

JUDGMENT OF THE COURT OF FIRST INSTANCE (Single Judge)
7 May 2003

Case T-278/01

Eric den Hamer
v
Commission of the European Communities

(Officials – Staff report – Action for annulment –
Action for damages)

Full text in French II - 665

Application for: first, annulment of the decision adopting the staff report of the applicant for the period 1995 to 1997 and, second, payment of damages in compensation for damage caused inter alia by the delay in drawing up that report.

Held: The Commission is ordered to pay the applicant the sum of EUR 3 000. The remainder of the application is dismissed. The Commission is ordered to pay the costs.

Summary

1. Officials - Reports procedure - Staff report - Drawing up - Delay - Irregularity not capable of leading to annulment (Staff Regulations, Art. 43)

2. Officials - Reports procedure - Staff report - Judicial review - Limits (Staff Regulations, Art. 43)

3. Officials - Reports procedure - Staff report - Drawing up - Delay - Breach of administrative duty giving rise to non-material damage (Staff Regulations, Art. 43)

4. Officials - Reports procedure - Staff report - Drawing up - Time-limit - Mandatory nature of the time-limits set by an institution's internal rules (Staff Regulations, Art. 43)

5. Officials - Promotion - Consideration of comparative merits - Consideration of staff reports - Incomplete personal file - Irregularity remediable by the existence of other information relating to the official's merits - Conditions (Staff Regulations, Arts 43 and 45)

1. In the absence of exceptional circumstances, a staff report cannot be annulled on the sole ground that it was drawn up late. Although delay in drawing up a staff report is capable of giving the official concerned a right to a remedy, such delay

cannot affect the validity of the staff report or, in consequence, justify the annulment thereof.

(see para 32)

See: T-15/96 *Liao v Council* [1997] ECR-SC I-A-329 and II-897, paras 34 and 35, and the case-law cited

2. Assessors enjoy a very wide discretion when judging the work of persons upon whom they must report. It is not for the Community judicature, save in the case of manifest errors as to the facts or misuse of powers, to review the merits of the assessment made of the occupational abilities of an official, where it involves complex value judgments which, by their very nature, are not amenable to objective verification.

(see para. 58)

See: T-187/01 *Mellone v Commission* [2002] ECR-SC I-A-81 and II-389, para 51, and the case-law cited

3. The absence, as a result of a breach of administrative duty, of the periodic report from an official's personal file is capable of giving rise to non-material damage entitling him to compensation if his career could have been affected thereby or if that fact resulted in his being put in an uncertain or anxious frame of mind with regard to his future.

(see para 82)

See: T-78/96 and T-170/96 *W v Commission* [1998] ECR-SC I-A-239 and II-745, para. 233

4. The case-law granting the Commission, in the light of the wording of Article 43 of the Staff Regulations, a reasonable period in which to draw up staff reports for its officials cannot apply where rules that are binding on the Commission make the conduct of the reports procedure subject to specific time-limits.

(see para. 88)

5. The periodic report constitutes an indispensable criterion of assessment each time the official's career is taken into consideration by the administration. Although, in exceptional circumstances, the absence of a periodic report may be compensated for by the existence of other information on an official's merits, such other information must meet certain conditions and it is for the defendant institution to show that they have been satisfied. In any event, a periodic report which is not final and is disputed by the official concerned cannot, of itself, serve as a source of such other information.

(see para. 95)

See: T-202/99 *Rappe v Commission* [2000] ECR-SC I-A-201 and II-911, paras 38, 40, 52 and 56