ORDER OF THE COURT (Third Chamber)
4 June 1987 *

In Case 16/86

G. P., an official of the Economic and Social Committee, represented by Benoît Liesenberg, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of R. P. Rippinger, 11 boulevard Royal,

applicant,

v

Economic and Social Committee, represented by Detlef Bruggemann, a member of its Legal Department, acting as Agent, and Roger O. Dalcq, of the Brussels Bar, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Chairman of the Economic and Social Committee of 22 October 1985 rejecting the applicant's complaint against the failure of the administration to afford him assistance under Article 24 of the Staff Regulations, and for compensation for the non-material damage which he claims to have suffered on account of that failure,

THE COURT (Third Chamber),

composed of: Y. Galmot, President of Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

after hearing the Opinion of the Advocate General,

makes the following

* Language of the Case: French.

Order

1 By application lodged at the Court Registry on 22 January 1986, Mr G. P., an official of the Economic and Social Committee (hereinafter referred to as 'the ESC'), brought an action for the annulment of the decision of the Chairman of the ESC of 22 October 1985 rejecting his complaint against the failure of the administration to afford him assistance under Article 24 of the Staff Regulations, and for compensation for the non-material damage which he claims to have suffered on account of that failure.

2 The documents before the Court show that Mr P. complains, in essence, of having been since 1983 the subject of insults and threats from another official of the ESC, Mr V. d. G. Accordingly, by a memorandum of 6 July 1983 addressed to the Chairman of the ESC, Mr P. informed him that, at the General Staff Meeting of 30 June 1983, Mr V. d. G. had criticized him in offensive terms and had cast aspersions on his professional integrity and personal abilities. The Secretary-General of the ESC replied to the memorandum on 9 September 1983, saying that he had had an interview with Mr V. d. G. regarding the incident in question and had addressed to him 'the remarks that were called for' on the matter. The letter concluded: 'Having thus acted on your request concerning the official complained of, I regard the matter as closed'.

3 On 24 June 1985 Mr P. submitted a complaint under Article 90 of the Staff Regulations 'against the fact that the appointing authority did not consider itself to be under a duty to take action under Article 24 of the Staff Regulations in order to impose sanctions in respect of the threats, insults and abuse' to which he had been exposed.

4 That complaint was rejected by a decision of the Chairman of the ESC of 22 October 1985, on the grounds that Mr P. had failed to specify exactly what kind of decision he expected from the appointing authority. Following that rejection, Mr P. brought the present action.

5 Under Article 92 (2) of the Rules of Procedure the Court may at any time consider whether there exists any absolute bar to proceeding with a case, and must give its decision in accordance with Article 91 (3) and (4) thereof. In the light of the evidence in this case, the Court has decided to avail itself of those provisions

and to make a separate order as to the admissibility of the application, without opening the oral procedure.

6 Articles 90 and 91 of the Staff Regulations make the admissibility of an action brought by an official against the institution to which he belongs conditional on the proper observance of the preliminary administrative procedure laid down thereunder. If, as in this case, the official wishes the appointing authority to take a decision relating to him, the administrative procedure must be opened by a request from the person concerned asking the authority to take the decision which he seeks, in accordance with Article 90 (1) of the Staff Regulations. It is only against a decision rejecting that request, which, in the absence of a reply from the administration, is deemed to have been given after a period of four months, that the person concerned may, within a further period of three months, submit a complaint to the appointing authority in accordance with Article 90 (2).

7 As the ESC has rightly argued, the successive steps of the administrative procedure, which are mandatory under the Staff Regulations, have not been followed in this case.

8 The applicant's complaint, lodged on 24 June 1985, was not preceded by a request under Article 90 (1) of the Staff Regulations. Consequently, the applicant failed to inform the administration of the measures which it should have adopted with regard to him. His memorandum of 6 July 1983 to the Chairman of the ESC cannot, for the purposes of these proceedings, be regarded as such a request. The applicant himself has stated that, in order to calm the situation, he had contented himself at the time with the reply from the administration and had therefore not intended to take the matter any further. In any event, the letter from the Secretary-General of 9 September 1983, in reply to the memorandum of 6 July 1983, was not followed by a complaint within the three-month period in accordance with Article 90 (2). The complaint submitted on 24 June 1985 was clearly out of time.

9 It follows that the application to the Court was not preceded by the proper administrative procedure and must therefore be dismissed as inadmissible in its entirety, including the claim for damages.

Costs

10 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, institutions must bear their own costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the parties to bear their own costs.

Luxembourg, 4 June 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber