ORDER OF THE COURT (Second Chamber)
10 June 1987 *

In Case 317/85

Eliodoro Pomar, a former official of the European Communities, residing at 13.7 C Playamar, Torremolinos, Spain, represented and assisted by B. Gouy, avocat at the cour d'appel, Lyon, with an address for service in Luxembourg at the Chambers of E. Arendt, 34 rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by D. Gouloussis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission should pay damages to the applicant together with certain sums which were not paid or were paid late, in breach of the Staff Regulations,

THE COURT (Second Chamber),

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

Advocate General: J. L. da Cruz Vilaça
Registrar: P. Heim

makes the following

* Language of the Case: French.

Order

1 By application received at the Court Registry on 29 October 1985, Eliodoro Pomar, a former official of the European Communities, brought an action pursuant to Article 91 of the Staff Regulations of Officials of the European Communities seeking, essentially, an order that the Commission should pay certain sums due to him in order to compensate for the loss caused by the Commission's repeated failure to discharge its obligations under the Staff Regulations, on the one hand, and, on the other, by reason of various irregularities of a pecuniary nature.

2 Mr Pomar, an Italian national, was employed at the Ispra Joint Research Centre from March 1961 to 30 June 1974, on which date his employment ceased. By letter of 6 March 1985, he submitted to the Commission a complaint concerning its failure to discharge its duty to assist officials under Article 24 of the Staff Regulations and breach of its general duty of protection towards its employees, resulting in this case from the fact that it released him belatedly, and then only partially, from his duty of discretion, in a manner which was manifestly contrary to the spirit and to the letter of Article 19 of the Staff Regulations. The Commission's breaches of its duty toward the applicant occurred, according to him, when he was the subject of criminal proceedings before the national authorities. The complaint also concerned instances of non-payment or belated payment of various allowances.

3 Neither party denies that the alleged breaches of duty, irrespective of how they fall to be classified in law, took place no later than 1980.

4 The Commission contends that the application is out of time and therefore inadmissible, since all the matters on which the applicant relies date back to the period from 1974 to 1980. In other words, the acts adversely affecting the applicant occurred, according to the Commission, during 1980 at the latest and it was not until 1985 that the applicant submitted a complaint. It is therefore beyond dispute that the time-limits laid down in Articles 90 and 91 of the Staff Regulations have not been complied with.

5 In reply, the applicant states that his action seeks to establish liability and to obtain compensation for the consequences of the Commission's wrongful conduct and

that an action of that kind is subject not to the time-limits prescribed by Article 91 of the Staff Regulations but to the limitation period of five years laid down for ordinary actions brought against the Communities to establish liability. In the event of the time-limits laid down in Articles 90 and 91 of the Staff Regulations being applicable in this case, the applicant considers that he is justified in pleading *force majeure*.

6 Under Article 92 (2) of its 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 give its decision in accordance with Article 91 (3) and (4), without opening the oral procedure.

7 The Court has consistently held (judgments of 22 October 1975 in Case 9/75 *Meyer-Burckhardt* v *Commission* [1975] ECR 1171, and of 4 July 1985 in Case 176/83 *Allo* v *Commission* [1985] ECR 2155) that any proceedings between an official and the institution by which he is employed, even if they involve an action for compensation for damage, fall, where they originate in the relationship of employment between the person concerned and the institution, under Article 179 of the EEC Treaty (or Article 152 of the EAEC Treaty) and Articles 90 and 91 of the Staff Regulations and, as regards in particular the admissibility of the application, outside the scope both of the articles of the constitutive Treaties governing the general conditions of non-contractual liability of the Communities and of the provisions of the Statutes (ECSC, EEC and EAEC) of the Court of Justice which lay down a limitation period of five years for legal proceedings.

8 It follows that Articles 90 and 91 of the Staff Regulations and not the abovementioned general provisions of the Treaties and Statutes of the Court of Justice apply to the present proceedings.

9 Under Article 91 (2) of the Staff Regulations, an application by an official is admissible only if a complaint has first been submitted to the appointing authority pursuant to Article 90 (2). That complaint must itself have been brought against the act alleged to have adversely affected the official within a period of three months.

10 It is common ground that none of the acts which may have adversely affected the applicant, allegedly in breach of Articles 19 and 24 of the Staff Regulations or of his financial rights, occurred later than 1980.

11 In view of the fact that the applicant did not lodge his complaint until 6 March 1985, his application manifestly fails to satisfy the time-limits laid down in Articles 90 and 91 of the Staff Regulations.

12 The applicant's plea that the lateness of his application was attributable to *force majeure* cannot be upheld. The applicant has not proved that it was impossible for him to lodge a complaint within the period prescribed in the Staff Regulations. Moreover, it would seem from the copious correspondence between him and the Commission dating from 1975 that he was in a position to comply with that formal requirement, if need be through another person acting on his behalf.

13 The application must therefore be held to be manifestly inadmissible.

14 Since the documents before the Court contain all the information needed for it to give its decision, it has not appeared to be necessary to hear oral argument from the parties.

Costs

15 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, costs incurred by the institutions in proceedings brought by servants of the Communities are to be borne by those institutions.

On those grounds,

THE COURT (Second Chamber)

giving its decision in accordance with Article 91 of the Rules of Procedure,

after hearing the views of the Advocate General,

hereby orders as follows:

(1) The application is dismissed as inadmissible;

(2) The parties shall bear their own costs.

Luxembourg, 10 June 1987.

P. Heim
Registrar

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