Case 19/85

Annick Grégoire-Foulon
v
European Parliament

'Officials — No necessity for judicial decision — Admissibility'

Summary

Procedure — Claim becoming devoid of purpose — New claim patently inadmissible — Removal from the register
(Rules of Procedure, Art. 92 (2))

ORDER OF THE SECOND CHAMBER OF THE COURT
28 November 1985 *

In Case 19/85

Annick Grégoire-Foulon, an official of the European Parliament, residing at 227 Rue des Romains, Bertrange, represented by Fernand Entringer, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers at 2 Rue du Palais de Justice,

applicant,

* Language of the Case: French.

v

European Parliament, represented by H.-J. Opitz, Secretary General of the Parliament, and Manfred Peter, Head of Division, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers at 22 Côte d'Eich,

defendant,

APPLICATION for annulment of the decision of the Advisory Committee on Promotion, established by the European Parliament, not to place the applicant's name on the list of officials eligible for promotion in 1984,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, O. Due and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

makes the following

ORDER

1 By an application lodged at the Court Registry on 23 January 1985, the applicant, Annick Grégoire-Foulon, who has been an official of the European Parliament since 1972 and in grade B 2 since 1979, brought an action in which she seeks primarily the annulment of the decision of the Advisory Committee on Promotion not to place her name on the list of officials eligible for promotion in 1984. Alternatively, she claims essentially that the Court should declare that the Advisory Committee must observe the elementary rules concerning an official's right to defend himself and, in particular, give the official concerned an opportunity to be heard before the adoption of the decision adversely affecting him and state the reasons for it if the Committee rejects his request with the result that his position as an official deteriorates; for the rest, she claims that the Court should make such further orders as may be necessary.

2 It appears from the documents before the Court that in 1982 an internal directive on the composition and functioning of the Advisory Committee on Promotion was issued by the President of the European Parliament in order to advise the appointing authority on promotions within career brackets and from one career bracket to another. The Advisory Committee, which is a joint committee, is composed of a chairman who has no right to vote, a full member for each of the directorates-general and an equal number of representatives of the Staff Committee. For promotions from one career bracket to another the Advisory Committee draws up a list of officials eligible for promotion which is published and remains valid until the end of the year. The internal directive provides that all officials eligible for promotion are to be considered by the Advisory Committee on the basis of the particulars in their personal files and that the names of officials who have not been promoted before 31 December are automatically entered on the corresponding lists for the following year unless the Committee takes a decision to the contrary and states the reasons for it.

3 On 11 July 1984 the applicant's lawyer wrote a letter to the President of the Parliament, in his capacity as the appointing authority, under Article 90 (2) of the Staff Regulations in order to draw his attention to the fact that, in contrast to the previous year, the applicant's name had not been included in the list of officials eligible for promotion in 1984 drawn up by the Advisory Committee. Since the decision had been taken without hearing the applicant, it adversely affected her rights to defend herself and constituted a disguised and unlawful disciplinary measure inasmuch as it was taken without disciplinary proceedings. In response to a request from the Director-General for Administration, Personnel and Finance, the applicant herself wrote him a letter on 6 September 1984 which was couched in the same terms as the letter of 11 July 1984. On 23 January 1985 the applicant assumed that there had been an implied rejection of her complaint and brought the present action.

4 By letter of 17 July 1985 the Advisory Committee informed the applicant that at an extraordinary meeting held on 10 July 1985 it had reviewed her case and had decided to revoke its decision. to withdraw her name from the list of officials eligible for promotion in 1984, with the result that her name had been reinstated on the list and would automatically be included in the list for 1985.

5 In those circumstances, the Parliament proposed that the Court should remove the case from the register since it had become devoid of purpose. The Parliament agreed to pay the costs.

6 In her reply the applicant stated that the Parliament's decision, in unreservedly accepting her argument, constitutes an admission that the Parliament's previous attitude was unlawful and that, in consequence of the damage wrongfully inflicted, it should pay her compensation consisting, on the one hand, of special and general damages for the harm to her career and her professional reputation and for the repeated refusal to assign her to a post (assessed at BFR 350 000) and, on the other, of special and general damages in respect of the proceedings instituted against the appointing authority (assessed at BFR 150 000), together with interest. In that connection the applicant draws attention to the two forms annexed to her reply informing her that her application for two particular posts had been rejected. She further observes that in July 1985 the Parliament decided to apply to her the invalidity procedure provided for in Article 78 of the Staff Regulations and that in consequence the letter to which the defendant refers was simply 'window-dressing enabling the appointing authority to take a step back the better to achieve its goal'. The applicant accordingly considers that there are valid grounds for continuing the action.

7 It must be remembered that, according to the application, the action is directed against the decision of the Advisory Committee not to include the applicant's name in the list of officials eligible for promotion in 1984. Since that decision was subsequently revoked by the Advisory Committee, the action, as contemplated in the application, has manifestly become devoid of purpose.

8 The applicant has not stated whether her new claim for damages is based on the same ground as her original claims, namely the decision not to include her name in the list of officials eligible for promotion, or on new grounds, namely the decisions rejecting her application for two particular posts and the decision referring her case to the Invalidity Committee. However, in the first eventuality, the claim is out of time, and in the second it is premature since it has not been preceded by a complaint submitted in accordance with the procedure laid down in the Staff Regulations. Hence the new claim is in any event patently inadmissible in these proceedings.

9 In those circumstances the Court, which, pursuant to Article 92 (2) of the Rules of Procedure may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case, has decided to make an order on the procedural issues pursuant to Article 91 (3) and (4) of those Rules without opening the oral procedure.

10 It follows from the foregoing considerations that the original claims have become devoid of purpose and that the new claim is inadmissible. The case must therefore be removed from the register.

Costs

11 According to Article 69 (5) of the Rules of Procedure, where a case does not proceed to judgment the costs are to be in the discretion of the Court. The Court considers that, without there being any need to ascertain the extent to which the submissions relied upon in support of the application were well founded, and notwithstanding the fact that one of the claims is manifestly inadmissible, it is clear from the particular circumstances of the case and from the course of the proceedings that there are sufficient grounds for ordering the defendant to pay the whole of the costs.

On those grounds,

THE COURT (Second Chamber)

upon hearing the Advocate General,

hereby orders as follows:

(1) It is unnecessary to give a decision on the claims formulated in the application.

(2) The claims formulated in the reply are dismissed as inadmissible.

(3) Case 19/85 is to be removed from the register.

(4) The European Parliament is to pay the costs.

Luxembourg, 28 November 1985.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber