# JUDGMENT OF THE COURT (Second Chamber)

16 December 1999 *

In Case C-150/98 P,

**Economic and Social Committee of the European Communities**, represented by Bermejo Garde, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 17 February 1998 in Case T-183/96 *E* v *Economic and Social Committee* [1998] ECR-SC I-A-67 and II-159, seeking to have that judgment set aside,

the other party to the proceedings being:

E, a former official of the Economic and Social Committee of the European Communities, resident in Brussels, Belgium,

applicant in the proceedings at first instance,

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of: R. Schintgen (Rapporteur), President of the Chamber, G. Hirsch and H. Ragnemalm, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 June 1999,

gives the following

## Judgment

1 By an application lodged at the Registry of the Court on 17 April 1998, the Economic and Social Committee of the European Communities brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 17 February 1998 in Case T-183/96 *E* v *Economic and Social Committee* [1998] ECR-SC I-A-67 and II-159 ('the contested judgment'), in which it annulled the decision of the General Secretary of the Economic and Social Committee of 18 January 1996 ('the contested

decision') imposing the disciplinary measure on the applicant of a relegation in step and ordered the Economic and Social Committee to pay the costs.

2 So far as the facts which gave rise to the dispute are concerned, reference is made to paragraphs 1 to 12 of the contested judgment.

## The contested judgment

3 It is clear from the contested judgment that E relied on four pleas in law in support of her action: first, procedural irregularity; secondly, manifest errors of law and misuse of powers; thirdly, manifest errors of fact; and fourthly, failure to observe the principle of proportionality.

4 The Court of First Instance dismissed the first three pleas but upheld the fourth.

5 In particular, the Court of First Instance held as follows:

'39 ... the purpose of the first paragraph of Article 12 of the Staff Regulations is to ensure that Community officials, in their conduct, present a dignified image which is in keeping with the particularly correct and respectable behaviour one is entitled to expect from members of an international civil service (Case T-146/94 *Williams* v *Court of Auditors* [1996] ECR-SC II-329, paragraph 65). In the present case the memorandum of 10 January 1995 is distinguished by an aggressive tone and therefore lacks the necessary decorum, as indeed the applicant recognised in her application. In particular

expressions such as "work ... which he is not familiar with", "which are none of your business", "that immediate superior is certainly not you", "Do not exceed your powers", "Stop defaming me and subjecting me to abuse and insults", "During the period when I was assigned to the Directorate I was the victim of insults on the part [of the reporting officer]: unbeknown to me he sent a defamatory note to Mr [Y] on 24 March 1994 demanding that I be dismissed and leading to my post being removed from the list of posts" and "The staff report drawn up by [the reporting officer] constitutes an abusive and defamatory personal attack full of false allegations" do not betoken the proper conduct required of officials under the first paragraph of Article 12 of the Staff Regulations. That being so, the Court considers that the administration was quite right to take the view that the memorandum in question constituted a breach of the applicant's duty to uphold the dignity of the service.

40 For the same reasons, the administration was entitled to find that the applicant's memorandum amounted to a breach of Article 21 of the Staff Regulations. Observance of the duty to assist and tender advice to one's superiors laid down in that article is required not only in the performance of specific tasks entrusted to an official but extends to the whole relationship between the official and the institution. By reason of that duty, therefore, the official must abstain, in general, from any act which may reflect on the position of the institution and its authorities and on the respect due to them (*Williams* v *Court of Auditors*, cited above, paragraph 72). As has been observed in the preceding paragraph, a number of the comments which the applicant made in the memorandum of 10 January 1995 reflected on the position of the reporting officer and the respect due to him.

41 Finally, it must be emphasised that, whilst it is true that freedom of expression is a fundamental right which is also enjoyed by Community officials (Case C-100/88 *Oyowe and Traore* v *Commission* [1989] ECR 4285, paragraph 16), it is equally true that Articles 12 and 21 of the Staff Regulations, as interpreted above, do not constitute a bar to the freedom of expression of those officials but rather place reasonable limits on the exercise of that fundamental right, in the interests of the service. Consequently, when

the applicant made use of her right under the second paragraph of Article 43 of the Staff Regulations to make any comments which she considered relevant on the periodical report which had just been communicated to her, it was incumbent on her to exercise that right in a manner compatible with Articles 12 and 21 of the Staff Regulations.

...

59 In the present case, as the Court has found,...the conduct attributable to the applicant is that when she used her right to communicate her observations on the staff report, she employed a tone and expressions which cannot be reconciled with the obligations relating to the dignity of the post and respect for the authorities of the institution. It was not, however, a serious breach of those obligations. In the contested memorandum, the applicant did not use grossly insulting language and she gave reasons for her criticism of the reporting official, setting out her own view of the working relationship she had with him and expressing her profound dissatisfaction with it. The breach of Articles 12 and 21 of the Staff Regulations therefore lies solely in the applicant's extreme and aggressive choice of words and in what she herself acknowledged in her application to be her unseemly conduct.

