

Case T-50/92

Gilberto Fiorani

v

European Parliament

(Official — Transfer/reassignment —
Measures of organization of departments —
Covert disciplinary sanction —
Act adversely affecting an official)

Judgment of the Court of First Instance (Fourth Chamber), 8 June 1993 II - 557

Summary of the Judgment

1. *Officials — Actions — Time-limits — Starting point — Notification — Definition — Decision sent to place of work of official on sickness leave — Not notified*
(Staff Regulations, Art. 91(3))
2. *Officials — Transfer — Reassignment — Distinguishing criteria*
(Staff Regulations, Arts 4 and 29)
3. *Officials — Actions — Act adversely affecting an official — Definition — Reassignment decision — Measure relating to internal organization of departments — Not an act adversely affecting an official — Conditions — Requirement to state reasons and consult beforehand — None*
(Staff Regulations, Art. 90(2))
4. *Officials — Actions — Claim for compensation in conjunction with a claim for annulment — Admissibility assessed differently depending on whether the two claims are closely linked*
(Staff Regulations, Arts 90 and 91)

1. A decision must be notified in such a way as to enable the person concerned by it to become aware of its existence. That requirement is not fulfilled where a decision taken in response to a complaint by an official is sent to the department to which the official has been assigned although he is on sickness leave. In such a case, the period for initiating proceedings starts to run only on the date on which the decision is actually brought to his notice.
2. In determining whether a measure is a transfer or a reassignment, the Court cannot be bound by the legal classification given to it by the parties.

In that regard, it is clear from the scheme of the Staff Regulations that there is a transfer in the strict sense of the term only where an official is transferred to a vacant post. It follows that any such transfer is subject to the formalities prescribed by Articles 4 and 29 of the Staff Regulations. In contrast, those formalities do not apply when an official is reassigned with his post because that transfer does not give rise to a vacant post.

3. An official is adversely affected by an act only where it is such as to have a direct effect on his position in law and thus goes beyond measures which, concerning only

the internal organization of departments, do not adversely affect the position of the official concerned under the Staff Regulations. A decision to reassign, which does not affect the rights of the person concerned under the Staff Regulations in that, firstly, in spite of a change in duties, it entails no alteration in his rank and, secondly, it has no effect on his material interests, which does not adversely affect his non-material interests or his future prospects and which was taken in the sole interest of the service, does not constitute an act adversely affecting an official. The transfer of an official in order to put an end to an administrative situation which has become intolerable must be regarded as having been taken in the interest of the service. The administration is not obliged to state the grounds on which such a decision, which is merely a measure of internal organization of departments, is based or give the official concerned a hearing beforehand.

4. Where a claim for compensation is submitted in conjunction with a claim for annulment which is inadmissible, the claim for compensation will either itself be inadmissible, if it is closely linked to the claim for annulment, or will be admissible, in so far as the damage alleged has its origin in a service-related fault independent of the measure which is the subject of the application for annulment, but only on condition that it is preceded by a request to the administration to make good the damage suffered.