

Case C-68/91 P

Heinz-Jörg Moritz

v

Commission of the European Communities

(Appeal — Officials — Promotion to Grades A 1 and A 2 — Procedure)

Report for the Hearing	I - 6851
Opinion of Advocate General Van Gerven delivered on 10 November 1992	I - 6868
Judgment of the Court (Third Chamber), of 17 December 1992	I - 6882

Summary of the Judgment

1. *Officials — Promotion — Comparative examination of merits — Taking into consideration of periodic reports — Incomplete personal file — Irregularity capable of being covered by the existence of other information on the candidate's merits — Condition — Exceptional circumstances*
(*Staff Regulations, Arts 43 and 45*)
2. *Appeals — Pleas — Insufficient statement of reasons — Grounds of a judgment not showing the existence of exceptional circumstances precluding the unlawfulness of a promotion decision in spite of irregularities affecting the comparative examination of the candidates' merits — Appeal upheld*

3. *Appeals — Pleas — Infringement of the obligation to respond to the pleas and claims put forward by the parties — Judgment dismissing a claim on the ground that it is identical to a claim rejected by another judgment between the same parties — Not identical — Appeal upheld*

1. The periodic report constitutes an indispensable criterion of assessment each time the official's career is taken into consideration by the administration and a promotion procedure is tainted with irregularity in so far as the appointing authority has not been able to consider the comparative merits of the candidates because there has been a substantial delay on the part of the administration in drawing up the periodic reports of one or more of them. It does not follow that all the candidates must be at exactly the same stage regarding the state of their periodic reports when the appointment decision is taken or that the appointing authority must postpone its decision if the most recent report on one or other of the candidates is not yet final because it has been referred to the appeal assessor or to the Joint Committee.

In exceptional circumstances the absence of a periodic report may be compensated for by the existence of other information on an official's merits.

2. If, in dismissing a plea by an official contesting the legality of a promotion procedure on the ground that the appointing authority assessed his merits in the absence of his periodic report and on the basis of a hearing of his Director-General at which he was not heard, the Court of

First Instance merely holds that that hearing did not make that procedure unlawful but does not mention the reasons justifying recourse to information other than the periodic report or the reasons why hearing the Director-General was sufficient to compensate for the absence of that periodic report, it has failed to state sufficient reasons for its judgment.

3. It is for the Court of First Instance to respond to the pleas and claims as they were raised before it by the parties.

It does not fulfil that obligation where it rejects a claim for compensation on the ground that a claim based on the same allegedly wrongful conduct of the administration was dismissed by a judgment given in another case between the same parties when the two claims are not identical, in so far as they are based on separate causes of damage, namely the fault consisting in the appointment of a candidate following an irregular promotion procedure, on the ground that the appointing authority assessed the respective merits of the candidates in the absence of the appellant's periodic report, and the fault consisting in the fact that the periodic report in question was drawn up late by the appointing authority.