Case 95/87

Fiorenzo Contini
v
Commission of the European Communities

(Inadmissibility)

Order of the Court (First Chamber), 4 May 1988 2537

Summary of the Order

Officials — Action — Act adversely affecting servant — Member of the auxiliary staff claiming the status of a member of the temporary staff — Initial contract of employment
(Staff Regulations of Officials, Arts 90 (2) and 91)

In the case of a member of the auxiliary staff who claims the status of a member of the temporary staff on the ground that his recruitment as a member of the auxiliary staff constituted an infringement of the Conditions of Employment of Other Servants, the act adversely affecting him is the initial contract of employment where this is not amended, in particular on the occasion of its extension.

ORDER OF THE COURT (First Chamber)
4 May 1988 *

In Case 95/87

Fiorenzo Contini, residing at Leggiuno (Italy), a former member of the auxiliary staff of the Commission, assigned to the Joint Research Centre, Ispra, represented by Angelo Ulghieri, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Roland Michel, 7 Côte d'Eich,

applicant,

* Language of the Case: Italian.

V

Commission of the European Communities, represented by Marie Wolfcarius, a member of its Legal Department, acting as Agent, assisted by Aloyse May, Avocat, Luxembourg, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the termination of the applicant's contract of employment as a member of the auxiliary staff was unlawful and that the applicant was entitled to the status of a member of the temporary staff and for an order that the Commission compensate the applicant for the damage suffered by him,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, R. Joliet and F. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

After hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 1 April 1987, Fiorenzo Contini, a former member of the auxiliary staff of the Commission assigned to the Joint Research Centre, Ispra, brought an action for a declaration that the termination by the Commission of his contract of employment as a member of the auxiliary staff was unlawful and that he was entitled to the status of a member of the temporary staff and for an order that the Commission compensate him for the damage which he had suffered.

2 Mr Contini was recruited by the Commission under a contract dated 3 September 1985 as a member of the auxiliary staff of the Joint Research Centre, Ispra, for a period of six months from 9 September 1985 to 8 March 1986. That contract of employment, which was extended for a further period of six months, expired on 8 September 1986.

3 Mr Contini considered that he had replaced for an indefinite period a member of the temporary staff whom the medical department had found to be unfit to fill the post. Consequently, on 2 September 1986, he submitted a complaint pursuant to Article 90 of the Staff Regulations, requesting the appointing authority to re-examine the terms of his contract as a member of the auxiliary staff and to convert it into a contract employing him as a member of the temporary staff.

4 Upon the Commission's failure to respond to his complaint, Mr Contini brought the present action.

5 In its rejoinder the Commission raised an objection contending that the application was inadmissible on the ground that the act adversely affecting the applicant was the contract employing him as a member of the auxiliary staff of 3 September 1985 and that the complaint ought to have been submitted within the three months from the conclusion of the contract as required by Article 90 (2) of the Staff Regulations.

6 The applicant was invited by the Court to state his views on the question of the admissibility of his action from the point of view of compliance with the time-limit. He did not do so.

7 In that respect it should be noted that, in his complaint of 2 September 1986, the applicant contested in substance the status as a member of the auxiliary staff conferred on him by his contract.

8 The status of a member of the auxiliary staff had been expressly agreed in the initial contract of employment and in the absence of any alteration of that status, in particular on the occasion of the extension of his contract, the initial contract of employment must be regarded as the act adversely affecting the applicant (see the judgment of 9 July 1987 in Case 329/85 *Castagnoli* [1987] ECR 3281).

9 In order for the application to be admissible, the complaint must, as the Court held in the abovementioned judgment, have been submitted within the three-month period laid down in Article 90 (2) of the Staff Regulations following the act adversely affecting the applicant, namely the contract employing him as a member of the auxiliary staff concluded on 3 September 1985, which took effect from 9 September 1985.

10 The applicant submitted his complaint on 2 September 1986 and accordingly failed to comply with the time-limit laid down in Article 90 (2) of the Staff Regulations.

11 The application must therefore be dismissed as inadmissible.

Costs

12 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 those rules, in proceedings brought by servants of the Communities the institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby orders as follows:

(1) The application is dismissed as inadmissible.

(2) The parties shall bear their own costs.

Luxembourg, 4 May 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the First Chamber