JUDGMENT OF THE COURT (Sixth Chamber)

27 November 2001 *

In Case C-270/99 P,

Z, an official of the European Parliament, residing in Brussels (Belgium), represented by J.-N. Louis, avocat, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 4 May 1999 in Case T-242/97 *Z* v *Parliament* [1999] ECR I-A-77 and II-401, seeking to have that judgment set aside in so far as the Court of First Instance dismissed Z's action against the decision of the Secretary-General of the European Parliament of 28 October 1996 imposing on him the disciplinary measure of downgrading,

* Language of the case: French.

the other party to the proceedings being:

European Parliament, represented by H. Krück, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann, J.-P. Puissochet and V. Skouris (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 1 February 2001,

after hearing the Opinion of the Advocate General at the sitting on 22 March 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 19 July 1999, Z brought an appeal under Article 49 of the EC Statute and the corresponding provisions of the ECSC and Euratom Statutes of the Court of Justice seeking, first, to have the judgment of the Court of First Instance of 4 May 1999 in Case T-242/97 *Z* v *Parliament* [1999] ECR-SC I-A-77 and II-401 set aside, in so far as the Court of First Instance dismissed Z's action against the decision of the Secretary-General of the European Parliament of 28 October 1996 imposing on him the disciplinary measure of downgrading ('the contested decision') and, second, annulment of that decision.

Legal framework

2 Article 7 of Annex IX to the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides:

'After consideration of the documents submitted and having regard to any statements made orally or in writing by the official concerned and by witnesses, and also to the results of any inquiry undertaken, the Disciplinary Board shall, by majority vote, deliver a reasoned opinion on the disciplinary measure appropriate to the facts complained of and transmit the opinion to the appointing authority and to the official concerned within one month of the date on which the matter was referred to the Board. The time-limit shall be three months where an inquiry has been held on the instructions of the Board.

In the event of criminal proceedings, the Disciplinary Board may decide not to deliver its opinion until after the court has given its decision.

The appointing authority shall take its decision within one month; it shall first hear the official concerned.'

Background to the dispute before the Court of First Instance

3 It is apparent from the judgment under appeal that the appellant entered the service of the Parliament in 1977. At the material time, that is between 1988 and 1995, he was responsible for the members' mail service within the Directorate-General of the Registry (DG-1) in Brussels. He was appointed principal clerical officer in Grade C 1 with effect from 1 May 1989.

4 In December 1994, XB, C and D, the three officials in the appellant's department, who were his subordinates, submitted a complaint against him to the President of the Staff Committee of the Parliament. They made a number of allegations in respect of the appellant's professional behaviour. Following that complaint, the Secretary-General of the Parliament, by note of 27 January 1995, requested the Director of Personnel to carry out an administrative inquiry.

5 The inquiry report of 2 June 1995 upheld the following complaints against the appellant:

— abusive behaviour towards employees under his authority,

— sexual harassment,

— dealing in second-hand cars without prior authorisation and using the institution's facilities (the telephone and the garage) for that purpose,

— inadequate organisation of the members' mail service, and

— removal of items of mail.

The report recommended that the Secretary-General of the Parliament, in his capacity as appointing authority, commence disciplinary proceedings.

6 On 7 July 1995, the appellant, who had been informed of the complaints upheld in the inquiry report of 2 June 1995, was heard by the appointing authority, in accordance with the second paragraph of Article 87 of the Staff Regulations. The minutes of the hearing were communicated to the appellant, who submitted his written observations by letter of 20 July 1995.

7 On 31 August 1995, the appointing authority decided to commence disciplinary proceedings against the appellant and to refer the matter to the Disciplinary Board. At the same time, the appellant was suspended without any reduction of his salary, pursuant to the first and second paragraphs of Article 88 of the Staff Regulations.

8 On the same day, the appointing authority sent the administrative file to the Disciplinary Board. On 11 December 1995, the appellant wrote to the Disciplinary Board criticising the inquiry report of 2 June 1995. The Disciplinary Board heard evidence from witnesses, in the presence of the appellant and his legal representative, between 18 December 1995 and 23 April 1996.

9 On 3 September 1996, the Disciplinary Board delivered its reasoned opinion. It found that there was sufficient proof of a number of the allegations made against the appellant, including the allegations of abusive behaviour, sexual harassment, the use of the Parliament's facilities for dealings in second-hand cars and inadequate organisation of the members' mail service. For those reasons, the Disciplinary Board recommended that the appellant be removed from his post, in accordance with Article 86(2)(f) of the Staff Regulations, but without reduction of his entitlement to a pension.

10 After hearing the appellant on 3 October 1996, as provided for in the third paragraph of Article 7 of Annex IX to the Staff Regulations, the appointing authority on 28 October 1996 adopted the contested decision, downgrading the appellant to Grade C 5, Step 1.

The action for annulment and the judgment under appeal

11 By application lodged at the Registry of the Court of First Instance on 22 August 1997, the appellant brought an action against the contested decision. In support

of that action, he relied, *inter alia*, on a number of pleas in law alleging irregularities in the pre-disciplinary, disciplinary and administrative proceedings. One of those pleas in law alleged infringement of the first and third paragraphs of Article 7 of Annex IX to the Staff Regulations, owing to failure to allow a reasonable time between the various steps in the proceedings.

12 As regards that plea in law, the Court of First Instance held as follows in paragraphs 39 to 42 of the judgment under appeal:

'39 The Court of Justice has consistently held (Case 13/69 *Van Eick* v *Commission* [1970] ECR 3, paragraph 3 et seq., Case 228/83 *F.* v *Commission* [1985] ECR 275, paragraph 30, and Joined Cases 175 and 209/86 *M.* v *Council* [1988] ECR 1891, paragraph 16) that the time-limits laid down in Article 7 of Annex IX to the Staff Regulations are not mandatory but constitute rules of sound administration; failure to observe those time-limits may render the institution liable for any damage caused to those concerned but does not in itself affect the validity of the disciplinary measure imposed after their expiry.

40 While it is true that the Court of First Instance held in *De Compte* v *Parliament* and *D* v *Commission*, cited above, that failure to comply with the time-limits "may also result in the measures adopted after the expiry of the period being declared void", that case-law cannot be interpreted as penalising every failure to comply with time-limits by automatic annulment. Furthermore, in each of those two cases the Court of First Instance specifically declined to declare the relevant measures void (see also Case T-12/94 *Daffix* v *Commission* [1997] ECR-SC II-1197, paragraphs 130 to 133).

41 It follows from the foregoing that it is only the fulfilment of specific conditions that can, in specific cases, affect the validity of a disciplinary measure imposed after expiry of a time-limit. The applicant confines his

argument to showing that the time-limit was actually exceeded. The Parliament, on the other hand, without being contradicted by the applicant, relies on the complexity of the disciplinary proceedings in the present case, the large number (agreed, moreover, with the applicant's legal representative) of witnesses heard and the problems and constraints encountered by the Disciplinary Board...

42 Furthermore, when the appointing authority decided to commence disciplinary proceedings against the applicant, the applicant was suspended without any reduction in his salary. Following the adoption of the contested decision, he was transferred to another Directorate-General. Throughout the disciplinary proceedings the applicant therefore retained the pecuniary rights attaching to his C 1 grade without being required to be present in his former department and was thus able to avoid, without financial loss, an atmosphere which might have become difficult for him. Following those proceedings, owing to his transfer, he was not required to return to his department, but had the opportunity to enter into a new working environment and build a new reputation.'

13 On the basis of those considerations, the Court of First Instance held in paragraph 43 of the judgment under appeal that failure to comply with the time-limits laid down in Article 7 of Annex IX to the Staff Regulations did not in this case provide a ground for annulling the contested decision. It therefore rejected the applicant's plea in law based on failure to comply with the time-limits laid down in that provision.

The appeal

14 In support of his appeal, the appellant claims that by not penalising in the present case the unlawfulness of the non-compliance with the time-limits laid down in Article 7 of Annex IX to the Staff Regulations, the Court of First Instance erred in law.

15 The appellant's plea in law consists of two limbs which must be examined separately. He maintains, first, that in the judgment under appeal the Court of First Instance misdirected itself as to the scope of Article 7 of Annex IX to the Staff Regulations and, second, that it failed to have regard to the rules of good conduct and sound administration by which the disciplinary authorities are bound.

Findings of the Court

First limb of the plea in law

16 In support of the first limb of his plea in law, the appellant claims in essence that by not holding that the time-limits laid down in Article 7 of Annex IX to the Staff Regulations are mandatory and of strict application, the Court of First Instance erred in law.

17 The appellant puts forward two arguments in support of that assertion.

18 First, he relies on Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'), which, he maintains, applies in the Community legal order by virtue of Article F(1) and (2) of the Treaty on European Union (now, after amendment, Article 6(1) and (2) EU). Article 6(1) of the Convention provides that everyone is entitled to a fair hearing within a reasonable time. The appellant maintains that proceedings cannot fulfil those conditions unless they are incorporated in a system in which procedural time-limits are fixed and of strict application.

19 Furthermore, the specific time-limits laid down in Annex IX to the Staff Regulations constitute a complete set of rules which the disciplinary authorities must observe in order to comply with the principle of legal certainty and also to avoid any discrimination or arbitrary treatment.

20 Second, the appellant claims that his argument is corroborated by a consistent line of decisions in which it has been held that the strict application of Community rules on procedural time-limits serves the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, in particular, Case 209/83 *Ferriera Valsabbia* v *Commission* [1984] ECR 3089 and Case 42/85 *Cockerill-Sambre* v *Commission* [1985] ECR 3749).