60 The Court finds that, in those circumstances, it was manifestly disproportionate to impose on her the penalty of relegation by several steps. That is a serious measure which is rarely imposed on officials and which, in order to be proportionate, must correspond to facts much more serious than those of the present case.'

## The appeal

6 In its appeal, the Economic and Social Committee requests that the Court should:

— set aside the contested judgment;

— give a final ruling in the dispute by upholding the Economic and Social Committee's contention at first instance for E's action to be dismissed in its entirety;

— order the parties to bear their own costs;

— give E's full name in its judgment.

7 In support of its appeal, the Economic and Social Committee relies on three pleas in law which it sums up as follows:

— erroneous finding as to the legal classification to be attributed to the facts and misinterpretation of Articles 12 and 21 of the Staff Regulations applicable to officials and other servants of the European Communities ('the Staff Regulations');

— defects in the reasoning in the contested judgment and misinterpretation of Articles 86 and 87 of the Staff Regulations;

— erroneous application of the principle of proportionality and misinterpretation of Articles 12 and 21 of the Staff Regulations.

8 It did not lodge a reply.

9 By its first plea, the Economic and Social Committee is essentially objecting to the finding, at paragraph 59 of the contested judgment, that the expressions and tone employed by E in her memorandum of 10 January 1995 were merely unseemly when in fact they reflected a lack of deference stemming from an abuse of the freedom of expression. According to the Economic and Social Committee, as far as Community officials are concerned, the exercise of that freedom is subject to the observance of further limitations flowing from the principle of good faith between the parties and the duty of respect owed to hierarchical superiors as expressly set out in Article 21 of the Staff Regulations. Therefore, in view of the tone and expressions used in the memorandum of 10 January 1995 and all the facts and circumstances of the case, the Court of First Instance was wrong in its finding as to the legal classification to be attributed to the facts, having regard to Articles 12 and 21 of the Staff Regulations.

10 In that respect, it is settled case-law that, where the Court of First Instance has found or assessed facts, the Court of Justice has jurisdiction under Article 168a of the EC Treaty (now Article 225 EC) to review the legal nature of those facts and the legal consequences thereof as determined by the Court of First Instance (see,

to that end, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 49).

11 First of all, the finding of the Court of First Instance, at paragraphs 39, 40 and 59 of the contested judgment, that E's conduct, though merely unseemly, amounted to an infringement of Articles 12 and 21 of the Staff Regulations, constituted an assessment of the legal nature of the facts presented to it. It follows that the first plea is admissible because it amounts to an application to the Court of Justice to review that assessment.

12 Next, it is the settled case-law of the Court of Justice that fundamental rights form an integral part of the general principles of law whose observance the Court ensures, and that freedom of expression, which is enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is one of those general principles (see Case C-219/91 *Ter Voort* [1992] ECR I-5485, paragraphs 34 and 35).

13 Finally, as regards the Community civil service, the Court has held that the obligation of allegiance to the Communities imposed on officials in the Staff Regulations cannot be interpreted in such a way as to conflict with the right to freedom of expression (see *Oyowe and Traore*, paragraph 16).

14 Observance of that right is particularly important where an official is exercising his right under the second paragraph of Article 43 of the Staff Regulations to make any comments he considers relevant on a staff report communicated to him.

15 Therefore, whilst it is true that it would seem to be legitimate to require officials to show discretion, as indeed they are expressly required by Articles 12 and 21 of the Staff Regulations to do, that requirement is not to be narrowly construed in respect of an official exercising his right under the second paragraph of Article 43 of the Staff Regulations. Accordingly, an official cannot be considered to have failed to meet that requirement unless he uses seriously insulting language or language which seriously undermines the respect due to the reporting officer.

16 Accordingly, the Court of First Instance erred in law in its legal classification of the facts submitted to it in finding, at paragraphs 39 and 40 of the contested judgment, that the conduct of which E was accused — namely her extreme and aggressive choice of words to convey her comments on a staff report — infringed Articles 12 and 21 of the Staff Regulations, yet holding, at paragraph 59 of the judgment, that she did not use seriously insulting language.

17 However, where the grounds of a judgment of the Court of First Instance disclose an infringement of Community law but the operative part of the judgment is shown to be well founded on other legal grounds, the appeal must be dismissed (see Case C-320/92 P *Finsider* v *Commission* [1994] ECR I-5697, paragraph 37).

18 That is the case here, because if the Court of First Instance had classified the facts correctly in law, it would not have found any infringement of Articles 12 and 21 of the Staff Regulations and would have been bound to annul the contested decision.

19 In those circumstances, and without its being necessary to consider the other pleas in law advanced by the Economic and Social Committee in support of its appeal, the appeal must be dismissed.

## Costs

20 In application of Article 69(1) of the Rules of Procedure, which applies to the appeal procedure by virtue of Article 118, the appellant is ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

**1. Dismisses the appeal;**

2. **Orders the Economic and Social Committee of the European Communities to pay the costs.**

Schintgen Hirsch Ragnemalm

Delivered in open court in Luxembourg on 16 December 1999.

R. Grass — R. Schintgen

Registrar — President of the Second Chamber