

Case T-130/89
(Summary publication)

B.

v

Commission of the European Communities

(Staff Regulations of Officials, Arts 90(2) and 91(1))
(Official — Admissibility — Act adversely affecting
an official — Provisional measure — Period for complaint)

Summary of the Judgment

1. *Officials — Actions — Conditions of admissibility — Public policy — Examination of its own motion — Act adversely affecting an official — Preparatory measure — Exclusion (Staff Regulations, Arts 90 and 91)*
2. *Officials — Actions — Prior complaint through official channels — Time-limits — Public policy (Staff Regulations, Arts 90 and 91)*

1. Since the conditions of admissibility of an action are a matter of public policy, the Court of First Instance may consider them of its own motion. Such consideration is not restricted to the submissions of inadmissibility put forward by the parties (see the judgments of 23 April 1956 in Joined Cases 7/54 and 9/54 *Groupeement des industries sidérurgiques luxembourgeoises v High Authority* [1954-56] ECR 175 and 16 December 1960 in Case 6/60 *Humblet v Belgian State* [1960] ECR 559).

An action challenging a preparatory measure which does not amount to an act adversely affecting an official within

the meaning of Article 90(2) of the Staff Regulations must be dismissed as inadmissible (see the judgments of 1 July 1964 in Case 26/63 *Pistojs v Commission* [1964] ECR 341, Case 78/63 *Huber v Commission* [1964] ECR 367 and Case 80/63 *Degreeef v Commission* [1964] ECR 391 and the judgment of 14 February 1989 in Case 346/87 *Bossi v Commission* [1989] ECR 303).

2. The time-limits laid down in Articles 90 and 91 of the Staff Regulations for lodging complaints and appeals are intended to ensure legal certainty. They are therefore a matter of public policy and cannot be left to the discretion of the

parties or the Court (see the judgments of 12 December 1967 in Case 4/67 *Mueller (née Collignon) v Commission* [1967] ECR 365 and 19 February 1981 in Joined Cases 122 and 123/79 *Schiavo v Council* [1981] ECR 473).

The fact that an institution, for reasons related to its staff policy, deals with the substance of an administrative complaint which is submitted out of time cannot

have the effect of derogating from the system of mandatory time-limits laid down in Articles 90 and 91 of the Staff Regulations (see the judgment of 12 July 1984 in Case 227/83 *Moussis v Commission* [1984] ECR 3133) or deprive the administration of its right at the stage of court proceedings to raise an objection of inadmissibility on the ground that the complaint was out of time.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
6 December 1990 *

In Case T-130/89,

Mrs B.,¹ a former member of the temporary staff of the Commission of the European Communities, of S. (Grand Duchy of Luxembourg), represented by C. Revoldini, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 21, rue Aldringen,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser J. Griesmar, acting as Agent, assisted by C. Verbraeken and, at the hearing, D. Waelbroek, both of the Brussels Bar, with an address for service in Luxembourg at the office of G. Berardis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

¹ — At the applicant's request the Court of First Instance ordered her name to be replaced by her initial in all publications.