ORDER OF THE COURT (Third Chamber)
19 October 1999 *

In Case C-21/99 P,

N, a former official of the Commission of the European Communities, residing in Brussels, represented by G. Sakellaropoulos, of the Athens Bar, with an address for service in Luxembourg at the Chambers of A. May, 31 Grand-Rue,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Fifth Chamber) of 30 November 1998 in Case T-97/94 *N* v *Commission* [1998] ECR-SC I-A-621 and II-1879, seeking to have that order set aside and the same form of order granted as that sought by N at first instance,

the other party to the proceedings being:

Commission of the European Communities, represented by G. Valsesia, Principal Legal Adviser, and F. Duvieusart-Clotuche, of its Legal Service, acting as Agents,

* Language of the case: French.

with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

THE COURT (Third Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann (Rapporteur) and J.-P. Puissochet, Judges,

Advocate General: F.G. Jacobs,

Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 29 January 1999, N brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 30 November 1998 in Case T-97/94 *N* v *Commission* [1998] ECR-SC I-A-621 and II-1879 ('the contested order'), in which the Court of First Instance dismissed his action for annulment of his staff report drawn up by the Commission in respect of the period from 1 July 1989 to 30 June 1991 ('the disputed staff report') and for compensation for the material and non-pecuniary damage allegedly suffered as a result of that report.

2 Reference should be made to paragraphs 1 to 8 of the contested order for the facts giving rise to the dispute between N and the Commission.

The contested order

3 By application lodged on 9 March 1994, N brought an action before the Court of First Instance in which he claimed that the Court should:

— annul the Commission's implied rejection of his complaint against the disputed staff report, lodged by him on 11 August 1993;

— annul the disputed staff report;

— hold that the Commission has the task of drawing up a fresh staff report for the period in question;

— order the Commission to pay him damages equivalent to three years' salary for the material and non-pecuniary harm suffered;

— formally note that he reserves the right to demand subsequently from the Commission any damages payable pursuant to the second paragraph of Article 24 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations');

— order the Commission to pay the costs.

4 The Commission contended that the action should be dismissed as inadmissible.

5 With regard to the claim for annulment of the disputed staff report, the Court of First Instance pointed out, in paragraphs 22 and 23 of the contested order, that, in order for an official or a former official to be able to bring an action under Articles 90 and 91 of the Staff Regulations, he must have a personal interest in the annulment of the contested measure and that interest is to be assessed as at the time when the action is brought.

6 The Court of First Instance then held, in paragraphs 25 and 26 of the contested order, that the primary function of a staff report, as an internal document, is to provide the administration with periodic information on the performance by officials of their duties and that it plays an important part in the progress of their careers. In principle, therefore, it affects the interest of the person assessed only until the termination of his service. After his service has terminated, the official is no longer entitled to bring an action, unless he can establish the existence of a particular circumstance substantiating a current, personal interest in obtaining the annulment of the report in question.

7 Therefore the Court found, in paragraphs 27 and 28 of the contested order, that, since N had been removed from his post with effect from 1 December 1993, he was no longer in the service of the Commission at the time when he brought his action and that neither the fact that he lodged a complaint against the disputed staff report when he was still an official nor the existence of a link between the present case and the case brought against the decision removing him from his post was such as to substantiate a current, personal interest.

8 The Court also held, in paragraph 29 of the contested order, that N was not justified in pleading bad faith on the part of the Commission and that he could not complain that it had failed to reply before 1 December 1993 to his complaint lodged on 11 August 1993 since, under Article 90(2) of the Staff Regulations, it had four months from the latter date to reply.

9 Finally, the Court added, in paragraph 30 of the contested order, that the right to a fair hearing within the meaning of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950 ('the European Convention on Human Rights'), did not preclude the application of the conditions laid down by Community law for the admissibility of an action, since the mere assertion by N, without further justification, that his personal and professional reputation needed to be restored was not enough to establish that he had a personal interest.

10 As regards the claim for compensation, the Court stated, in paragraph 32 of the contested order, that since it was closely linked to the claim for annulment, it likewise had to be declared inadmissible.

11 Consequently, the Court of First Instance dismissed the action in its entirety.

The appeal

12 By his appeal, N claims that the Court should:

— set aside the contested order;

— grant the application made by him at first instance; and

— order the Commission to pay the costs.

13 The Commission contends that the appeal should be dismissed as being partly inadmissible and, in any event, unfounded and that the appellant should be ordered to pay the costs.

14 In support of his appeal, the appellant relies on four pleas in law, alleging: (i) that the Court of First Instance infringed the principle that personal rights are to be protected and respected; (ii) that it erred in its assessment with regard to the Commission's bad faith; (iii) that it did not consider the substance of the matter; and (iv) that it erred in its assessment with regard to the existence of personal harm to him.

Findings of the Court

15 Under Article 119 of its Rules of Procedure, the Court may at any time dismiss an appeal by reasoned order where it is clearly inadmissible or clearly unfounded, without opening the oral procedure.

16 First, in accordance with the Court's settled case-law, it follows from Article 168a of the EC Treaty (now Article 225 EC) and the first paragraph of Article 51 of the EC Statute of the Court of Justice that an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts (see, in particular, Case C-8/95 P *New Holland Ford* v *Commission* [1998] ECR I-3175, paragraph 25).

17 Also, as provided in Article 112(1)(c) of the Rules of Procedure of the Court of Justice, an appeal must specify the pleas in law and legal arguments relied on.

18 It follows from those provisions that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal.

19 It is settled case-law that that requirement is not satisfied by an appeal confined to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the Court of First Instance, which under Article 49 of the EC Statute of the Court of Justice does not have jurisdiction to undertake (see, in particular, *New Holland Ford* v *Commission*, cited above, paragraphs 23 and 24).

First plea in law: infringement by the Court of First Instance of the principle that personal rights are to be protected and respected

20 By the first plea, N alleges that the Court of First Instance infringed the principle that personal rights are to be protected and respected. He contends, in the first part of this plea, that the Court of First Instance erred in holding, at paragraphs 22 and 23 of the contested order, that, in order for an official or a former official to be able to bring an action under Articles 90 and 91 of the Staff Regulations, he must have a personal interest in the annulment of the contested measure and that that interest is to be assessed as at the time when the action is brought. In the appellant's submission, it should have been established whether he had an interest in bringing proceedings as at the day on which he lodged his complaint with the Commission, that is to say 11 August 1993.

21 In that regard, suffice it to state that the Court of First Instance was right in holding that, in accordance with settled case-law, the personal interest of an official or former official in the annulment of the contested measure is to be assessed as at the time when the action is brought (see, in particular, Case 124/78 *List* v *Commission* [1979] ECR 2499, paragraph 7).

22 Consequently, the first part of the first plea must be rejected as clearly unfounded.

23 In the second part of the first plea, N contends that the Court of First Instance erred in law in holding, at paragraph 28 of the contested order, that he did not establish the existence of a particular circumstance showing that he retained a current, personal interest in bringing an action for annulment. N submits that such an interest continues to exist even after the termination of his service, given that the disputed staff report would enable him to prove his academic and professional abilities in a non-Community context.

24 In that regard, as the Court of First Instance stated at paragraph 25 of the contested order, it is apparent from the case-law of the Court of Justice that staff reports are internal documents whose primary function is to provide the administration with periodic information on the performance by officials of their duties (see, in particular, Joined Cases 6/79 and 97/79 *Grassi* v *Council* [1980] ECR 2141, paragraph 20). After his service has terminated, an official is therefore no longer entitled to bring an action, unless he can establish the existence of a particular circumstance substantiating a current, personal interest in obtaining the annulment of the report in question.

25 In the light of those findings, the Court of First Instance's assessment that N did not establish the existence of such a circumstance is not to be criticised.

26 The second part of the first plea must therefore be rejected as clearly unfounded.

Second plea in law: error of assessment by the Court of First Instance with regard to the Commission's bad faith

27 By his second plea, the appellant criticises the Court of First Instance for holding, at paragraph 29 of the contested order, that he was not justified in asserting that the Commission had acted in bad faith in its treatment of his complaint. He submits that the Court of First Instance should not have based itself on the Commission's actions in breach of the Staff Regulations and should have ruled on the concept of bad faith in the exercise of its discretion. Thus, the contested order is not fair for the purposes of Article 6 of the European Convention on Human Rights in that it denies the official his means of defence and infringes the principle that no one is to profit from his own unlawful acts.

28 However, this plea simply repeats the arguments already put forward before the Court of First Instance without demonstrating how the contested order is vitiated by an error of law, so that, in essence, it seeks merely re-examination of the argument relating to the bad faith said to have been displayed by the Commission in rejecting N's complaint after the date on which his service terminated, to which the Court of First Instance has already replied.

29 Accordingly, the second plea should be rejected as clearly inadmissible.

Third plea in law: failure of the Court of First Instance to consider the substance of the matter

30 By his third plea, N complains that the Court of First Instance did not consider the substance of the matter in order to avoid any comment on the merits which would have obliged it to carry out a comparative examination of his performance during the period at issue and the preceding periods. He contends that the

reasoning, at paragraph 30 of the contested order, effectively turns Community law into a legal order incompatible with Article 6 of the European Convention on Human Rights.

31 In that regard, it is sufficient to observe that consideration of the admissibility of an action is a necessary prerequisite for assessment by the Court of First Instance of the substance. The conditions of admissibility must therefore be met in order for the substance of the action to be considered.

32 Consequently, the third plea must be rejected as clearly unfounded.

Fourth plea in law: error of assessment by the Court of First Instance with regard to the existence of personal harm to N

33 By his fourth plea, N alleges that the Court of First Instance erred in its legal assessment in considering that the delay in the drawing up of the disputed staff report had not caused him personal harm. The Court of First Instance did not take account of the non-pecuniary, academic and professional harm resulting from the failure to draft that report, which should have been drawn up by 31 December 1991 at the latest, denying him the definite opportunity of taking part in a competition in 1993. It follows that the Court of First Instance did not follow its own case-law, according to which the absence of a staff report is largely attributable to the Commission and causes the official non-material damage, because it results in his being put in an uncertain or anxious state of mind with regard to his future.

34 This plea is based on a manifest misreading of the contested order.

35 The Court of First Instance, at paragraph 32 of the contested order, confined itself to the question of the admissibility of the claim for compensation formulated by N, holding that claim inadmissible since it was closely linked to the claim for annulment, which was itself inadmissible. Thus, the Court of First Instance did not address the substance of the question as to whether N suffered any personal harm because of the delay in drafting the disputed staff report.

36 The fourth plea must therefore be dismissed as clearly unfounded.

37 It follows from all of the foregoing considerations that the pleas put forward by the appellant in support of his appeal are either clearly inadmissible or clearly unfounded. The appeal must therefore be dismissed pursuant to Article 119 of the Rules of Procedure.

Costs

38 Under Article 69(2) of the Rules of Procedure, applicable to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby orders:

1. The appeal is dismissed.

2. N shall pay the costs.

Luxembourg, 19 October 1999.

R. Grass
Registrar

J.C. Moitinho de Almeida
President of the Third Chamber