Case 289/87

Michele Giubilini
v
Commission of the European Communities

(Inadmissibility)

Order of the Court (First Chamber), 23 March 1988 1735

Summary of the Order

Officials — Actions — Act adversely affecting the official — Member of the auxiliary staff claiming the status of member of the temporary staff — Contract of employment
(Staff Regulations of Officials, Arts 90 (2) and 91)

Where a member of the auxiliary staff claims the status of member of the temporary staff on the ground that his recruitment as a member of the auxiliary staff was in breach of the Conditions of Employment of Other Servants, the act adversely affecting him is his contract of employment, if that contract was not altered on the occasions when it was renewed.

ORDER OF THE COURT (First Chamber)
23 March 1988 *

In Case 289/87

Michele Giubilini, residing in Besozzo, a former member of the Commission's auxiliary staff employed at the Joint Research Centre, Ispra, represented by

* Language of the Case: Italian.

Angelo Ulgheri, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Roland Michel, 7, Côte d'Eich,

applicant,

v

Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, 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 measure whereby the Commission terminated the applicant's contract as a member of the auxiliary staff was unlawful, for a declaration that the applicant's status is that of a member of the temporary staff and for an order requiring the Commission to 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: D. Louterman, Administrator

after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 28 September 1987, Michele Giubilini, a former member of the Commission's auxiliary staff employed at the Joint Research Centre, Ispra, brought an action for a declaration that the measure whereby the Commission terminated his contract as a member of the auxiliary staff was unlawful, a declaration that his status is that of a member of the temporary staff and an order requiring the Commission to compensate him for the damage suffered.

2 By a contract dated 27 February 1986, Mr Giubilini was recruited by the Commission as a member of the auxiliary staff for a period of six months from 3 March to 2 September 1986 in order to occupy a post as a skilled worker at the Joint Research Centre at Ispra. His contract of employment was renewed for a further period of six months, and terminated on 2 March 1987.

3 Taking the view that he was doing the work of a member of the temporary staff who was exempted from the service for reasons of health, Mr Giubilini wrote a letter to the Commission on 27 February 1987 in which he maintained that his contract as a member of the auxiliary staff was unlawful and should be amended in conformity with the Staff Regulations.

4 By decision of 28 July 1987 the Commission rejected Mr Giubilini's allegations and drew his attention to the fact that the complaint had not been submitted within the three-month period prescribed by Article 90 (2) of the Staff Regulations, in accordance with his contract of employment.

5 Mr Giubilini brought this action against that decision.

6 The Commission raised an objection of inadmissibility against the application and contended that the measure adversely affecting the applicant was his initial contract of employment as a member of the auxiliary staff and its subsequent renewal, and that he should have lodged his complaint within the three-month period prescribed by Article 90 (2) of the Staff Regulations, which started to run from the date on which the contract was concluded.

7 In his reply, the applicant stated that he had not been able to approach the Commission until he became aware that his situation was unlawful, that is to say until he learned of the Commission's refusal to renew his contract. Moreover, he maintains that his letter of 27 February 1987 does not constitute a complaint within the meaning of Article 90 (2) of the Staff Regulations but a request within the meaning of Article 90 (1) thereof.

8 In that regard, it must be stated that the letter of 27 February 1987 constitutes a complaint within the meaning of Article 90 (2) of the Staff Regulations, inasmuch as the applicant challenges, in substance, the status of member of the auxiliary staff which had been conferred on him by the contract.

9 That description of his status had been expressly agreed upon in the initial contract of employment and, in the absence of any alteration of that description, in particular when the contract was renewed, 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).

10 In order for the application for annulment to be admissible, the complaint must, as the Court decided in its judgment of 9 July 1987 in Case 329/85, have been lodged within the three-month period laid down by Article 90 (2) of the Staff Regulations following the adoption of the act adversely affecting the applicant, that is to say his contract of employment as a member of the auxiliary staff which was concluded on 27 February 1986 and entered into force on 3 March 1986.

11 It must be held that, since the applicant did not lodge his complaint until 27 February 1987, the three-month period laid down by Article 90 (2) of the Staff Regulations was not complied with.

12 The application must therefore be dismissed as inadmissible.

Costs

13 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those rules provides that, in proceedings brought by servants of the Community, the costs incurred by the institutions are to be borne by the latter.

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, 23 March 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the First Chamber