

Case T-20/89

Heinz-Jörg Moritz

v

Commission of the European Communities

(Official — Admissibility — Appointment — Periodic Report
— Damage — Claim for compensation)

Judgment of the Court of First Instance (Fifth Chamber), 13 December 1990 771

Summary of the Judgment

1. *Officials — Actions — Interest in bringing proceedings — Application for annulment of another official's appointment — Applicant entering retirement during the proceedings — Inadmissibility*
(Staff Regulations, Art. 91)
2. *Officials — Recruitment — Application of Article 29(2) of the Staff Regulations — Choosing amongst the candidates — Discretion of the appointing authority — Judicial review — Limits*
(Staff Regulations, Art. 29(2))
3. *Officials — Recruitment — Application of Article 29(2) of the Staff Regulations — Hearing by a consultative body of the views of the Head of Service and immediate superior of a candidate on the question of the qualifications required for the post — Hearing in the absence of the candidate — Breach of the right to a fair hearing — None*
(Staff Regulations, Art. 29(2))
4. *Officials — Recruitment — Conditions — Nationality of one of the Member States — Possession of such nationality on taking up duties*
(Staff Regulations, Arts 27 and 28)

5. *Officials — Recruitment — Vacant post — Filling of vacancy — Appointment of a candidate from outside the institutions — Breach of the duty to have regard to officials' interests — None*
(Staff Regulations, Art. 29)

6. *Officials — Assessment — Periodic report — Drawing up of report — Lateness — Delay partly attributable to the official*
(Staff Regulations, Art. 43)

1. In order for an official who has entered retirement to be able to pursue an action for annulment, brought under Article 91 of the Staff Regulations, he must have a personal interest in the annulment of the contested decision. That is not the case where his action is primarily for the annulment of the appointment of another person to a post to which he may no longer successfully lay claim.
2. When filling a Grade A 2 post exercising the option afforded by Article 29(2) of the Staff Regulations, the appointing authority has a wide discretion in comparing the merits of candidates and evaluating the interests of the service. The review to be carried out by the Court must be confined to the question whether, having regard to the various considerations which have influenced the administration in making its assessment, the administration remained within reasonable bounds and has not used its power in a manifestly incorrect way or for purposes other than those for which it was conferred.
3. The fact that in a procedure to fill a Grade A 2 post pursuant to Article 29(2) of the Staff Regulations a consultative committee, charged with examining the applications, proceeds to hear in the absence of a candidate the Director-General to whom the person filling the post will be answerable and who is the immediate superior of the person concerned, in order to have a clear idea of the qualifications required for the post, does not constitute a breach of the principle of the right to a fair hearing.
4. A decision to appoint an official who originates from a Member State and has the nationality of a non-member country but who re-acquires the nationality of one of the Member States before taking up his duties does not constitute a breach of Articles 27 and 28 of the Staff Regulations.
5. The fact that an official who is a candidate for a post to be filled is not preferred over a younger candidate from outside the Community institutions cannot constitute *per se* a breach of the duty owed by the administration to have regard to officials' interests and show loyalty towards officials.
6. An official cannot complain of the delay in drawing up his periodic report and claim non-material damage in that regard where the delay is attributable to him, at least in part, or where he contributed considerably to the delay.