Case 13/86

Charlotte von Bonkewitz-Lindner
v
European Parliament

(Procedural issue)

Order of the Second Chamber of the Court, 18 March 1987 1417

Summary of the Order

Officials — Actions — Prior complaint through official channels — Identical subject-matter — Specific and ascertainable subject-matter — Interest in bringing an action — Absence — Action inadmissible
(Staff Regulations, Arts 90 and 91)

ORDER OF THE SECOND CHAMBER OF THE COURT
18 March 1987 *

In Case 13/86

Charlotte von Bonkewitz-Lindner, an official of the European Parliament, residing in Luxembourg, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18a rue des Glacis, L-1628,

applicant,

v

European Parliament, represented by Francesco Pasetti-Bombardella, a Legal Adviser of the European 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, 22 Côte d'Eich,

defendant,

* Language of the Case: German.

APPLICATION for a declaration that the appointing authority of the European Parliament wrongfully failed to undertake an investigation and for an order for damages,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: J. Mischo
Registrar: P. Heim

makes the following

Order

1 By an application lodged at the Court Registry on 20 January 1986, Mrs von Bonkewitz-Lindner, an official of the European Parliament, brought an action against the European Parliament under Article 91 of the Staff Regulations of Officials of the European Communities seeking in substance a declaration that the appointing authority of the European Parliament wrongfully failed to undertake an investigation and to restore order in the division and an order requiring the Parliament to pay to the applicant a total of BFR 391 600 by way of damages, namely BFR 91 600 for material damage and BFR 300 000 for non-material damage. In law, the applicant bases her application on the contention that the European Parliament has failed in its duty to give assistance to its staff and thereby infringed Article 24 of the Staff Regulations.

2 By a letter dated 28 February 1985, Mrs von Bonkewitz-Lindner requested the appointing authority of the European Parliament first to call for an explanation from a colleague and protect her against slanders and attacks and secondly to require a particular course of conduct from her immediate superior. On 30 July 1985, since that request had evoked no response, Mrs von Bonkewitz-Lindner submitted a complaint under Article 90 (2) of the Staff Regulations. That

complaint referred expressly to the request dated 28 February 1985. It also contained a table of the material damage which Mrs von Bonkewitz-Lindner claimed to have suffered, which she evaluated at BFR 138 600, although she did not seek payment of that sum.

3 Mrs von Bonkewitz-Lindner's requests prompted the administration of the European Parliament to consider a reorganization of the division concerned and offer her a transfer, which, however, she refused.

4 The European Parliament takes the view that the application is inadmissible because it does not satisfy essential formal requirements and does not comply with the Rules of Procedure of the Court.

5 Under Article 92 (2) of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case — in particular the inadmissibility of the application — and may so decide in accordance with Article 91 (3) and (4) without opening the oral procedure.

6 It must be stated that by virtue of Article 91 (2) of the Staff Regulations, an action brought by an official is admissible only if the appointing authority has previously had a complaint submitted to it pursuant to Article 90 (2). Furthermore, the Court has consistently held that an application will be inadmissible if its subject-matter differs from that of the complaint through official channels (see the judgment of 10 July 1986 in Case 270/84 *Licata* v *Economic and Social Committee* [1986] ECR 2305). The Court has also consistently held that any application must be based on an interest on the part of the applicant in bringing proceedings. Finally, any application must have a specific content.

7 The applicant's application satisfies none of those conditions.

8 It should be stated in the first place that the claim for a declaration that the appointing authority wrongfully failed to undertake an investigation does not correspond to one of the requests contained in the letter of 28 February 1985 and the letter of complaint of 30 July 1985. In the second place, it appears that the application is not based on an interest in bringing proceedings. The application

merely requests an investigation in general terms without indicating what specific matter the appointing authority failed to investigate or to what extent such an investigation would affect the applicant's interests. Moreover, the problems of the division concerned are well-known to the administration of the European Parliament, and indeed they prompted it to consider a reorganization of the division and suggest a transfer for the applicant. A declaration on the part of the Court that the appointing authority wrongfully failed to undertake an investigation would not therefore alter the applicant's situation in any way.

9 The claim for the restoration of order in the division also fails to correspond to either of the requests contained in the two abovementioned letters. Furthermore, it lacks all substance. The applicant does not state in what way she thinks that order should be restored. Lastly, and above all, no provision of the Staff Regulations confers on the applicant the right to ask in general terms for a division to be brought to order, the organization of its departments being the sole responsibility of the administration concerned.

10 As regards the claim for damages, it was not preceded by a complaint through official channels. Neither the letter of 28 February 1985 nor the complaint of 30 July 1985 contains such a claim for damages.

11 It must therefore be held that the application is inadmissible.

12 As the documents before the Court contain all the evidence necessary in order to give a decision, the Court has not found it necessary to hear oral argument from the parties.

Costs

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

On those grounds,

THE COURT (Second Chamber),

in pursuance of Article 91 of the Rules of Procedure,

after hearing the Opinion of the Advocate General,

hereby orders as follows:

(1) The application is dismissed as inadmissible.

(2) Each party shall bear its own costs.

Luxembourg, 18 March 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber