

Case T-82/89

Antonio Marcato

v

Commission of the European Communities

(Official — Promotion within career bracket —
List of officials found to be most worthy of promotion —
Admissibility of application — Promotion procedure —
Right to a fair hearing)

Judgment of the Court of First Instance (Fifth Chamber), 5 December 1990 737

Summary of the Judgment

1. *Officials — Actions — Act adversely affecting an official — Concept — Exclusion from a list of officials eligible for promotion — Inclusion a condition for possible promotion within career bracket — Admissibility*
(*Staff Regulations, Arts 90 and 91*)
2. *Officials — Actions — Interest in bringing proceedings — Application for the annulment of a decision not to include an official in a list of officials eligible for promotion — Applicant's retirement during the pre-litigation procedure — Admissibility*
(*Staff Regulations, Arts 90 and 91*)
3. *Officials — Decision affecting the administrative status of an official — Taking into consideration of matters not included in the personal file — Exclusion from a list of officials eligible for promotion — Exclusion based on assessment voiced orally before a consultative body — Impossibility for the official to exercise his right to a fair hearing — Illegality*
(*Staff Regulations, Art. 26*)

1. The inclusion of an official's name on a list of officials found to be most worthy of promotion within a career bracket is merely a preparatory measure and does not therefore constitute an act adversely affecting another official. In so far as the appointing authority is not obliged to promote an official included on the list, such inclusion does not in itself directly affect that official's legal position, since no decision concerning his possible promotion has yet been taken. Nor can the mere fact that another official is included affect the legal position of officials who are not included, since it can only be affected by the actual promotion of that other official.

If, however, on the basis of internal measures relating to the procedure for promotion within a career bracket, an institution considers itself bound by the list drawn up on the completion of the proceedings of a consultative promotion committee, in so far as it excludes from promotion officials not included on that list, the decision to exclude an official from the list directly affects his legal position and constitutes an act adversely affecting him.

2. A retired official retains a personal interest in seeking the annulment of a decision excluding him from the list of

officials found to be most worthy of promotion within a career bracket since, if the decision not to include his name on the list were to be annulled, he would be able to bring an action seeking compensation for whatever damage he had suffered as a result of his exclusion.

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

A decision excluding an official from a list of officials found to be most worthy of promotion within a career bracket based, in the absence of a staff report, on an assessment of him voiced orally in the context of a promotion procedure before a committee set up for that purpose, against which the official was unable to exercise the right to a fair hearing which Article 26 of the Staff Regulations seeks to ensure, infringes the safeguards under the Staff Regulations and must be annulled as having been taken following a procedure vitiated by illegality.