JUDGMENT OF THE COURT (Second Chamber)
9 November 1989 *

In Case 55/88

Theodoros Ioannis Katsoufros, an official of the Court of Justice of the European Communities, residing at 8 rue Cyprien Merjai, Luxembourg, represented by L. Stavritis, of the Athens Bar, with an address for service in Luxembourg at the Chambers of A. Menidiatis, 50 rue Nic. Ries,

applicant,

v

Court of Justice of the European Communities, represented by F. Hubeau, an official of the Court of Justice, Annex Building, Luxembourg-Kirchberg, with an address for service at the latter's office, assisted by K. Loukopoulos of the Athens Bar,

defendant,

APPLICATION for the annulment of the decision of the Administrative Committee of the Court of Justice rejecting the applicant's complaint and for a declaration that the appointing authority is required to act in accordance with Article 24 of the Staff Regulations of Officials of the European Communities,

THE COURT (Second Chamber)

composed of: F. A. Schockweiler, President of Chamber, G. F. Mancini and T. F. O'Higgins, Judges,

Advocate General: G. Tesauro
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 27 June 1989,

* Language of the case: French.

after hearing the Opinion of the Advocate General on 10 October 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 February 1988, Mr Theodoros Ioannis Katsoufros, an official in Grade LA 6 in the Greek Translation Division of the Court of Justice of the European Communities, brought an action for the annulment of the decision of the Administrative Committee of the Court of Justice of 23 November 1987 rejecting his complaint and for a declaration that the appointing authority is required to act in accordance with Article 24 of the Staff Regulations of Officials of the European Communities.

2 It is apparent from the documents before the Court that on 4 February 1987, following a discussion between several officials of the Greek Translation Division concerning the professional abilities of Mr Katsoufros, an incident took place, according to the applicant, in which Mr Constantinou, a retired official of the Communities who at the material time was working for the Court as a free-lance reviser, physically assaulted the applicant. Mr Katsoufros claims that the assault undermined his health to such an extent as to make him temporarily unable to work.

3 That version of the facts is corroborated by another official of the Greek Translation Division but is denied by Mr Constantinou himself and by the Head of Division, both of whom accuse the applicant of having behaved in a provocative manner.

4 On 24 February 1987 Mr Katsoufros requested the appointing authority to adopt appropriate measures to determine responsibility for the incident, to prevent any repetition of such an incident for which he alleged Mr Constantinou alone was responsible, and to take disciplinary action against the latter.

5 By letter of 9 June 1987 the Registrar of the Court of Justice informed Mr Katsoufros that, after studying the relevant documents in the file, he was unable, in view of the conflicting evidence given by witnesses of the incident, to establish the existence of facts justifying the adoption of measures. However, instructions had been given that Mr Katsoufros's translations should no longer be entrusted for revision to Mr Constantinou.

6 On 11 August 1987 Mr Katsoufros lodged a complaint pursuant to Article 90(2) of the Staff Regulations against the Registrar's reply of 9 June 1987. Mr Katsoufros criticized the fact that no disciplinary action had been taken against Mr Constantinou.

7 By decision of 23 November 1987, the Administrative Committee of the Court rejected the applicant's complaint on the ground that, in gathering and considering the written evidence of all those involved in the incident, the administration had complied with its duty of assistance under the first paragraph of Article 24 of the Staff Regulations. In view of the impossibility of determining responsibility for the incident, the administration acted in a balanced manner and with the degree of care dictated by the gravity of the alleged facts by adopting a measure organizing the department in such a way as to prevent any fresh confrontation between the parties concerned. With regard to the possibility of imposing penalties, apart from the fact that they could not have been based on the system of disciplinary measures established by the Staff Regulations, which was inapplicable to Mr Constantinou, the administration had a broad discretion in the matter and the duty of assistance did not require it to initiate disciplinary proceedings as well.

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

9 The Court raises the objection that the application is inadmissible on the ground that the applicant has no interest in bringing proceedings inasmuch as the refusal to take disciplinary action against Mr Constantinou cannot affect the applicant's legal position.

10 In that regard, it must be stated that the purpose of the complaint lodged by Mr Katsoufros is to ensure that the appointing authority complies with its obligations under the Staff Regulations and takes disciplinary action against Mr Constantinou. The applicant thus seeks to establish indirectly that he is in no way to blame for the incident which occurred on 4 February 1987.

11 The applicant therefore has an interest in bringing proceedings against the decision rejecting his complaint, in so far as his action seeks compensation for non-material damage resulting from the injury to his reputation arising from the fact that he may be regarded as having caused the events in question and having behaved in a manner unworthy of an official.

12 It follows that the objection of inadmissibility raised by the Court against the application must be rejected.

Substance

13 In support of his application the applicant claims, in substance, that the Court infringed Article 24 of the Staff Regulations by failing to adopt appropriate measures to remedy the damage which he claims to have sustained as a result of the incident which occurred on 4 February 1987 and he alleges, in particular, that the Court failed to take disciplinary action against Mr Constantinou for assaulting him.

14 According to the first paragraph of Article 24 of the Staff Regulations, 'the Communities shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he . . . is subjected by reason of his position or duties'.

15 In that regard, it must be pointed out, as the Court held in its judgment of 26 January 1989 in Case 224/87 *Koutchoumoff* v *Commission* [1989] ECR 99, that the duty of the Community institutions under Article 24 of the Staff Regulations to protect officials, which also covers attacks on those officials by other officials, only arises once the facts in question have been established.

16 Although, according to the case-law of the Court (see the judgment of 14 June 1979 in Case 18/78 *Mrs V.* v *Commission* [1979] ECR 2093), the administration is required, when faced with an incident which is incompatible with the good order and tranquillity of the service, to intervene with all the necessary vigour so as to ascertain the facts and to take the appropriate action in full knowledge of the matter, it cannot take disciplinary action against the official in question unless the preliminary measures ordered clearly establish that the official concerned has engaged in conduct detrimental to the proper functioning of the service or to the dignity and reputation of another official.

17 In this case, immediately after the incident in question had been brought to its attention, the appointing authority gave instructions for an official investigation to be carried out in which it gathered and examined the evidence given by all those who had witnessed the events of 4 February 1987.

18 However, since the conflicting statements it had collected during the investigation did not enable it to establish with certainty either the facts or responsibility for them, the appointing authority was entitled, without exceeding the limits of its power of discretion, to take the view that it was unnecessary for it to take action under Article 24 of the Staff Regulations.

19 In those circumstances, it must be stated that the appointing authority has not failed to fulfil its general duty to ensure the proper functioning of the service by merely giving instructions that Mr Katsoufros's translations should no longer be entrusted for revision to Mr Constantinou so as to prevent any fresh confrontation between the two parties involved in the incident in question.

20 It follows from the foregoing considerations that the application must be dismissed as unfounded.

Costs

21 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application as unfounded;

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

Schockweiler Mancini O'Higgins

Delivered in open court in Luxembourg on 9 November 1989.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Second Chamber