

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
21 June 1996

Case T-41/95

**Andrew Macrae Moat**  
v  
**Commission of the European Communities**

(Officials – Action for damages – Implementation of a judgment annulling an appointment – Late completion of staff report)

Full text in English . . . . . II - 939

**Application for:** compensation for harm allegedly suffered by the applicant as a result of the failure to implement or delay in implementing the judgment of the Court of First Instance in Case T-58/92 *Moat v Commission* [1993] ECR II-1443, the delay in completing his 1991-1993 staff report, and the failure to give a reasoned reply to a memorandum of 30 March 1994 described as a request and/or complaint.

**Decision:** Application dismissed.

### Abstract of the Judgment

The applicant applied on 6 February 1992 for the posts of Head of Unit 7 (Recruitment) in Directorate A (Personnel) of Directorate-General IX (Personnel and Administration, 'post IX.A.7') and Head of Unit 3 (Transport and Tourism) in Directorate D (Restrictive practices, abuse of dominant positions and other distortions of competition III) in Directorate-General IV (Competition), to be filled at Grades A 3, A 4 or A 5, notice of which was published on 30 January 1992 in Vacancy Notices COM/6/92 and COM/4/92.

His candidature for the abovementioned posts and his subsequent complaints having been rejected, the applicant lodged an application at the Registry of the Court of First Instance on 12 August 1992 for the annulment of the decisions of the defendant rejecting his candidature, the annulment of the decisions appointing other persons to those posts, and compensation for the harm allegedly suffered by him as a result of the failure to complete his staff report for the period 1 July 1989 to 30 June 1991 in due time, to consult it when the abovementioned posts were filled and to give a reasoned reply to his complaint.

By the judgment in Case T-58/92 *Moat v Commission* [1993] ECR II-1443 the Court of First Instance annulled the Commission's decision rejecting the applicant's candidature for post IX.A.7 and that appointing Mr T. to that post and dismissed the remainder of the application.

On 10 March 1994 the defendant published a new vacancy notice for post IX.A.7, COM/41/94.

On 30 March 1994 the applicant lodged a memorandum described as a request pursuant to Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and/or a complaint pursuant to Article 90(2) of the Staff Regulations in which he sought to know the outcome of his application for post IX.A.7 (COM/6/92). He also asked in his memorandum for compensation for the harm allegedly suffered by him on account of the means adopted by the defendant to implement the judgment in Case T-58/92.

By a request lodged on the same date pursuant to Article 90(1) of the Staff Regulations, he asked for compensation for the harm allegedly suffered by him as a result of the delay in completing his report for the period 1 July 1991 to 30 June 1993.

On 7 April 1994, the defendant republished Vacancy Notice COM/41/94, including in it notice of the cancellation of Vacancy Notice COM/6/92.

On 8 June 1994, the defendant rejected his request for compensation for the delay in completing his 1991-1993 staff report.

On 3 September 1994, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the express rejection of his request for compensation for the delay in completing his 1991-1993 staff report and the implied rejection of his memorandum described as a request and/or complaint. That complaint was rejected.

## Admissibility

Although it is true that an applicant who has retired has no interest in seeking the annulment of a vacancy notice or of a decision appointing an official in relation to a post to which he can no longer aspire, he nevertheless retains a personal interest in bringing an action seeking compensation for the harm allegedly caused by the decision to refuse to promote him and by various faults and omissions committed by the administration (paragraph 26).

See: T-82/89 *Marcato v Commission* [1990] ECR II-735, paras 53 and 54; T-82/91 *Latham v Commission* [1994] ECR-SC II-61, paras 24 and 25

## Substance

### *Failure to implement or delay in implementing the judgment in Case T-58/92*

It has been consistently held that in order for applicants to be able to claim compensation they must demonstrate that the institution has committed a fault, that a definite and quantifiable loss has occurred and that a causal link exists between the fault and the alleged loss (paragraph 37).

See: T-16/89 *Herkenrath and Others v Commission* [1992] ECR II-275, para. 36

The Court of First Instance has held that the appointing authority is not obliged to carry through a recruitment procedure initiated pursuant to Article 29 of the Staff Regulations. The principle thus laid down remains applicable even when, as in the present case, the recruitment procedure has been partially annulled by the

Community judicature. Accordingly such a judgment can in no way affect the discretionary power of the appointing authority to extend its field of choice in the interests of the service by annulling the original vacancy notice and at the same time initiating a fresh appointment procedure (paragraph 38).

See: T-38/89 *Hochbaum v Commission* [1990] ECR II-43, paras 15 and 16

Consequently, the defendant did not infringe Article 176 of the Treaty by cancelling Vacancy Notice COM/6/92 and at the same time initiating a fresh procedure by publishing Vacancy Notice COM/41/94 (*Hochbaum*, paragraph 16). Since the appointing authority had the right to open a fresh recruitment procedure without being obliged, in order to implement the judgment, to take up the procedure at the stage it had reached before the adoption of the unlawful act, it was not obliged, in the present case, to reconsider the applications received in response to the original Vacancy Notice COM/6/92 (paragraph 39).

Moreover, the time taken by the defendant was reasonable, inasmuch as it published within three months of the judgment annulling an appointment to a post a fresh vacancy notice for that post. The appointing authority was not obliged to expedite a recruitment procedure on the ground that one of the potential candidates for the disputed post was close to retirement (paragraph 40).

The applicant has not in any event suffered damage as a result of the publication of the vacancy notice in March 1994, since his situation on 10 March 1994 was not appreciably different to what it was on 16 December 1993 with regard to his interest in bringing proceedings. The applicant had the possibility of submitting his candidature for the disputed post in either December 1993 or March 1994 and, if

appropriate, to request that he be awarded damages in the event that he was refused appointment to the post in question (paragraph 41).

See: *Latham v Commission*, referred to above, paras 24 and 25

Furthermore, the duty to have regard for the welfare of officials which is incumbent upon the appointing authority did not include an obligation to inform the applicant personally of its intentions concerning post IX.A.7. Even though the applicant might have been uncertain as to the intentions of the defendant as regards that post after the publication of Vacancy Notice COM/41/94 on 10 March 1994, the fact remains that the cancellation of Vacancy Notice COM/6/92 on 7 April 1994 and the telephone conversation he had with the Director-General of the Directorate-General for Personnel and Administration enabled the applicant to know the appointing authority's intentions regarding the annulment. It was on his own initiative that the applicant failed to apply for Vacancy Notice COM/41/94, considering that it was too late to do so (paragraph 42).

*Delay in completing the staff report for the period 1 July 1991 to 30 June 1993*

According to settled case-law, where there are no particular circumstances justifying it, the absence from an official's personal file of his staff report because of the late completion of the latter is capable of giving rise, in so far as that official is concerned, to non-material damage if, on the one hand, his career could have been affected thereby or if, on the other, that fact resulted in his being put in an uncertain or anxious state of mind with regard to his future (paragraph 54).

See: T-496/93 *Allo v Commission* [1995] ECR-SC II-405, para. 89

*Failure to give a reasoned reply to the memorandum described as a request and/or complaint*

It follows from paragraph 42 of this judgment that the defendant was not obliged to inform the applicant personally of the steps taken to implement the judgment in Case T-58/92 and that the applicant was aware of Vacancy Notice COM/41/94 and the cancellation of Vacancy Notice COM/6/92 so that he could have applied for post IX.A.7 (paragraph 62).

**Operative part:**

**The application is dismissed.**