

## Case T-84/92

Finn Nielsen and Pia Møller

v

Economic and Social Committee of the European Communities

(Officials — Annulment of a decision on promotion —  
Opinion of the Joint Committee on Promotions —  
Personal file — Staff report)

Judgment of the Court of First Instance (Fifth Chamber), 28 September 1993 ... II - 950

### Summary of the Judgment

1. *Officials — Promotion — Complaint by candidate not promoted — Decision rejecting complaint — Grounds — Scope*  
(Staff Regulations, Arts 45 and 90(2))
2. *Officials — Decision affecting the administrative status of an official — Account taken of matters not recorded in personal file — Not permissible — Limits — Account taken, in granting promotion, inter alia of comparative assessment of candidates' abilities by their immediate superior — Whether permissible*  
(Staff Regulations, Art. 26)

1. The appointing authority is required, in accordance with Article 90(2) of the Staff Regulations, to give reasons for its decision rejecting a complaint contesting promotion, so that the Community judiciary can review the legality of that

decision on promotion and the person concerned has sufficient information to ascertain whether the decision is well founded or vitiated by an error which will allow its legality to be contested. Where it has promoted an official who is not

included on a list drawn up by a joint body required to give its opinion, it discharges that obligation if, in its letter rejecting the complaint, it makes clear that it made its comparative assessment of all the candidates' qualifications, merits and knowledge required for the performance of duties on the basis of the staff reports of all the officials eligible for promotion.

based on such matters is contrary to the guarantees contained in the Staff Regulations and must be annulled because it was adopted on the basis of a procedure vitiated by illegality.

That is not the case where the appointing authority makes a decision granting promotion to an official, in preference to others, on the basis both of the staff reports of the candidates and of a comparative assessment of their abilities by their immediate superior, which, as a value judgment likely to be damaging to the unsuccessful candidates, must not be communicated to them or included in their personal file.

2. The purpose of Article 26 of the Staff Regulations is to safeguard an official's right to a fair hearing by ensuring that decisions taken by the appointing authority and affecting his administrative status and his career are not based on matters concerning his conduct which are not mentioned in his personal file. A decision

## JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

28 September 1993 \*

In Case T-84/92,

**Finn Nielsen and Pia Møller**, officials of the Economic and Social Community of the European Communities, residing respectively in Rixensart (Belgium) and Brussels, represented by Thierry Demaseure and Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Myson SARL, 1 Rue Glesener,

applicants,

\* Language of the case: French.