

Case 126/87

Sergio Del Plato

v

Commission of the European Communities

(Officials — Refusal to allow an official to participate
in an internal competition)

Report for the Hearing	644
Opinion of Mr Advocate General Darmon delivered on 28 February 1989	649
Judgment of the Court (Third Chamber), 10 March 1989	659

Summary of the Judgment

1. *Officials — Action — Action against a decision rejecting a complaint — Admissibility (Staff Regulations, Arts 90 and 91)*
2. *Officials — Action — Prior administrative complaint — Same subject-matter — Submissions and arguments not appearing in, but closely linked to, the complaint — Admissibility — Claim for compensation made for the first time before the Court — Extension of the subject-matter of the action — None (Staff Regulations, Arts 90 and 91)*

1. Under the system established by the Staff Regulations, an appeal by an official to the Court of Justice against a decision of the appointing authority relating to him may lie only if the official has previously submitted a complaint to the appointing authority and that complaint has been rejected by express or implied decision. When those conditions are met, the action is admissible whether it is directed

against the initial decision alone, the decision rejecting the complaint or both, provided, however, that the complaint and the appeal were brought within the periods prescribed by Articles 90 and 91 of the Staff Regulations.

2. An official may not submit to the Court conclusions with a subject-matter other than those raised in the prior adminis-

trative complaint or put forward heads of claim based on matters other than those relied on in the complaint. The submissions and arguments made to the Court in support of those heads of claim need not necessarily appear in the complaint, but must be closely linked to it. It follows that although Articles 90 and 91 of the Staff Regulations are designed, through the lodging of the prior administrative complaint, to permit the amicable settlement of disputes which have arisen between officials and the administration, it is not the purpose of those provisions to bind strictly and absolutely the contentious stage of the

proceedings, provided that the claims submitted at that stage change neither the legal basis nor the subject-matter of the complaint.

In particular, a claim for compensation made for the first time before the Court, whereas the administrative complaint sought only the annulment of the decision by which the applicant claimed to have been adversely affected, is admissible since such a request for annulment may imply a request for compensation for damage which may have been caused to the applicant by that decision.

REPORT FOR THE HEARING delivered in Case 126/87 *

I — Facts and procedure

Mr Del Plato was recruited by the Commission in 1967 to carry out duties at the Joint Research Centre at Ispra. He is an official in Grade B 3 in the scientific and technical service, at present employed in the Infrastructure Division.

On 29 April 1986, Mr Del Plato submitted his candidature in response to a vacancy notice for post COM/536/86, which is the post of head of the department in which he works. His candidature met with an oral refusal, and he submitted it again on the

following day, 30 April 1986, by registered letter with acknowledgment of receipt.

In August 1986 Mr Del Plato learned that Mr Timm had been appointed to the post and on 9 September 1986 he submitted a complaint in which he requested the annulment of the refusal to allow him to take part in the procedure for filling the post in question, the annulment of Mr Timm's appointment to that post and the recommencement of the entire procedure by transfer or promotion.

* Language of the case: French.