

Case T-8/92
(Publication by extracts)

Tiziano di Rocco

v

Economic and Social Committee of the European Communities

(Inadmissibility — Intervention)

Order of the Court of First Instance (Fifth Chamber), 18 December 1992 II - 2654

Summary of the Order

1. *Officials — Actions — Act adversely affecting an official — Definition — Decision to close without further action a disciplinary proceeding — Excluded*
(Staff Regulations, Arts 90 and 91)
2. *Officials — Disciplinary measures — Action taken — Discretion of the appointing authority — Opinion of the Disciplinary Board — Scope — Limits*
(Staff Regulations, Art. 86(2))
3. *Officials — Actions — Action for damages — Separate from action for annulment — Limits — Pre-litigation procedure different according to whether or not there is an act adversely affecting the official*
(Staff Regulations, Arts 90 and 91)

1. The decision by which the appointing authority decides to close without further action disciplinary proceedings does not constitute an act adversely affecting the official against whom the proceedings were initiated within the meaning of Articles 90 and 91 of the Staff Regulations,

since the operative part of such a decision is not capable of altering the legal situation of that official.

2. The powers of the appointing authority in disciplinary matters permit it only to order one of the measures provided for in

Article 86(2) of the Staff Regulations or to close the disciplinary proceedings without ordering a disciplinary measure, regardless of the opinion of the Disciplinary Board, which in any event is not binding on the appointing authority.

3. When, under Articles 90 and 91 of the Staff Regulations, the question of the admissibility of an action for damages is being examined, a distinction must be drawn between two types of cases. Where the claims for damages are closely linked to an action for annulment, the inadmissibility of the latter entails the inadmissibility of the action for damages. If there is no close link between the two actions, the admissibility of the claims for damages must be assessed separately from that of the action for annulment and is subject, in particular, to the pre-litigation procedure

provided for under Articles 90 and 91 having been properly carried out.

In that connection, where an action for damages is seeking redress for harm suffered as a result of an act which adversely affected the official, it is for the person concerned to lodge, within the prescribed period, a prior administrative complaint against that act, and then to bring an action within a period of three months from the date on which the complaint is rejected. Conversely, if the alleged harm has resulted from conduct which, since it had no legal effects, cannot be characterized as acts adversely affecting the official, the pre-litigation procedure must begin with a request for compensation. Only an express or implied rejection of that request constitutes a decision adversely affecting the official against which a complaint may be directed, and it is only after a decision rejecting, expressly or impliedly, that complaint that an action for damages may be brought before the Court of First Instance.

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

18 December 1992 *

In Case T-8/92,

Tiziano Di Rocco, an official of the Economic and Social Committee, residing in Kraainem (Belgium), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

* Language of the case: French.