JUDGMENT OF THE COURT (First Chamber)
5 November 1991 *

In Case C-348/90 P,

European Parliament, represented by Jorge Campinos, Jurisconsult, M. Peter and J. L. Rufas Quintana, acting as Agents, with an address for service in Luxembourg at its General Secretariat, Kirchberg,

appellant,

APPEAL against the judgment delivered by the Court of First Instance of the European Communities (Third Chamber) on 26 September 1990 in Case T-139/89 *Gabriella Virgili-Schettini* v *European Parliament* (published in summary form in the Reports of Cases [1990] ECR II-535), seeking to have that judgment set aside,

the other party to the proceedings being:

Gabriella Virgili-Schettini, represented by V. Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 4 Rue Tony Neuman, who contends that the Court should uphold the contested judgment and order the appellant to pay the costs,

THE COURT (First Chamber),

composed of: Sir Gordon Slynn, President of the Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman, Principal Administrator,

* Language of the case: French.

having regard to the Report by the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 3 October 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 November 1990 the European Parliament brought an appeal, under Article 49 of the Protocol on the Statute of the Court of Justice of the EEC and the corresponding provisions of the Protocols on the Court of Justice of the ECSC and EAEC, the European Parliament brought an appeal against the judgment given on 26 September 1990 in Case T-139/89 by which the Court of First Instance annulled part of the decision of the European Parliament of 1 February 1989 regarding the calculation of leave not taken by a member of its temporary staff, Mrs Gabriella Virgili-Schettini.

2 In support of its appeal, in which it asks the Court to set aside the contested judgment, the Parliament puts forward three grounds alleging, first, that the Court of First Instance wrongly held that the application was admissible, secondly, lack of reasons set out in the contested judgment and, thirdly, infringement of Article 4 of Annex V to the Staff Regulations of the European Communities ('the Staff Regulations').

3 Reference is made to the Report by the Judge-Rapporteur for a fuller account of the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 In its first ground of appeal the Parliament complains that the Court of First Instance wrongly held that the application was admissible on the ground that it had been preceded by the administrative complaint required by Article 91(2) of the Staff Regulations, whereas the complaint was not valid in this case, since, contrary to Article 90(2), it emanated solely from Mrs Virgili-Schettini's lawyer.

5 In this respect, it is sufficient to observe, in common with the Court of First Instance, that, according to the Court's case-law, no form is prescribed for administrative complaints submitted by officials, whose content must be interpreted and understood by the administration with all the care which a large well-equipped organization owes to those having dealings with it, including members of its staff (see in particular, the judgment in Case 54/77 *Herpels* v *Commission* [1978] ECR 585). The Court added, in that judgment, that it was not possible to prohibit the seeking of legal advice by those concerned at the pre-litigation stage. Consequently, the Court of First Instance rightly held that to require that the official should sign the complaint prepared by her lawyer would constitute completely excessive formalism, devoid of any legal basis and contrary to the case-law of the Court.

6 The Parliament's first ground of appeal must therefore be rejected as unfounded, without its even being necessary to determine whether it was inadmissible because it was not raised before the Court of First Instance.

7 The Parliament's second ground of appeal is that the legal criteria upon which the calculation of 27 days' leave to be paid to the applicant were based are not clear from the judgment.

8 In this connection, it appears from paragraphs 26, 27, 35 and 36 of the contested judgment that the Court of First Instance relied, as far as the law is concerned, on the first paragraph of Article 4 of Annex V to the Staff Regulations regarding the carrying over of leave and on Article 58 of the Staff Regulations regarding maternity leave in order to hold, first, that Mrs Virgili-Schettini's accumulation of leave was attributable to the requirements of the service and, secondly, that the Parliament had been entitled to regard the six weeks preceding confinement as part of her maternity leave. The Court of First Instance therefore accepted part of the applicant's claim and deducted the days corresponding to the maternity leave, in which respect it accepted the Parliament's arguments.

9 It follows from the foregoing that the contested judgment is sufficiently reasoned as regards the legal criteria upon which the calculation of the number of days' leave for which the Parliament has to pay compensation was based. Consequently, the Parliament's second ground of appeal must be rejected as unfounded.

10 Finally, in its third ground of appeal the Parliament complains that the Court of First Instance held that, pursuant to Article 4 of Annex V to the Staff Regulations, Mrs Virgili-Schettini was entitled to carry over more than 12 days without producing a certificate from her superiors proving that the abnormal accumulation was due to reasons relating to the requirements of the service. The Parliament maintains that, as a result, the Court of First Instance failed to take account of the institution's internal rules and of the power of internal organization which the Court of Justice has consistently held the institutions to have. It claims, moreover, that the effect of such an interpretation would be to reverse the burden of proof by compelling the Parliament to prove a negative, namely the absence of reasons relating to the requirements of the service.

11 In this connection, it must be observed that, although the institutions may, within the framework of the power of internal organization vested in them, establish an internal procedure relating to leave, such a procedure cannot deprive an employee of the right to prove by any means that his leave accumulated for reasons relating to the requirements of the service. The Court of First Instance therefore interpreted the Staff Regulations correctly in holding that the decisive criterion for carrying over leave was whether or not the carrying over of the leave was justified by the requirements of the service to which the official was assigned.

12 Pursuant to that criterion, the Court of First Instance held that the accumulation of unused leave over the years by the applicant at first instance was attributable to the requirements of the service to which she was assigned. As this finding is an assessment of the facts of the case, the Court of Justice has no jurisdiction to call it in question.

13 The Parliament's third ground of appeal must therefore be rejected as unfounded.

Costs

14 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Parliament has failed in its appeal it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the Parliament to pay the costs.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 5 November 1991.

J.-G. Giraud
Registrar

Gordon Slynn
President