

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
5 November 2003

Case T-326/01

**Giorgio Lebedef**  
v  
**Commission of the European Communities**

(Officials – Staff report –  
Exercise of activities as staff representative and union activities –  
Action for annulment)

Full text in French . . . . . II - 1317

**Application for:** the annulment of the decision adopting the definitive staff report of the applicant for the period running from 1 July 1995 to 30 June 1997.

**Held:** The application is dismissed. The parties are ordered to bear their own costs.

## Summary

*1. Officials – Representation – Constraints associated with performance of duties as staff representative – Taking into account when staff report drawn up – Duties of assessors  
(Staff Regulations, Arts 24a and 43; Annex II, Art. 1, sixth para.)*

*2. Officials – Reports procedure – Staff report – Drawing up – Officials performing staff representation duties – System set up by the Commission – Duties of assessors – Account taken of opinions of the ad hoc staff reports group and the ad hoc joint appeals committee*

*3. Officials – Reports procedure – Staff report – Obligation to state reasons – Scope  
(Staff Regulations, Art. 43)*

1. The activities associated with staff representation must be taken into consideration when the staff reports of the officials concerned are drawn up, in such a way that they are not penalised for carrying out such activities. Consequently, even though the assessor and appeal assessor are authorised solely to assess the performance in the post to which he is assigned of an official who has a mandate as staff representative, to the exclusion of the activities connected with that mandate, which are not within their competence, they must none the less take account of the constraints connected with the exercise of those duties as staff representative. More specifically, they must take account (where appropriate) of the fact that the number of days' work which the official concerned has been able to provide in his department is less than the normal number of working days in the reference period as provided for in the Staff Regulations. The proficiency and work of that official must therefore be assessed, for the purposes of the staff report, on the basis of the performance which the institution is normally entitled to expect from an official of the same grade during a period corresponding to the time he has actually devoted to his activity in the branch to which he is posted after deducting the time spent,

under the conditions laid down in the Staff Regulations, in his activity as staff representative.

(see para. 49)

See: T-23/91 *Maurissen v Court of Auditors* [1992] ECR II-2377, para. 14

2. Although, where an institution has not adopted a special system for reporting on officials performing staff representation activities, the assessors are not competent to evaluate those activities, that is not the case where an ad hoc assessment system has been set up for those officials.

Thus, in the system introduced at the Commission, an ad hoc staff reports group and, where appropriate, an ad hoc joint appeals committee are required to intervene.

The purpose of consulting the ad hoc staff reports group is to provide the assessor with the information he needs to assess the duties which the subject of the report performs as a staff or trade union representative, given that those duties are regarded as forming part of the services which such an official is required to provide in his institution. Furthermore, under the second indent of the sixth paragraph of Article 3 and Article 5 of the general provisions adopted by the Commission for the implementation of Article 43 of the Staff Regulations, the assessor is required to consult the ad hoc staff reports group before drawing up the preliminary draft report.

It follows that the assessor is required to take account of the opinion of the ad hoc staff reports group when drawing up the staff report of an official performing staff representation or trade union activities. However, he is not obliged to follow that opinion. If he does not, he must then explain the reasons which led him to depart from it. Simply attaching the opinion to the staff report is not sufficient to be regarded as satisfying the requirement to provide a statement of reasons.

Those principles also apply, *mutatis mutandis*, to the opinion of the ad hoc joint appeals committee. According to Annex II of the general provisions implementing Article 43 of the Staff Regulations, the opinion of that committee must be taken into account by the appeal assessor when drawing up the staff report.

(see paras 51-56)

See: *Maurissen v Court of Auditors*, cited earlier

3. Since the staff report contains a sufficient statement of reasons, the appeal assessor cannot be required to provide further explanations of the reasons which led him not to follow the recommendations of the Joint Committee on Staff Reports unless that advisory body's opinion mentions special circumstances likely to cast doubt on the validity or proper foundation of the original assessment and therefore calls for a specific assessment from the appeal assessor as to any appropriate conclusions to be drawn from those circumstances.

(see para. 69)

See: T-187/01 *Mellone v Commission* [2002] ECR-SC I-A-81 and II-389, para. 33