# JUDGMENT OF THE COURT (Fourth Chamber)
1 April 1987 *

In Case 257/85

**C. Dufay**, residing at 19 rue Bovis Vilde, 92260 Fontenay-aux-Roses (France), represented by Stanley Chaney, of the Paris Bar, 19 boulevard Henry-IV, 75004 Paris, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 13 boulevard Royal,

applicant,

v

**European Parliament**, represented by Francesco Pasetti-Bombardella, Jurisconsult, and by Manfred Peter, Head of Division, both residing in Luxembourg, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at Mr Bonn's Chambers, 22 côte d'Eich,

defendant,

APPLICATION for an order requiring the defendant (a) to pay the applicant the equivalent of seven months' salary by way of additional notice, (b) to reinstate the applicant in Category B and to compensate her, and (c) to make good the damage resulting from the applicant's sudden dismissal by decision of 15 October 1984 of the President of the Liberal and Democratic Group in the European Parliament,

THE COURT (Fourth Chamber),

composed of: C. Kakouris, President of Chamber, T. Koopmans and G. C. Rodríguez Iglesias, Judges,

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

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 27 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 February 1987,

gives the following

## Judgment

1 By application lodged at the Court Registry on 14 August 1985, Christiane Dufay, a member of the temporary staff in Category C at the European Parliament who was assigned to the Liberal and Democratic Group in Paris, whose contract was terminated by letter of 15 October 1984 and who was paid a sum corresponding to three months' notice, brought an action for an order requiring the Parliament (a) to pay her the equivalent of seven months' salary by way of additional notice, (b) to reinstate her as from 1 November 1980 in Category B having regard to the normal development of her career, with all the attendant consequences in law, in particular as regards the acquisition of pension points, and (c) to make good the damage resulting from her loss of salary before and after her dismissal.

2 The applicant, who is a French national, was recruited in Paris by the Liberal and Democratic Group in the Parliament as a member of the temporary staff in Grade B3. Her contract of employment for a fixed period, commencing on 1 July 1973, was converted into a contract of indefinite duration by the addition of a rider thereto on 31 January 1975.

3 In April 1981 the Liberal and Democratic Group proposed to the applicant an amendment to the terms of her contract, involving her regrading in Grade C2; she accepted that amendment by signing a further rider to the contract on 7 April 1981 regrading her with effect from 1 November 1980. The applicant reimbursed the difference between the salary she received in Grade B3, Step 4, and Grade C2, Step 5.

4 Finally, by letter of 15 October 1984 from the President of the Liberal and Democratic Group, the applicant's contract was terminated as from 1 December 1984 and she received payment of a sum corresponding to three months' notice.

5 The applicant states that a 'request through official channels' which she submitted to the European Parliament on 12 April 1985 went unanswered.

6 Reference is made to the Report for the Hearing for a more detailed exposition of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 As the European Parliament, the defendant, has objected primarily that the claims in the application are inadmissible, it is appropriate to begin by considering the objections raised.

**Admissibility of the first claim**

8 According to the European Parliament, the measure adversely affecting the applicant is the decision to dismiss her which was implemented on 1 December 1984. Hence it is from that date at the latest that time started to run for the purposes of the three-month period for lodging a complaint under Article 90 (2) of the Staff Regulations, which is applicable by analogy to members of the temporary staff by virtue of Article 46 of the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment'). As the applicant lodged her complaint on 11 April 1985, that is to say after the three-month period had expired, the Parliament contends that this claim is inadmissible.

9 The applicant contends in the first place that the time-limit in question cannot be raised as a plea against her because it is contrary to Article 6 of the European Convention on Human Rights.

10 That argument must be rejected. It is sufficient to state in that regard that the principle established by the abovementioned Article of the European Convention on Human Rights, namely to ensure that every person has a fair trial, which is recognized by the Community's legal system, does not preclude the setting of a time-limit for the institution of legal proceedings.

11 In the second place, the applicant claims to have suffered discrimination by comparison with other employees working in France since, under French law, they have a longer period for submitting a complaint.

12 In that regard, it must be pointed out that the applicant was recruited in accordance with the Conditions of Employment, as is expressly stated in her contract of employment of 1 August 1973. The Conditions of Employment, in conjunction with the Staff Regulations of Officials, to which Article 46 of the Conditions of Employment refers so far as appeals are concerned, governs employment relationships between members of the temporary staff and the Community institutions to the exclusion of any other system of rules.

13 Furthermore, the fact that Community staff, unlike other employees in the country in which they are working, are subject to a system of rules established by Community law cannot be regarded as discriminatory treatment.

14 It follows from the foregoing considerations that the applicant's first claim is inadmissible.

**Admissibility of the second claim**

15 The European Parliament objects to the admissibility of this claim too, on the ground that it was submitted out of time, inasmuch as the measure adversely affecting the applicant, namely the decision classifying her in Category C, was known to her since 7 April 1981, the date on which she signed the additional rider to the contract. Furthermore, the applicant accepted her classification in Category C by signing that document.

16 The applicant advances the same argument as before to the effect that the time-limits laid down in the Staff Regulations are inapplicable to her.

17 Irrespective of the question whether the action for annulment provided for by Article 179 of the EEC Treaty and Article 91 of the Staff Regulations is admissible when it is directed not against a unilateral measure taken by an institution but against a contract signed by that institution and an applicant, it must be pointed out that in this case the second claim is in any event out of time. The applicant's argument to the effect that the only choice she was given was either to resign

under compulsion or to accept her regrading cannot have any bearing on the fact that her application was lodged out of time.

18 Accordingly, the applicant's second claim is also inadmissible.

**Admissibility of the third claim**

19 The European Parliament submits, with regard to the claim for compensation for the damage suffered by the applicant as a result of her dismissal, that it is based on the alleged illegality of the decision to dismiss her. According to the case-law of the Court, an action for damages based on the alleged illegality of the decisions complained of is subject to the same conditions, as regards the time-limits laid down in Article 90 of the Staff Regulations, as an action for annulment.

20 The applicant advances the same argument as before to the effect that the time-limits laid down by the Staff Regulations are inapplicable to her and claims that French law should be applied in order to fill the legal gap constituted by the absence of compensation for damage suffered by staff governed by the Conditions of Employment as a result of their dismissal or forced resignation.

21 It should be noted that, as the Court has consistently held, appeals based on Article 179 of the EEC Treaty, which provides that the Court is to have jurisdiction in any dispute between the Community and its servants, are subject to the time-limits laid down in Articles 90 and 91 of the Staff Regulations.

22 In this case, the damage which the applicant claims to have sustained was caused by two measures, namely the decision to regrade her by the addition of a rider to the contract on 7 April 1981, and the decision to dismiss her, the legality of which is challenged by the first two claims in the application.

23 As is clear from the examination of the first and second claims, the applicant failed to comply with the time-limits laid down in the Staff Regulations for challenging the measures adversely affecting her. It follows that the claim for damages must also be rejected as being out of time.

24 It follows from the foregoing considerations that the application must be dismissed as inadmissible in its entirety.

## Costs

25 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. However, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, institutions are to bear their own costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

**(1) Dismisses the application as inadmissible;**

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

Kakouris Koopmans Rodríguez Iglesias

Delivered in open court in Luxembourg on 1 April 1987.

P. Heim
Registrar

C. Kakouris
President of the Fourth Chamber