

# Case T-19/90

Detlef von Hoessle

v

Court of Auditors of the European Communities

(Official — Classification in step —  
Professional experience)

Judgment of the Court of First Instance, 11 July 1991 ..... II - 617

## Summary of the Judgment

1. *Officials — Application to the Court — Prior complaint through administrative channels — Time-limit — Matter of public policy (Staff Regulations of Officials, Arts 90 and 91)*
2. *Officials — Application to the Court — Object — Instruction addressed to the administration — Inadmissibility (Staff Regulations of Officials, Art. 91)*
3. *Officials — Application to the Court — Prior complaint through administrative channels — Object — Concordance between complaint and action — Question of public policy raised by the Court of its own motion — Submission not appearing in the complaint — Conditions of admissibility (Staff Regulations of Officials, Arts 90 and 91; Rules of Procedure, Art. 113)*
4. *Officials — Recruitment — Classification in step — Additional seniority in grade — Taking account of professional experience — Discretion of the administration — Exclusion of a period of professional experience taken into consideration for the purposes of the appointment of the person concerned (Staff Regulations of Officials, second para. of Art. 32)*

1. The time-limits laid down in Articles 90 and 91 of the Staff Regulations for lodging complaints and appeals are intended to ensure certainty in legal relationships. They are therefore a matter of public policy and cannot be left to the discretion of the parties or the Court.

The fact that the defendant institution did not formally raise, in the proceedings before the Court, an objection of inadmissibility on the ground that the action is barred because the complaint was out of time does not dispense the Court from verifying whether, on the facts before it, the said time-limits have been complied with.

2. The question of admissibility regarding the consistency between the prior complaint through administrative channels and the application to the Court is a matter of public policy in so far as it relates to the legality of the administrative procedure, which constitutes an essential procedural requirement. The examination of this question by the Court of its own motion is justified, in particular, in the light of the very purpose of the administrative procedure, which is to permit an amicable settlement of the differences which have arisen between officials or servants and the administration.

3. A plea that was not raised in the complaint and mentioned for the first

time only in the written procedure before the Court must be rejected as inadmissible where the administrative complaint not only does not refer to that plea but contains nothing from which the defendant institution, even endeavouring to interpret the complaint with an open mind, could have inferred that the applicant wished to rely on the plea at issue.

4. With a view to granting additional seniority and grade when an official is recruited the appointing authority enjoys, under the second paragraph of Article 32 of the Staff Regulations, a discretion as regards all aspects of potential importance for the recognition of previous experience, both as regards the nature and duration of such experience and as regards the extent to which it corresponds to the requirements of the post to be filled.

The appointing authority does not exceed the limits of its discretion by taking into consideration a particular period of professional experience when appointing a candidate to a vacant post and yet refusing to take the same period into account for granting additional seniority in grade, if it considers that that experience is not sufficiently specific with respect to the requirements of the post to be filled.