

Case T-20/89 RV

Heinz-Jörg Moritz

v

Commission of the European Communities

(Officials — Promotion — Article 29(2) of the Staff Regulations — Compensation for material and non-material damage — Case referred back after being set aside)

Judgment of the Court of First Instance (Fifth Chamber), 16 December 1993 ... II - 1425

Summary of the Judgment

1. *Officials — Reports procedure — Periodic report — Delay — Absence of the most recent periodic report of a candidate for promotion — Absence not covered by other information relating to the candidate's merits — Maladministration of such a kind as to render the institution liable*

(Staff Regulations, Arts 43 and 45(1))

2. *Officials — Promotion — Consideration of comparative merits — Consideration of staff reports — Incomplete personal file — Promotion prospects compromised — Maladministration of such a kind as to render the institution liable*

(Staff Regulations, Arts 43 and 45(1))

1. Delay in drawing up an official's periodic report constitutes maladministration of such a kind as to render the institution concerned liable if the official did not

contribute in any significant way to that delay. The absence of the periodic report from an official's personal file does not allow persons who are required to give an

opinion or to adopt decisions concerning the career progress of the official to take account of this important assessment criterion, particularly in the context of a promotion procedure.

That must *a fortiori* be the case in view of the fact that the applicant's periodic report, as finally drawn up, differed in several respects from the earlier periodic report, which did not truly reflect the applicant's precise qualifications at the time of the contested recruitment procedure and the adoption of the contested decision.

The absence of a periodic report cannot be considered to have been covered in an individual case in which the personal file contained an earlier periodic report and in which the applicant's Director-General had stated before a consultative committee for promotions that he intended to extend the earlier periodic report. In the first place, the Director-General was not the applicant's first assessor and, consequently, the expression of an intention to extend the periodic report did not make it possible to establish with a sufficient degree of certainty what the applicant's qualifications were at the point in time when his superiors were required to examine his personal file. Second, the procedure for drawing up officials' periodic reports is subject to specific procedures which require, at the very least, the participation of two assessors as well as the official actually being assessed and which, by virtue of that fact, may result in a final report on the official concerned which differs from that resulting from the assessment made by the first assessor. It is therefore only in the light of the definitive periodic report that the appointing authority can properly proceed to examine the file of the official concerned with a view to taking a decision that will have a bearing on his career progress.

2. Although an official in possession of an irregular and incomplete personal file thereby suffers non-material damage as a result of being put in an uncertain and anxious state of mind with regard to his professional future, it is also true that a delay in the drawing-up of a periodic report may in itself be prejudicial to an official for the simple reason that his career progress may be affected by the absence of such a report when a decision concerning him must be taken.

It is therefore necessary to hold that there was maladministration and to award damages against the institution concerned in a case where, by reason of the completely unjustified delay in drawing up a periodic report, the merits of an official who was a candidate for promotion were assessed in conditions such as to affect the promotion prospects of the person concerned, whose periodic report subsequently revealed certain changes that were in his favour.