ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
25 February 1992 *

In Case T-39/91,

Doris Herrmann, employed at the European Centre for the Development of Vocational Training, residing at D-1000 Berlin 30, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at Fiduciaire Myson S.à r. l., 1 Rue Glesener,

applicant,

v

European Centre for the Development of Vocational Training, represented by Marino Riva, acting as Agent, assisted by D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Director of the European Centre for the Development of Vocational Training of 30 January 1991 reclassifying the applicant in Grade B 5, Step 1, and, in so far as is necessary, the decision contained in a memorandum of 21 February 1991 expressly rejecting the complaint through administrative channels which she submitted on 30 January 1991,

* Language of the case: French.

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Fourth Chamber),

composed of: R. García-Valdecasas, President, D. A. O. Edward and C. P. Briët, Judges,

Registrar: H. Jung,

makes the following

Order

1 The applicant, Mrs Herrmann, entered the service of the European Centre for the Development of Vocational Training (hereinafter referred to as 'the Centre') in 1977 at Grade C 1, Step 2. From 1984 until 1989 she was secretary to the Director. On 4 September 1989 she was assigned to the 'Conferences' Directorate of a new 'Conferences and Interpretation' Department which was created in 1988. On 10 March 1989 the Director of the Centre requested, in the estimates of the Centre's income and expenditure for the budgetary year 1990, a new B 3 post in exchange for a C 3 post. The request was refused by the budgetary authorities. In contrast, a subsequent request for a B 3 post in exchange for a C 1 post for the budgetary year 1991 was accepted. In a handwritten memorandum of 21 December 1990 the Director of the Centre complimented the applicant on a report which she had made and added the following words:

'Your reclassification in B 3 has been definitively decided in the 1991 budget which has just been adopted.'

2 By letter of 3 January 1991, the Director of the Centre was informed by the Commission's Directorate General for Personnel and Administration that 'it is not possible to make an appointment in Grade B 3'. Subsequently, by letter of 30 January 1991, the Director informed the applicant as follows:

'I hereby inform you that the budgetary authority has approved the transformation of your post from C to B.

In accordance with the Commission's arrangements and the practice which has been applied up to now at the Centre, you will be classified in the starting grade of career bracket B, that is to say in Grade B 5.

Your salary will continue to be paid at C 1 level, but you will no longer be entitled to the secretarial allowance.'

3 By letter of 30 January 1991 the applicant replied as follows:

'I was greatly surprised by your letter of 30 January 1991 (471/98208). I cannot accept your decision. I request that the relevant administrative measure be suspended.

I intend to refer to my union in Brussels in order to obtain legal assistance and to bring an appeal in accordance with Article 43(2) and Article 44(4).'

4 On 1 February 1991, the applicant sent to the Director a further letter in the following terms:

'With reference to:

— document XIV-8 covering the estimate of income and expenditure for 1991 (extract copy attached),

— your manuscript memorandum of 21 December 1990 (copy attached), and

— your letter of 30 January 1991 (copy attached),

I should be grateful if you would state the precise reasons which have led you to alter your decision so that I can complete my case.'

By written memorandum of 21 February 1991 the Director communicated to the applicant a copy of a letter which he had sent on the same day to the Chairman of the Staff Committee, informing him that it was impossible to classify the applicant in Grade B 3.

By application lodged at the Registry of the Court of First Instance on 28 May 1991, the applicant brought an action for the annulment of the decision of the European Centre for the Development of Vocational Training of 30 January 1990 reclassifying her in Grade B 5 and, in so far as necessary, the memorandum of 21 February 1991 as an express decision rejecting her complaint of 30 January 1991.

In support of her action, the applicant claims that since 4 September 1989, she had been performing the duties corresponding to a Grade B 3 post. She maintains that the Centre was therefore under an obligation to reclassify her in that grade. Furthermore, the 'withdrawal' of the 'decision' of 21 December 1990 was unlawful or, at least, constituted a breach of the principle of the protection of legitimate expectations.

The Centre objects that the action is inadmissible on the ground that there was neither a prior complaint nor a decision adversely affecting the applicant. As regards the substance of the case, the Centre contends that it was impossible for it to classify the applicant in Grade B 3.

9 It must be stated, as a preliminary point, that for staff to whom the Centre's Conditions of Employment (Council Regulation (ECSC, EEC, Euratom) No 1859/76 of 29 June 1976, Official Journal 1976 L 214, p. 1) apply, the applicant being a member of that staff, the means of redress applicable in the present case are laid down in Articles 43 and 44.

10 Article 43 of the Centre's Conditions of Employment provides that

'2. Any person to whom these Conditions of Employment apply may submit to the Management Board a complaint against an act adversely affecting him, either where the director has taken a decision or where he has failed to adopt a measure prescribed by the Conditions of Employment. The complaint must be lodged within three months . . .

3. A request or complaint by a staff member shall be submitted through his immediate superior, except where it concerns that person, in which case it may be submitted direct to the authority next above.'

Article 44 of the Centre's Conditions of Employment provides that

'1. The Court of Justice of the European Communities shall have jurisdiction in any dispute between the centre and any person to whom these Conditions of Employment apply regarding the legality of an act adversely affecting such person within the meaning of Article 43(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.

2. An appeal to the Court of Justice of the European Communities shall lie only if:

— the Management Board has previously had a complaint submitted to it pursuant to Article 43(2) within the period prescribed therein, and

— the complaint has been rejected by express or implied decision.'

11 The defendant considers that the applicant's two letters cannot be regarded as constituting complaints within the meaning of Article 43(2). Her first letter of 30 January 1991 stated her intention to consult her union representatives and to lodge a complaint in the future ('Ich beabsichtige, den in Artikel 43 Abs. 2 bzw. Artikel 44 Abs. 4 vorgesehenen Beschwerdeweg zu gehen'). It cannot be regarded as constituting a complaint. The defendant adds that that letter does not contain any plea in law against the contested decision. The second letter of 1 February 1991 asks the Director of the Centre to state the reasons for his decision so that the applicant could 'complete [her] case'. The applicant did not specify her complaints against the administration in any of the abovementioned memoranda.

12 Therefore, according to the defendant, none of the conditions laid down in Article 44(2) has in fact been fulfilled and, consequently, it contends that the Court of First Instance should declare the application inadmissible.

13 The applicant claims that the Director's letter of 30 January 1991 containing her reclassification constitutes the act adversely affecting her within the meaning of Article 43(2) of the Centre's Conditions of Employment. She regards her letter of 30 January 1991 addressed to the Director as constituting a complaint against that measure. Her letter of 1 February 1991, sent with accompanying documents, supplemented the complaint. She considers that the Director's memorandum which he sent to her on 21 February 1991 constituted an express rejection of her complaint.

14 According to Article 111 of the Rules of Procedure of the Court of First Instance, where an application brought before the Court is manifestly inadmissible the Court

may give a decision on the action without taking further steps in the proceedings. In the present case the Court considers that the documents in the case provide it with sufficient information and has decided that there is no need to take further steps in the proceedings.

15 Article 43 and 44 of the Centre's Conditions of Employment are, in all essential respects, drafted in the same terms as Articles 90 and 91 of the Staff Regulations of Officials of the European Communities. Consequently, the case-law of the Court of Justice relating to Articles 90 and 91 is applicable in the present case. In those circumstances, that case-law is applicable in the present case in the sense that, where the Centre's Management Board has made a decision which adversely affects an official, that official is obliged to initiate the complaints procedure laid down in Article 43(2) if he wishes to seek the annulment, correction or withdrawal of the decision adversely affecting him (see, to that effect, the corresponding case-law relating to Articles 90 and 91 of the Staff Regulations of Officials of the European Communities; order of the Court of Justice in Case 16/86 *P* v *ESC* [1987] ECR 2409; judgment of the Court of Justice in Case 91/76 *Lacroix* v *Court of Justice* [1977] ECR 225, paragraph 10; order of the Court of First Instance in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235; order of the Court of First Instance in Case T-38/91 *Coussios* v *Commission* [1991] ECR II-763; judgment of the Court of First Instance in Case T-58/89 *Williams* v *Court of Auditors* [1991] ECR II-77; judgment of the Court of First Instance in Case T-72/89 *Viciano* v *Commission* [1990] ECR II-57).

16 The Court must therefore establish the legal status of the abovementioned letters of the applicant, since the question whether a letter constitutes a complaint is, as has been consistently held (see *inter alia* order of the Court of First Instance in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235 and the judgment in Case T-1/90 *Pérez-Mínguez Casariego* v *Commission* [1991] ECR II-143), a matter for determination by the courts alone and does not depend on what the parties intended.

17 The letter sent by the applicant to the Director of the Centre on 30 January 1991 and which she describes as a complaint, complains about the Director's letter of 30 January 1991 in which he informed her that the budgetary authority had approved the transformation of her post from C into B, that she would be classified in Grade B 5 and that her salary would continue to be paid at C 1 level without a secretarial allowance.

18 That first letter of the applicant of 30 January 1991 expressly announced her intention to consult her union in order to obtain legal assistance 'and to bring an action in accordance with Article 43(2) and Article 44(4)' — that is to say, what was envisaged was the complaints procedure and not the appeals procedure, in the formal sense, before the Community judicature. That interpretation of the letter of 30 January 1991 is confirmed by the subsequent letter of 1 February 1991 in which the Director of the Centre was asked 'to state the precise reasons which have led you to alter to your decision so that I can complete my case'. The letters of 30 January 1991 and 1 February 1991 constituted a prior request for information in order to enable the applicant to complete her case and submit a complaint. Such letters cannot be regarded as constituting a complaint.

19 It must be further pointed out that the congratulatory handwritten memorandum of 21 December 1990 was, neither in substance nor in form, a decision capable of conferring rights on the applicant.

20 It follows from all the foregoing considerations that the action must be dismissed as inadmissible.

Costs

21 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application is dismissed;

2. The parties are ordered to bear their own costs.

Luxembourg, 25 February 1992.

H. Jung
Registrar

R. García-Valdecasas
President