

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
10 September 2003

Case T-165/01

Hans McAuley
v
Council of the European Union

(Staff report – Guide to staff reports –
Change of assessor during the period covered by the report –
Substantial irregularities)

Full text in French II - 963

Application for: annulment of the Council's decision of 15 September 2000 drawing up the applicant's final staff report for the period 1 July 1997 to 30 June 1999.

Held: The Council's decision of 15 September 2000 drawing up the applicant's final staff report for the period 1 July 1997 to 30 June 1999 is annulled. The Council is ordered to pay the costs.

Summary

*1. Officials – Reports procedure – Institution’s internal guidelines on the reporting procedure – Legal effects
(Staff Regulations, Arts 43 and 110)*

*2. Officials – Reports procedure – Staff report – Signatures of those consulted
(Staff Regulations, Art. 43)*

*3. Officials – Reports procedure – Staff report – Purpose – Need for prior consultation of those who have had the official under their authority
(Staff Regulations, Art. 43)*

1. A decision of a Community institution communicated to all its staff and intended to guarantee the officials concerned the same treatment regarding the reporting procedure, even though it cannot be regarded as a general implementing provision within the meaning of Article 110 of the Staff Regulations, constitutes an internal directive and must, as such, be regarded as a rule of conduct, indicating the practice to be followed, which the administration imposes on itself and from which it may not depart without specifying the reasons for doing so, since otherwise the principle of equality of treatment would be infringed.

(see para. 44)

See: 148/73 *Louwage v Commission* [1974] ECR 81; 190/82 *Blomefield v Commission* [1983] ECR 3981

2. The signing of the staff report by those consulted before it is drawn up is not simply a formality, inasmuch as it is intended first of all to allow the subject of the report to know the identity of those who contributed to the report and thereby to exercise his right to defend himself in the reporting procedure, and secondly to allow those who have been consulted to comment on the assessments contained in the report.

(see para. 50)

3. The primary function of the staff report is to provide the administration with periodic information, which is as complete as possible, on the performance of their duties by officials. It cannot, as a rule, fulfil that function in a truly comprehensive manner if those under whose authority the official in question discharged his duties during the reporting period are not consulted in advance and given an opportunity to make any comments.

(see para. 51)

See: T-63/89 *Latham v Commission* [1991] ECR II-19, para. 27