

Case 224/87

Jean Koutchoumoff

v

Commission of the European Communities

(Official — Protection under Article 24
of the Staff Regulations — Damages)

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Summary of the Judgment

1. *Officials — Action against a decision rejecting a complaint — Admissibility (Staff Regulations of Officials, Arts 90 and 91)*
2. *Officials — Actions — Prior administrative complaint — Identical subject-matter — Submissions and arguments which do not appear in the complaint but are closely linked to it — Admissibility — Claim for damages raised for the first time before the Court — Extension of the subject-matter of the dispute — None (Staff Regulations of Officials, Arts 90 and 91)*
3. *Officials — Duty of the administration to have regard for the interest of the employee — Scope (Staff Regulations of Officials, Art. 24)*

1. Under the system laid down in the Staff Regulations, an official may submit an appeal to the Court against a decision adversely affecting him taken by the appointing authority only after he has first submitted a complaint to that authority and that complaint has been rejected by an express or implied decision. The action is admissible whether it is directed against the initial decision alone, the decision rejecting the complaint or both, provided, however, that the complaint and the appeal were lodged within the periods prescribed by Articles 90 and 91 of the Staff Regulations.
2. An official may not submit to the Court conclusions with a subject-matter other than those raised in the prior administrative complaint or put forward heads of claim based on matters other than those relied on in the complaint. The submissions and arguments made to the Court in support of those heads of claim need not necessarily appear in the complaint but must be closely linked to it. It follows that although Articles 90 and 91 of the Staff Regulations are designed to permit, by means of a prior administrative complaint, the amicable settlement of disputes which have arisen between officials and the administration, it is not the purpose of those provisions to bind strictly and absolutely the contentious stage of the proceedings, provided that the claims submitted at that stage do not change the legal basis or the subject-matter of the complaint.

In particular, a request for compensation raised for the first time before the Court,

inasmuch as the administrative complaint related only to the annulment of the decision which allegedly adversely affected the official, is admissible since such a request may imply a request for compensation for damage caused by that decision.

3. The duty of the institutions of the Community under Article 24 of the Staff Regulations to protect officials against threats, insulting or defamatory acts or utterances or any attacks to which they are subjected, which also covers attacks on those officials by other officials, only arises once the facts in question have been established.

Although the administration, when faced with an incident which is incompatible with the good order and tranquillity of the service, is required to intervene with all the necessary vigour so as to ascertain the facts and, having done so, to take the appropriate action in full knowledge of the matter, it is not required to institute an investigation on the basis of mere allegations by an official. It is incumbent upon the official who is seeking the protection to which he is entitled under Article 24 of the Staff Regulations to provide at least some evidence of the reality of attacks of which he claims he was the victim. It is only when that evidence is provided that the institution is under an obligation to take the necessary measures, in particular to carry out an inquiry, with the cooperation of the complainant, to determine the facts which gave rise to the complaint.