

JUDGMENT OF THE COURT OF FIRST INSTANCE (Single Judge)
23 October 2003

Case T-24/02

Maddalena Lebedef-Caponi
v
Commission of the European Communities

(Officials – Staff report – Late preparation –
Action for damages)

Full text in French II - 1227

Application for: first, annulment of the Commission's decisions partially rejecting the applicant's complaints seeking damages to compensate her for the non-material damage caused by the delay in the preparation of the Staff Reports concerning her for the periods 1993/1995, 1995/1997 and 1997/1999 and, secondly, for damages to compensate her for that non-material damage.

Held: The Commission is ordered to pay the applicant the sum of EUR 2 500, in addition to the sum of EUR 1 500 already awarded by the Appointing Authority. The remainder of the action is dismissed. The Commission is ordered to pay the costs.

Summary

*1. Officials – Actions – Action for damages – Claim for annulment of a pre-litigation decision refusing a request for compensation – Claim cannot be assessed in isolation from claims for compensation
(Staff Regulations, Arts 90 and 91)*

*2. Officials – Reports procedure – Staff report – Drawing up – Delay – Breach of administrative duty giving rise to non-material damage – Delay partly attributable to the official
(Staff Regulations, Art. 43)*

*3. Officials – Reports procedure – Staff report – Inclusion in the official’s personal file – Signature of the official reported on – Not an essential requirement for inclusion
(Staff Regulations, Art. 43)*

*4. Officials – Reports procedure – Staff report – Officials performing staff representation duties – Reporting procedure – Time-limit for final report
(Staff Regulations, Art. 43; Annex II, Art. 1, sixth para.; Commission’s general implementing provisions, Art. 7)*

1. An institution's decision rejecting a claim for compensation forms an integral part of the preliminary administrative procedure which precedes an action to establish liability before the Court of First Instance.

Consequently, claims for annulment of that rejection brought by the official cannot be assessed in isolation from the claims relating to liability. The measure setting out the position adopted by the institution during the pre-litigation stage only has the effect of allowing the party who has suffered damage to apply to the Court for compensation.

(see para. 41)

See: T-90/95 *Gill v Commission* [1997] ECR-SC I-A-471 and II-1231, para. 45; T-77/99 *Ojha v Commission* [2001] ECR-SC I-A-61 and II-293, para. 68; T-209/99 *Hoyer v Commission* [2002] ECR-SC I-A-243 and II-1211, para. 32

2. The administration must ensure that staff reports are drawn up periodically on the dates laid down by the Staff Regulations and that they are drawn up in a proper form, both for reasons of sound administration and in order to safeguard the interests of officials. A delay in the drawing up of a staff report may in itself be prejudicial to the official for the simple reason that his career progress may be affected by the absence of such a report at a time when decisions concerning him must be taken. An official in possession of an irregular and incomplete personal file thereby suffers non-material damage as a result of being put in an uncertain and anxious state of mind with regard to his professional future. In the absence of special circumstances justifying the delays found to have occurred, the administration commits an administrative fault giving rise to liability on its part.

However, an official cannot complain of the delay in drawing up his periodic report where the delay is attributable to him, at least in part, or where he contributed considerably to the delay.

(see paras 71-73)

See: 156/79 and 51/80 *Gratreau v Commission* [1980] ECR 3943, para. 15; 173/82, 157/83 and 186/84 *Castille v Commission* [1986] ECR 497, para. 36; T-73/89 *Barbi v Commission* [1990] ECR II-619, para. 41; T-20/89 *Moritz v Commission* [1993] ECR II-1423, para. 50; T-59/96 *Burban v Parliament* [1997] ECR-SC I-A-109 and II-331, paras 44 and 50; T-187/01 *Mellone v Commission* [2002] ECR-SC I-A-81 and II-389, paras 77, 78 and 79

3. The signature of the member of staff reported on is not essential for a report to be included in his personal file where all the rules relating to the drawing up of the report have been complied with by the administration beforehand.

(see para. 77)

4. The general provisions adopted by the Commission for implementing Article 43 of the Staff Regulations do not lay down a precise time-limit for the ad hoc joint appeal committee when it is called upon to adjudicate on the report of an official performing staff representation duties. However, given that the entire procedure must, under Article 7 of those provisions, be concluded by 31 December of the year in question at the latest, the same time-limit must necessarily apply for officials performing staff representation duties, for whom the provisions require consultation first of the ad hoc staff reports group and, in the event of an appeal, the ad hoc joint appeal committee. According to the final paragraph of Article 1 of Annex II to the Staff Regulations, the fact of performing staff representation duties must in no way be prejudicial to the official concerned. If the target date of 31 December did not apply to the reports procedure for such officials, they would suffer damage as a

result of their activities in that they would not receive their final report at the same time as officials not performing staff representation duties.

(see para. 84)