JUDGMENT OF THE COURT (FIRST CHAMBER)
25 FEBRUARY 1969[1]

Raymond Elz
v Commission of the European Communities

Case 15/68

Summary

Officials of the EEC — Personal file — Communication to person concerned — Procedure provided for in the third paragraph of Article 26 of the Staff Regulations of Officials — Purpose restricted to proof of communication

If it is established that the documents in the personal file of an official have been communicated to him, it is unnecessary to consider whether the procedure provided for in the third paragraph of Article 26 of the Staff Regulations of Officials in the EEC have been complied with, as its only purpose is to prove beyond doubt the communication required by the preceding paragraph.

In Case 15/68

RAYMOND ELZ, an official of the Commission of the European Communities, resident in Luxembourg-Howald, 24 Rue Bellevue, assisted by Paul Beghin, Advocate of the Luxembourg Bar, 9 avenue de la Gare, Luxembourg,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Pierre Lamoureux, acting as Agent, with an address for service at the Chambers of Emile Reuter, Legal Adviser to the Commission, 4 boulevard Royal, Luxembourg,

defendant,

Application at the present stage of the proceedings relating to the admissibility of the application for the annulment and rectification of the periodic report of 15 January 1968 concerning the applicant,

1 — Language of the Case: French.

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President, A. M. Donner (Rapporteur) and R. Monaco, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The applicant, who occupies the post of Principal Administrative Assistant with the Directorate-General for Financial Control was the subject of a periodic report dated 15 January 1968.
The applicant, after he had asked in his personal comments on this report, which had been communicated to him in accordance with the provisions of the second paragraph of Article 43 of the Staff Regulations of Officials, for its rectification, lodged a complaint through official channels with the President of the Commission of the European Communities on 27 March 1968 pursuant to Article 90 of the Staff Regulations.
On 25 July 1968 the applicant lodged at the Court Registry the present appeal against the periodic report of 15 January 1968 and the implied rejection of his request of 27 March 1968.
In its statement of defence of 14 October 1968 the defendant raised an objection of inadmissibility by submitting that it had withdrawn the report of 15 January 1968 and had asked for Article 91 of the Rules of Procedure to be applied; the applicant submitted his observations on this objection on 27 November 1968.
The Court after hearing the Advocate-General decided to open the oral procedure relating to the objection of inadmissibility.

II — Conclusions of the parties

The *Commission* claims that the Court should:
— dismiss the application by declaring it to be inadmissible by way of a preliminary ruling under Article 91 of the Rules of Procedure;
— order the applicant to pay the costs.
The *applicant* contends in his observations on the objection of inadmissibility that the Court should:
in the first place
— reserve its decision on the objection of inadmissibility raised by the Commission for the final judgment;
— declare this objection to be unfounded and therefore dismiss it;
— in addition uphold the applicant's conclusions which are set forth in full in his originating application;
further
— confirm to the applicant that the periodic report of 15 January has been withdrawn from his personal file;

— order that the periodic report of 22 May 1968 be withdrawn from his personal file;

further,

— take note of the applicant's submission that Article 42(2) of the Rules of Procedure be applied.

III — Submissions and arguments of the parties

In its statement of defence of 14 October 1968 the *defendant* submits that the application is inadmissible because it has no purpose and the applicant has no legal interest requiring protection.

As a result of the applicant's complaint of 27 March 1968 his immediate superiors modified their findings and drew up a new periodic report dated 22 May 1968 which, with regard to the points criticized by the applicant, differs substantially from the previous report. When the second report was submitted to the applicant by his superiors he refused to sign it.

On being formally summoned by Mr J. de Groote, Head of Division of the Directorate-General for Personnel and Administration to meet him on 31 May 1968, the applicant attended this meeting, took note of the new report and repeated his refusal to accept it, which was confirmed in a note by Mr de Groote of the same date.

As the periodic report of 22 May 1968 and the note of 31 May 1968 had been put on the applicant's personal file, the defendant concludes that the report of 15 January 1968 was withdrawn from the file and replaced by the report of 22 May 1968.

