OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 10 October 1989 *

Mr President,
Members of the Court,

1. These proceedings arise from a quarrel which took place at work between Mr Katsoufros, an official, who is a lawyer-linguist in the Translation Directorate at the Court of Justice, and Mr Constantinou, a former official of the Court, who at the time was working as a free-lance reviser in that directorate. In the light of that incident, the applicant submitted a request under Article 90 of the Staff Regulations, informed the administration that he had been physically assaulted and consequently asked, in connection with the duty of assistance referred to in Article 24 of the Staff Regulations, for appropriate — that is to say disciplinary — measures to be taken against the assailant.

Taking the view that the evidence gathered did not confirm the applicant's version of the facts, the administration refused to adopt the measures requested and merely gave instructions that, in the future, Mr Katsoufros's translations were no longer to be revised by Mr Constantinou.

Not content with that outcome, Mr Katsoufros lodged a complaint which was rejected by decision of the Administrative Committee of the Court of Justice. It is that decision which forms the subject-matter of this application.

* Original language: Italian.

Admissibility

2. To begin with, the Court of Justice contends that the application is inadmissible since the applicant has no legal interest in bringing proceedings. On the one hand, the failure to adopt disciplinary measures does not adversely affect any situation in respect of which he is entitled to legal protection; on the other, he has already obtained satisfaction from the administration to a sufficient extent after being assured, following the incident in question, that in future his translations would no longer be revised by Mr Constantinou.

It may seem somewhat puzzling, on the one hand, for the Court to state that the applicant does not have an interest worthy of protection and, on the other, to deny him an interest in bringing proceedings on the ground that his substantive legal rights, which he alleges to have been adversely affected, have in any event already been fully recognized and protected by the administration.

It is true that the contradiction detected in the defendant's argument is the result of the frequent confusion, often designed to strengthen the arguments for the defence, between the lack of an interest in bringing proceedings and the lack of grounds for the application, that is to say between the strictly procedural aspect and the substance of the case. That confusion usually relates to an interest in taking action in the strict sense, that is to say an interest in bringing

proceedings; less frequently — this being easier to verify — it relates to an interest in challenging an administrative act or a judgment, for the simple reason that an interest in bringing proceedings arises in those circumstances either from the rejection by the contested measure of the original request or, in the event of a judicial decision, from the fact that the applicant has been unsuccessful either wholly or in part — matters which can be ascertained at once without difficulty.

It is quite clear that this case turns on the applicant's interest in challenging a measure, specifically the measure whereby the appointing authority rejected his request. Precisely because it is an adverse measure — on the substance, moreover, and not on the (original) interest in taking action — it is reasonable to suppose that the applicant has an interest in challenging it before the Court. It is the classic example in textbooks on procedural law.

However, there is something more to be said. To begin with, it is well known that a measure may be lawfully challenged by an individual who has what may be termed a personal interest in his request being granted, that is to say a person who is likely to derive a 'benefit' from the desired outcome of the proceedings. A 'personal' interest, however, cannot be understood as meaning only an interest on the part of the applicant in a modification of his subjective material or economic rights, but must also include an interest in an outcome capable of satisfying his non-material rights. To take a different view, as the defendant does in this case, would be tantamount to denying the admissibility, for instance, of any action for defamation in which the applicant seeks damages not for himself but for a charitable institution.

Moreover, in the event that an administrative measure is contested, the action is frequently based on a further interest, namely that the conduct of the administration should be free from any irregularities, whether procedural or substantive.

It follows that a person has no interest in bringing proceedings only where the contested measure is entirely consistent with his request. In that case, the commencement of proceedings and possible annulment of the measure would have the effect of compelling the administration to adopt a measure identical in scope to the one annulled.

Still in that context, however, it must be apparent from the proceedings that the contested measure has no adverse effects at all since it corresponds entirely as regards its scope and its effects to the subject-matter of the request submitted to the administration. Only in those circumstances can the investigation carried out by the court be considered relevant to the issue of admissibility alone and not to the merits of the action.

Conversely, if the applicant argues before the court that the contested measure, though partially favourable to him, does not afford him sufficient protection in respect of his legal rights (in other words, where he has been partially unsuccessful), he cannot be denied an interest in bringing an action. In the event of the application being allowed, the possibility cannot be ruled out that the administration may take a decision which is consistent to an even greater extent with the applicant's expectations, as set out in the original application. Furthermore, the

benefit which must derive from the judicial decision may also consist — as frequently emphasized in national case-law [1] — in an instrumental benefit which amounts merely to calling in question the contested relationship anew as a result of the annulment (as is usually the case, moreover, where a measure is annulled 'without prejudice to the adoption of further measures by the administration').

It should also be pointed out that, even in those circumstances, the court will in any event review the scope of the administrative measure in the light of the request made by the applicant to the administration (in order to assess, for instance, whether there has been a manifest disregard or distortion of the facts suggesting that the measure is unsuitable for achieving its purpose). However, the investigation will focus on the substance and not on the admissibility of the action in view of the need in practice to ascertain whether the administrative measure did not overstep the bounds set by its governing provisions and is not vitiated by any manifest errors of assessment.

3. Having said that, and turning to the circumstances of this case, my findings are as follows.

To begin with, there is no doubt that the applicant has asserted a legitimate interest inasmuch as it is protected by the Staff Regulations and, in more general terms, by certain principles (duty of care and duty of proper administration) on which the rules governing the European public service are also based. It is established law that the Community institutions are required to take action, particularly on the basis of the duty of assistance referred to in Article 24, in cases in which an official has been attacked by a colleague.

The institutions naturally have a broad discretion in assessing the requirements to be guaranteed and in choosing the specific measures to be adopted. This does not mean, however, that an official who considers himself to have been insufficiently protected by the administration cannot ask the Court to review the administration's conduct, though clearly within the limits of its jurisdiction to review legality. Although he may not be entitled to a specific measure (for instance the adoption of a disciplinary measure), he is none the less entitled to ask the Court to ascertain whether the act or omission on the part of the administration is vitiated by an abuse of power or by a manifest error in the assessment of the facts, reflecting a failure by the administration to discharge its duty of assistance towards him. In such cases, review by the Court will focus essentially on a comparison between the seriousness of the attack and the measure adopted as a result thereof, since a complete failure to act on the part of the administration or an evident lack of proportion between those two factors may constitute grounds for allowing the application.

Although the annulment of one measure does not necessarily entail the adoption by the administration of another measure which meets the applicant's wishes in every respect, he will none the less have an interest in his legal position being reconsidered in the light of the Court's judgment since it may lead to a higher degree of protection than that previously afforded.

1 — See, for instance, the judgment of 7 December 1976 of the Italian Council of State (Fourth Chamber) in Case 1221, in *Consiglio di Stato* 1976, I, 1343.

That is precisely the kind of review which the applicant seeks from the Court in this case. He considers that his legitimate interest in obtaining adequate assistance from the administration has been adversely affected by the contested measure. In my view, therefore, there can be no doubt that he has an interest in bringing an action, inasmuch as — if his allegations prove to be well founded — it may lead to the annulment of the contested decision without prejudice, evidently, to any further measures which the administration may adopt.

Substance

4. In support of his application for annulment, the applicant relies on three submissions.

(A) In the first place, he considers that the administration has infringed Article 24 of the Staff Regulations by failing to adopt measures capable of remedying the aggression to which he fell victim. In particular, he points out that a disciplinary measure would have been proportionate to the gravity of the incident, whilst acknowledging that in the precontentious procedure even a mere invitation to apologize would have been sufficient.

As stated earlier, it is established law that Article 24 also applies to cases in which an official has been attacked by colleagues.[2] The Court has pointed out, moreover, that in the face of incidents which are incompatible with the good order, tranquillity and efficiency of the service, the administration is required, in the light of that provision (but also, it may be said, by virtue of the more general principle of proper administration) to intervene so as to ascertain the facts and take appropriate action.[3] Having regard to the importance of the personal and general interests involved, that investigation must be carried out in depth, promptly and impartially. Furthermore, the decisions adopted as a result of that investigation must be such as to remedy any violation of the dignity and reputation of the official concerned and guarantee the good name and proper functioning of the service, which evidently implies observance of the principle of proportionality.

5. In this case, in contrast to the view taken in other proceedings,[4] the administration has carried out a prompt inquiry into the incident in question, asking the parties to give their versions of what happened and soliciting statements from two eyewitnesses. No other evidence appears to have been neglected in order to ascertain the facts, with the result that, in my view, there are no flaws in the preliminary investigation.

Although it is apparent from the evidence gathered, when we come to assess it, that a quarrel in fact took place between the two officials, it does not permit the physical assault reported by the applicant to be considered proven in view of the conflicting accounts given by witnesses.

Nor can Mr Constantinou be held to blame for his purely verbal attacks on the

2 — See, most recently, the judgment of 26 January 1989 in Case 224/87 *Koutchoumoff* [1989] ECR 99, paragraph 14 of the decision.

3 — Ibid., paragraph 15 of the decision.

4 — See, in particular, the judgment of 14 June 1979 in Case 18/78 *Mrs V.* v *Commission* [1979] ECR 2099.

applicant, since he was provoked by the latter. It would appear that Mr Katsoufros provoked Mr Constantinou by stating that the latter had on two occasions expressed differing assessments of the former's professional ability solely in order to ingratiate himself with a view to obtaining a free-lance contract.

On the strength of those factors, therefore, it cannot be said that the administration was absolutely bound to intervene, in connection with its duty of assistance, by taking steps or measures of whatever type or nature against Mr Constantinou and in defence of the applicant.

Accordingly, it serves no purpose to raise the question whether or not the decision that Mr Constantinou was no longer to revise work translated by Mr Katsoufros was appropriate.

The submission alleging infringement of Article 24 of the Staff Regulations must therefore be rejected.

6. (B) The applicant further submits that the reasons stated in the contested decision are inadequate.

It is sufficient to point out that in its decision the appointing authority clearly stated the reasons why no breach of the duty of assistance had occurred in this case. In particular, reference is made in the decision to the investigation carried out by the administration and to the objective impossibility of ascertaining precisely who was to blame owing to the witnesses' conflicting accounts. The appointing authority also adds that, in any event, disciplinary measures under the Staff Regulations are inapplicable to persons whose status is that of free-lance agents.

The applicant was therefore in a position to take cognizance of the reasons on which the measure was based and to seek, if necessary, a review thereof by the Court. In fact the proceedings before the Court focused precisely on those aspects.

The criticism relating to the absence of a statement of reasons must therefore also be rejected.

7. (C) Finally, the applicant challenges the view that a former official, even one working on a free-lance basis, cannot be subjected to disciplinary measures.

That contention may be correct in theory, in the sense that, according to the wording of Article 86 of the Staff Regulations, disciplinary measures are also applicable to former officials. However, it would still be necessary to establish whether, in those circumstances, penalties may be imposed for *any* breach of the obligations arising from the Staff Regulations or only for breach of the duty to behave with integrity and discretion (Articles 16 and 17), which is the only duty expressly stated to be binding even on persons who have left the service.

However, that question would appear to be purely theoretical since, in this case, as stated earlier, *no* breach of the obligations arising from the Staff Regulations has been established and consequently the administration was not required to take *any* measures in relation to Mr Constantinou.

Even on the assumption that the statement in the contested decision to the effect that disciplinary action may not be taken against former officials is incorrect, that error could not in any event invalidate the measure in question inasmuch as it is not one of the fundamental grounds on which the measure is based.

Hence the applicant's third submission must also be rejected.

Costs

8. The Court of Justice takes the view that, as the action is vexatious, the applicant should be ordered to bear the whole of the costs.

It is true — as the Court has pointed out — that the applicant has contested the legality of the administration's practice of resorting to free-lance agents in order to meet the requirements of the Translation Directorate. None the less, that observation is also justified inasmuch as it aims to show that, in deciding that a free-lance agent was no longer to be entrusted with revision, the administration acted exclusively with a view to remedying a situation that was not entirely lawful, or was at any rate inappropriate, and its decision therefore constitutes merely a measure pertaining to internal organization and not a proper discharge of its duty of assistance towards the applicant. In other words, that observation is justified inasmuch as its purpose was to show that the administration's answer was not in keeping with the applicant's request. Therefore it is logically relevant to the arguments put forward by the applicant in support of his allegation that Article 24 of the Staff Regulations has been infringed.

In my view, it is also important to point out that, in this case, although it is true that it has not been possible to establish whether the assault allegedly committed on Mr Katsoufros by Mr Constantinou actually took place, *it is equally true that it has in no way been established that the applicant lied when giving his version of the incident.* In those circumstances, I do not believe that the applicant's action can in any way be regarded as reckless. On the contrary, it must be acknowledged, it seems to me, that there was an objective interest in considering whether or not, in carrying out the investigation and adopting the decisions in question, the administration exceeded the bounds of its discretion.

Finally, in view of the specific nature of the case and the subsistence of doubts regarding the facts themselves, I believe there are no grounds for the view that this action seeks to achieve aims which are unconnected with those inherent in any review of the legality of administrative conduct, with the result that the general rule concerning the apportionment of the costs must be applied.

9. I therefore suggest that the Court:

(i) declare the application admissible;

(ii) dismiss it as to the substance;

(iii) order the parties to bear their own costs.