

# Case C-115/92 P

## European Parliament

v

## Cornelis Volger

(Appeal — Official — Procedure for filling vacant posts —  
Equality of treatment and rights of candidates to be heard —  
Absence of a statement of the grounds on which  
the decision to reject the application was based)

Report for the Hearing .....	I - 6550
Opinion of Advocate General Lenz delivered on 1 April 1993 .....	I - 6563
Judgment of the Court (Third Chamber), 9 December 1993 .....	I - 6582

### Summary of the Judgment

- 1. Officials — Vacant post — Filling by promotion or transfer — Consideration of comparative merits of candidates — Discretion of the administration — Choice of a procedure involving interview with each candidate — Procedure not followed — Judgment of the Court of First Instance declaring unlawful a decision rejecting the application of an official not invited to interview — Dismissal of appeal*  
*(Statute of the Court of Justice of the EEC, Art. 51; Staff Regulations, Art. 45(1))*
- 2. Officials — Act adversely affecting an official — Rejection of an application for a post — Obligation to provide a statement of reasons at the latest by the stage of rejection of the complaint — Failure to comply -- Rectification during legal proceedings — Not permissible — Judgment of the Court of First Instance penalizing failure to state grounds — Dismissal of appeal*  
*(Staff Regulations, second para. of Art. 25 and Art. 90(2))*

1. Where the Court of First Instance, in its findings and assessments of fact which fall solely within its jurisdiction, has found on the one hand that the appointing authority, for the purpose of filling a vacant post, has decided in the exercise of its discretion to consider the comparative merits of candidates for promotion or transfer on the basis in particular of an interview with each of the candidates and, on the other hand, that the procedure determined for such consideration has not been followed, inasmuch as not all the candidates were interviewed, that Court was right to declare that a decision rejecting the application of one official who was not invited to interview was unlawful. An appeal against the judgment of the Court of First Instance is therefore unfounded.

2. Although the appointing authority is not required to provide a statement of

grounds for promotion or transfer decisions in respect of unsuccessful candidates, it is required to provide a statement of grounds for rejecting a complaint lodged under Article 90(2) of the Staff Regulations by an unsuccessful candidate, the statement of grounds for such a decision being deemed to be the same as the statement of grounds for the decision against which the complaint was directed.

Although it is true that the appointing authority is not, in general, required to reply to a complaint, the position is different where the decision which is the subject of it is not reasoned, since a reasoned reply coming after an action has been commenced would not meet its purpose as regards either the person concerned or the Court.

An appeal against a judgment of the Court of First Instance penalizing such a lack of a statement of grounds is therefore unfounded.

## REPORT FOR THE HEARING in Case C-115/92 P\*

### I — Facts and procedure before the Court of First Instance ‘...

It may be seen from the judgment of the Court of First Instance, delivered on 12 February 1992, in Case T-52/90 *Volger v Parliament* [1992] ECR II-121, that

1. The applicant, Mr Volger, an official in Grade A 6 at the European Parliament, has been assigned to the Directorate General for Information and Public Relations (DG III) since 1 October 1981.

\* Language of the case: French.