

Case T-37/89

Jack Hanning

v

European Parliament

(Official — Successful candidate in a competition
— Annulment of a second competition
by the Court of First Instance)

Judgment of the Court of First Instance (Fifth Chamber), 20 September 1990 466

Summary of the Judgment

1. *Officials — Actions — Act adversely affecting the official — Candidate placed in a favourable position at the end of the competition procedure — Decision not to make an appointment*
(*Staff Regulations of Officials, Arts 90 and 91*)
2. *Procedure — Raising of fresh issues in the course of proceedings — Conditions — Fresh issue — Concept*
(*Rules of Procedure, Art. 42(2)*)
3. *Officials — Actions — Submissions — Inadequacy of the statement of reasons — To be considered of the Court's own motion*
4. *Officials — Decision adversely affecting them — Obligation to state the reasons on which the decision is based — Failure to do so — Correction during the procedure before the Court — Limits*
(*Staff Regulations of Officials, Art. 25(2)*)
5. *Officials — Recruitment — Competition — Obligation to choose one of the candidates who had been successful in the competition if the post is to be filled — Limits — Refusal to make use of a list of suitable candidates part of which is irregular — Unlawful*

6. *Officials — Recruitment — Competition — Obligation to make appointments in accordance with the order of merit of the list of suitable candidates — Limits — Interest of the service*
7. *Officials — Actions — Annulment by the Court — Court's power to order the institution to act — None*
(*Staff Regulations of Officials, Art. 91*)
8. *Officials — Actions — Action for damages — Extent of the damage not specified — Inadmissible*
(*Staff Regulations of Officials, Art. 91; Rules of Procedure, Art. 38(1)*)
9. *Officials — Actions — Action for damages — Annulment of the contested unlawful act — Appropriate reparation for non-material damage*
(*Staff Regulations of Officials, Art. 91*)

1. The fact that a candidate has taken part in a competition with the result that he has achieved a favourable position is evidence of an interest which he has in the outcome of that competition as determined by the appointing authority. A decision not to make an appointment and to open a fresh recruitment procedure is therefore capable of adversely affecting such a candidate.
2. Although Article 42(2) of the Rules of Procedure prohibits the raising of fresh issues in the course of proceedings unless they are based on matters of law or fact which come to light in the course of the written procedure, a submission which may be regarded as amplifying a submission made previously, directly or by implication, in the original application, and which is closely connected with that previous submission, must be considered admissible.
3. The Court of First Instance must of its own motion consider whether the defendant institution has fulfilled its obligation to provide an adequate statement of the reasons for the contested decision.
4. The statement of the reasons on which a decision not to make an appointment and to commence a new competition by reason of irregularities during the procedure in the first competition is based is inadequate if it contains no indication of the character or nature of those irregularities.

Although the lack of a statement of reasons cannot be remedied by the fact that the applicant learned the reasons for the decision during the proceedings before the Court, the position is different where the statement of reasons is inadequate. Explanations provided during the proceedings may, in exceptional cases, deprive of its purpose a submission alleging that the statement of reasons is inadequate.

Where the statement of reasons and any additional information on that subject provided at the hearing is inadequate, it is for the Court to verify whether the statements of reasons relied on by the defendant institution are of such a nature as to justify in law the contested decision.

5. The Staff Regulations do not oblige the appointing authority to give effect to the result of the recruitment procedure, once it has been completed, by making an appointment. However, if it intends to fill the vacant post, it must appoint the successful candidates on the basis of the results of the competition. It may depart from that rule only for sound reasons and must state the reasons for its decision clearly and fully. It follows that the institution is not entitled to terminate the recruitment procedure without considering whether there were sound reasons for not appointing one of the candidates who had been successful in the competition.

Although it is true that, in principle, all steps in a competition are necessarily vitiated by an unlawful refusal to admit a candidate, the position is not the same where one or more candidates have been wrongly admitted. In those circumstances, the appointing authority is faced with a competition procedure and a list of suitable candidates of which the parts which are irregular may be severed from those which are not.

Before deciding to disregard the results of a competition, the appointing authority must therefore consider the possibility of filling the vacant post by

appointing one of the persons properly included in the list of suitable candidates.

6. Although the appointing authority is entitled to ignore the precise order of merit of the successful candidates in a competition, it must have sound reasons connected with the interest of the service for appointing a candidate other than the one who came first.

7. The Court cannot, without encroaching upon the prerogatives of the administration, order an institution to adopt the measures necessary for the enforcement of a judgment by which decisions concerning steps in a competition are annulled.

8. A claim for compensation for material damage in which the applicant does not set out the extent of the damage he claims to have suffered even though he could easily have expressed it in figures and has neither shown nor even claimed that there were any special circumstances justifying that failure does not fulfil the requirements of Article 38(1) of the Rules of Procedure.

9. The annulment of an administrative act challenged by an official constitutes appropriate and, in principle, sufficient reparation for any non-material harm he may have suffered. It follows that a claim for one franc by way of symbolic damages has no purpose.