Therefore the first report ceased to exist and no longer adversely affects the person concerned.

The defendant submits in the alternative that, even if the report has not been withdrawn from the file, the application would not be in all respects admissible, since it asks *inter alia* for the annulment of point 8 of the periodic report and, in particular, of paragraph (b) of the assessment of Mr Haighton, the head of division, whereas these parts of the report were not referred to in the complaint of 27 March 1968.

The applicant did not therefore submit these claims within the period prescribed by Article 91 of the Staff Regulations.

In his observations on the objection of inadmissibility the *applicant* submits that it should be rejected, since the report of 22 May 1968 does not exist in law because of the failure to comply with Article 26 of the Staff Regulations which provides that 'the communication of any document to an official shall be evidenced by his signing it or, failing that, shall be effected by registered letter'.

The report of 22 May 1968 was not signed by the applicant and was not served upon him by registered letter. That these formalities are essential is confirmed by Article 6 of the Regulations relating to reports on officials of the former Commission of the EEC, which provides that officials must sign their reports within fifteen days and may add any observations which they consider appropriate. The applicant submits further in another part of his argument that he was never informed of the decision that the report of 15 January had been withdrawn. For this reason he was unable to lodge an application, if it had been necessary to do so, for the annulment of the report of 22 May.

The applicant asked the Court in the alternative to confirm that the report of 15 January has been withdrawn from his personal file. As on the other hand the report of 22 May has ceased to exist in law he asks the Court to order that it be withdrawn from his personal file.

Finally in reply to the alternative argument of the defendant the applicant submits that the complaint of 27 March 1968 refers to the report as a whole and that the points examined in greater

detail in the application do not therefore amount to a new submission.

In the further alternative and to the extent to which the Court upholds the defendant's alternative submission the applicant asks the Court to apply Article 42(2) of the Rules of Procedure.

IV — Procedure

The oral submissions of the parties were heard during the hearing of 14 January 1969.

The Advocate-General delivered his opinion on the admissibility of the application on 29 January 1969.

Grounds of judgment

1-3 The application is directed against the periodic report of 15 January 1968. The defendant has raised an objection of inadmissibility by submitting that this report had been withdrawn and replaced on 22 May 1968 by an amended report and that therefore the application lodged on 25 July 1968 from the very beginning had no purpose.

4-7 The applicant replies that the documents in question cannot be used or cited against him, because Article 26 of the Staff Regulations provides that the institutions cannot use or cite against an official any documents in his personal file which have not been communicated to him. On this point he refers to the third paragraph of the said article which provides that the communication of any document to an official shall be evidenced by his signing it, or failing that, shall be effected by registered letter. In his view it follows from the defendant's own statements that the provisions of this latter paragraph have not been complied with in this case and the objection of inadmissibility must therefore be dismissed as unfounded.

8-11 It is common ground that a preliminary draft of the amended periodic report was communicated to the applicant on 22 May 1968 and the final version on 31 May. Although it is true that on these two occasions the applicant refused to sign the said report it nevertheless emerges from the facts of this case that he took note of it. In these circumstances the requirement of the second paragraph of Article 26 of the Staff Regulations that all documents in his personal file must be communicated to the official concerned has been complied with. As communication of the report has in fact been established it is unnecessary to consider whether the procedure provided for in the third paragraph of Article 26 has been complied with, as its only purpose is to confirm beyond doubt the communication required by the preceding paragraph of the said Article.

12-13 The periodic report of 22 May 1968 may therefore be used and cited against the applicant and accepted as sufficient evidence that the earlier periodic

report of 15 January has been withdrawn. Consequently at the date of the application the contested periodic report no longer existed and the application must therefore be declared inadmissible since it has no purpose.

Costs

14 The applicant has failed in his application.

15-16 Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However, in accordance with Article 70 of the said Rules, in applications brought by servants of the Communities, institutions shall bear their own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Staff Regulations of Officials of the European Communities, especially Article 26;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses Application 15/68 as inadmissible;**

2. **Orders the parties to bear their own costs.**

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 25 February 1969.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber