JUDGMENT OF THE COURT (Third Chamber)
20 June 1985 *

In Case 141/84

Henri de Compte, an official of the European Parliament, residing at 10 Avenue Guillaume, Luxembourg, represented by Gaston Vogel, of the Luxembourg Bar,

applicant,

v

European Parliament, represented by its Secretary-General, H. J. Opitz, acting as Agent, assisted by M. Peter, Head of the Division for Legal and Administrative Affairs, and by R. Andersen, of the Brussels Bar, 214 Avenue Montjoie, 1180 Brussels, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of 24 May 1984 by which the President of the European Parliament downgraded Mr de Compte from Grade A 3 to Grade A 7, Step 6, as a disciplinary measure, and also for a declaration that the Court takes formal note that the applicant reserves the right to claim damages on account of the injury which that decision allegedly caused him,

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 15 May 1985,

* Language of the Case: French.

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 4 June 1984, Henri de Compte, an official of the European Parliament, brought an action against Parliament for the annulment of the disciplinary measure downgrading him, for an order that his rights must be restored in full with retroactive effect and for a declaration that the Court takes formal note that he reserves the right to claim damages.

2 On 14 January 1983 the President of the European Parliament informed Mr de Compte, at the time an official in Grade A 3 employed as an accountant by Parliament, of certain facts which might lead to the initiation of disciplinary proceedings against him. On 28 January 1983, pursuant to Article 87 of the Staff Regulations of Officials, Parliament's Director General for Administration, Personnel and Finance invited Mr de Compte to submit his views on the matters in question.

3 On 13 April 1983, pursuant to the second paragraph of Article 87 of the Staff Regulations, the President of Parliament submitted to the chairman of the Disciplinary Board a report concerning the allegations made against the applicant. The Disciplinary Board met on several occasions between 2 June 1983 and 10 February 1984. On the latter date the Board proposed by three votes to two that Mr de Compte should be reprimanded, whilst the two members who did not support such a measure were in favour of simply dismissing the charges against him.

4 On 16 March 1984 the President of Parliament, in his capacity as the appointing authority, removed the applicant from his post as a disciplinary measure, without a reduction or withdrawal of his pension rights, by a decision upholding six complaints against him concerning various irregularities which he allegedly committed in connection with his work as an accountant.

5 On 21 March 1984 the applicant submitted to the President of Parliament, under Article 90 (2) of the Staff Regulations, a complaint against the decision of 16 March 1984 removing him from his post. A supplementary complaint submitted on 11 April 1984 was based essentially on the ground that on 10 April 1984 the European Parliament had granted a final discharge to Mr de Compte in respect of the 1981 financial year, that is to say the year in which the applicant was alleged to have committed the irregularities in question.

6 On 24 May 1984 the President of Parliament, in response to the initial complaint and to the supplementary complaint, decided that instead of being removed from his post Mr de Compte should be demoted to Grade A 7, Step 6. That decision was based on the grounds relied upon in support of the initial decision to remove him from his post.

7 On 4 June 1984 Mr de Compte took the following steps:

— He submitted a complaint to the President of Parliament against the decision of 24 May 1984.

— He brought this action before the Court essentially for the annulment of the aforementioned decision of 24 May 1984 downgrading him.

— He applied for an interim order suspending the operation of that decision until the Court gave judgment in the main action.

8 By order of 3 July 1984, the President of the Third Chamber, acting on behalf of the President of the Court, ordered the operation of the decision of 24 May 1984 to be suspended until the Court gave judgment in the main action.

9 By decision of 4 July 1984 the President of Parliament rejected the complaint submitted by the applicant on 4 June 1984.

The claim for annulment of the decision of 24 May 1984 downgrading the applicant as a disciplinary measure

10 In challenging the decision of 24 May 1984 the applicant relies in the first place on six submissions concerning alleged procedural irregularities in the disciplinary proceedings:

— the disciplinary proceedings initiated against him were 'inadmissible' owing to the infringement of the principle of *non bis in idem*, embodied in Article 86 of the Staff Regulations, which prohibits the initiation of two disciplinary proceedings in respect of the same factual situation;

— the preliminary hearing, provided for by Article 87 of the Staff Regulations, was conducted by an official who was not the competent authority;

— the documents given by the applicant to that official on the occasion of the preliminary hearing were never passed on to the Disciplinary Board, contrary to the *audi alteram partem* rule;

— the three witnesses examined by the Disciplinary Board gave evidence in the applicant's absence and without his knowledge, also contrary to the *audi alteram partem* rule;

— the same principle was contravened by virtue of the fact that the Disciplinary Board refused to hear the evidence of witnesses called by the applicant or his representative;

— finally, the Disciplinary Board wrongly refused to suspend its proceedings pending the outcome of the administrative inquiry which was being conducted at the same time by Parliament's Committee on Budgetary Control.

11 Secondly, the applicant relies, in support of his claim, on the following four submissions concerning the substantive legality of the contested decision:

— the decision of 24 May 1984 is based on an insufficient statement of reasons;

— the final discharge granted to the applicant by the European Parliament deprives the disciplinary measure of its legal basis;

— the six complaints upheld against the applicant rest on a factually incorrect basis or on a mistaken interpretation of the facts;

— finally, the disciplinary measure is manifestly disproportionate to the gravity of the irregularities with which he is charged, even if they can be proved.

12 The Court has informed the parties that, having regard to the complexity of the case, it considers it preferable to decide first whether the disciplinary proceedings were lawful. Of the submissions relating to that point, it is appropriate to examine first the allegation of the breach of the *audi alteram partem* rule inasmuch as the three witnesses examined by the Disciplinary Board gave evidence in the absence of the applicant or his representative.

13 The applicant contends that the principle of *audi alteram partem* and of the right to a fair hearing was contravened, inasmuch as the three witnesses examined by the Disciplinary Board gave evidence in his absence and without his being notified either orally or in writing of the date of the hearing. In his view, those three witnesses gave evidence relating precisely to the very essence of the allegations against him and he maintains that, had he been present, he would have been able to correct many of the statements that were incorrect or incomplete.

14 Parliament does not deny that contention but points out that the evidence given by the three witnesses was recorded on tape by the Disciplinary Board and transcribed in the minutes which were approved by the witnesses. Those documents, translated where necessary, were passed on to the applicant or to his representative. The applicant was therefore in a position, before the Disciplinary Board had completed its proceedings, to acquaint himself with all the evidence

recorded and to submit his views on any allegations made against him, in accordance with the principle of *audi alteram partem* in disciplinary proceedings.

15 It must be remembered that, as the Court held in its judgment of 11 July 1968 in Case 35/67 *Van Eick* v *Commission* [1968] ECR 329, although, within the context of the powers conferred upon it by Annex IX to the Staff Regulations, the Disciplinary Board is an advisory body of the appointing authority, it is, however, bound in the exercise of its powers to observe the fundamental principles of the law of procedure.

16 Those fundamental principles include the *audi alteram partem* rule which guarantees observance of the right to a fair hearing and is, moreover, expressly referred to in Article 6 of Annex IX to the Staff Regulations which provides as follows:

'If the Disciplinary Board requires further information concerning the facts complained of or the circumstances in which they arose, it may order an inquiry in which each side can submit its case and reply to the case of the other side.'

17 It follows from a rule common to most of the legal systems of the Member States that the principle of *audi alteram partem* in an inquiry such as that referred to in Article 6 of Annex IX requires that the official charged or his representative should be given an opportunity to be present when witnesses are heard and to put to them any questions which the official considers useful for his defence.

18 To decide otherwise and to deprive the official charged of the opportunity to put questions to witnesses, either personally or through his representative, would place him at a disadvantage as against the representatives of the administration on the Disciplinary Board, to whom that opportunity is available. Furthermore, the scope of the dialogue which must be possible before a Disciplinary Board between a witness and the official charged is not the same as that of a mere written reply by the official to minutes of a hearing. The immediate cross-examination of a witness after he has given evidence may sometimes bring new facts to light and may also compel the witness to explain or rectify an inadequate or erroneous statement. It is therefore capable of producing an impression on the members of the Disciplinary

Board quite unlike that which they would gain merely by reading a document submitted by the official charged.

19 It follows that the phrase 'inquiry in which each side can submit its case and reply to the case of the other side' used in Article 6 of Annex IX must be interpreted as meaning that, if the Disciplinary Board decides to hear witnesses, the official charged or his representative must be given an opportunity to be present at the hearing and to put questions to those witnesses.

20 Moreover, the fact that the applicant had an opportunity, before the Board had completed its proceedings, to acquaint himself with a transcript of the evidence given by the witnesses examined in this case and to submit his views on any allegations made against him was not, in itself alone, capable of ensuring that the *audi alteram partem* rule was observed.

21 Therefore, without there being any need to consider the other submissions relied upon in support of the applicant's aforesaid claim, it must be acknowledged that the proceedings of the Disciplinary Board are vitiated by a fundamental defect and consequently that Parliament's decision of 24 May 1984 downgrading the applicant as a disciplinary measure, which was adopted in the light of the opinion given by the Disciplinary Board, must be annulled.

The claim for an order that the applicant's rights must be restored in full with retroactive effect

22 Article 176 of the EEC Treaty provides that an institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court of Justice. The Court cannot, without exceeding its jurisdiction, address orders to the Community institutions regarding the implementation of its judgments. Accordingly, this claim is inadmissible.

The claim for a declaration that the Court takes formal note that the applicant reserves the right to bring an action for damages against Parliament

23 There is no provision in the Treaty or in the Rules of Procedure allowing the Court to take formal note of the intention evinced by one of the parties to bring an action against a Community institution. This claim must therefore be dismissed as inadmissible.

Costs

24 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has been unsuccessful in its main submissions, it must be ordered to pay the costs, including the costs of the application for the adoption of interim measures.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Annuls the decision of 24 May 1984 whereby the President of the European Parliament downgraded Mr de Compte from Grade A 3 to Grade A 7, Step 6, as a disciplinary measure.

(2) Dismisses the remainder of the claims set out in the application.

(3) Orders the defendant to pay the costs, including the costs of the application for the adoption of interim measures.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 20 June 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber