

Joined Cases T-89/91, T-21/92 and T-89/92

Mrs X

v

Commission of the European Communities

(Officials — List of officials most deserving of promotion — Inclusion on the list — Promotion procedure)

Judgment of the Court of First Instance (Third Chamber), 25 November 1993 II - 1236

Summary of the Judgment

1. *Officials — Promotion — Discretion of the administration — Review by the Court — Limits (Staff Regulations, Art. 45)*
2. *Officials — Promotion — Consideration of comparative merits — Consideration of staff reports — Incomplete personal file — Rectification — Fresh consideration of comparative merits after granting of some promotions — Permissible (Staff Regulations, Art. 45)*
3. *Officials — Promotion — Consideration of comparative merits — Consideration of staff reports — Other factors which may be taken into consideration (Staff Regulations, Art. 45)*

1. In assessing the merits of candidates to be taken into consideration in a decision on promotion under Article 45 of the Staff Regulations, the appointing authority has

a wide discretion and in this area the review of the Community judicature must be confined to determining whether, having regard to the various considerations

which have influenced the administration in making its assessment, it has remained within reasonable bounds and has not used its power in a manifestly incorrect way. The Court cannot therefore substitute its assessment of the qualifications and merits of the candidates for that of the appointing authority.

2. Where there is an irregularity in the consideration of the comparative merits of the officials eligible for promotion by a promotion committee, whose task it is to prepare the ground for the decisions of the appointing authority, in that the latest staff report on one of those officials is missing from his or her personal file, then if that report has in the meantime been placed on the file, and even if some decisions on promotion have already been taken, the conditions set out in Article 45 of the Staff Regulations are met if that committee undertakes a fresh consideration of the comparative merits of all the

officials eligible for promotion, on the basis of the same information on all those concerned as was available to it on the previous occasion.

3. In order to comply with the first paragraph of Article 45(1) of the Staff Regulations, the criteria to be taken into account in considering applications for promotion are the comparative merits of the officials eligible for promotion and the reports on them. Accordingly, in making the choice which is to serve as a basis for the decision to be taken by the appointing authority under that article, a promotion committee is not bound to rely solely on the staff reports on those concerned but may also base its assessment on other aspects of the merits of the candidates such as information relating to their administrative and personal position, which is such as to qualify an assessment made solely on the basis of their staff reports.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

25 November 1993 *

In Joined Cases T-89/91, T-21/92 and T-89/92,

Mrs X, an official of the Commission of the European Communities, residing in Brussels, represented by Lucas Vogel, of the Brussels Bar, with an address for service at the chambers of Paul Mousel, 8-10 Rue Mathias Hardt,

applicant,

* Language of the case: French.