21 In that regard, it should be recalled, first, that it is settled case-law that the time-limits laid down in Article 7 of Annex IX to the Staff Regulations are not mandatory but constitute rules of sound administration with the result that a failure to observe those time-limits may render the institution liable for any damage caused to those concerned, but cannot of itself affect the validity of a disciplinary sanction imposed after their expiry (see *Van Eick* v *Commission*, cited above, paragraphs 3 to 7, *F.* v *Commission*, cited above, paragraph 30, and *M.* v *Council*, cited above, paragraph 16).

22 Second, it must be held that the appellant's arguments are not such as to cast doubt on that case-law.

23 As regards the argument based on Article 6(1) of the Convention, and without there being any need to determine whether that provision is applicable to the disciplinary proceedings provided for in the Staff Regulations, it should be

recalled that Article 6(1) provides that in the determination of his civil rights or obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time, by an independent and impartial tribunal established by law. As its wording clearly shows, Article 6(1) of the Convention does not lay down precise time-limits and does not provide that the time-limits laid down in a legislative measure, such as those laid down in Article 7 of Annex IX to the Staff Regulations, are necessarily to be regarded as mandatory.

24 As regards the application of the general principle of Community law that everyone is entitled to legal process within a reasonable period (see Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 21), it is clear from the case-law of both the Court of Justice and the European Court of Human Rights that the reasonableness of the length of proceedings is to be determined in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (see *Baustahlgewebe* v *Commission*, cited above, paragraph 29, and the judgments of the European Court of Human Rights in the cases of *Erkner and Hofauer* of 23 April 1987, Series A No 117, § 66; *Kemmache* of 27 November 1991, Series A No 218, § 60; *Phocas* v *France* of 23 April 1996, *Reports* 1996-II, p. 546, § 71, and *Garyfallou AEBE* v *Greece* of 27 September 1997, *Reports* 1997-V, p. 1821, § 39).

25 Furthermore, as regards the argument which the appellant derives from the case-law of the Court of Justice referred to in paragraph 20 above (*Ferriera Valsabbia* v *Commission*, paragraph 14, and *Cockerill-Sambre* v *Commission*, paragraph 10), that case-law is not relevant in this case. It concerns certain time-limits for bringing proceedings before the Court of Justice and the Court of First Instance. Such time-limits are by their nature different from those laid down in Article 7 of Annex IX to the Staff Regulations and cannot therefore be compared with the latter.

26 Having regard to the foregoing considerations, the first limb of the plea in law must be rejected as unfounded.

The second limb of the plea in law

27 By the second limb of his plea in law, the appellant claims that in any event, even if the time-limits laid down in Article 7 of Annex IX to the Staff Regulations are not mandatory, they show that the Community legislature intended that the disciplinary authorities should be bound by a rule of sound administration, consisting in the obligation to conduct disciplinary proceedings diligently and to ensure that each step in the proceedings is taken within a reasonable time of the previous one.

28 In support of that argument, the appellant relies on the judgment of the Court of First Instance in Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781 and claims that, according to that decision, failure to comply with the time-limits in question (which can be appraised only in the light of the circumstances specific to the case) may not only render the institution concerned liable, but may also result in the measure adopted after the expiry of the time-limits being declared void.

29 According to the appellant, in the judgment under appeal the Court of First Instance failed to fulfil its obligation to appraise the circumstances specific to the case when adjudicating on a plea in law based on failure to comply with the time-limits laid down in Article 7 of Annex IX to the Staff Regulations. It merely examined the legality of the conduct of the disciplinary proceedings and the veracity and gravity of the complaints upheld by the appointing authority. Instead

of carrying out a thorough analysis of the proceedings, it merely adopted the argument, set out in paragraphs 36 to 38 of the judgment under appeal, whereby the Parliament sought to justify the fact that in the present case the time-limits laid down in Article 7 of Annex IX to the Staff Regulations had been exceeded.

30 The appellant criticises that argument and concludes that no exceptional circumstance was relied on by the Parliament to justify exceeding the time-limits. Accordingly, the Court of First Instance infringed the principles laid down in its own case-law.

Admissibility

31 The Parliament contends that the second limb of the plea in law is inadmissible, and puts forward two arguments in support of that contention.

32 First, it claims that, in so far as the appellant appears to rely on the alleged 'failure to have regard to the rules of good conduct and sound administration by which the disciplinary authorities are bound' as an independent and separate plea in law, that plea must be rejected as inadmissible, since no particular argument is put forward to support it.

33 In that regard, it should be pointed out that it follows from the first paragraph of Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the Court is requested to set aside and the legal arguments in support of that request (see, *inter alia*, orders in Case C-303/96 P *Bernardi* v

Parliament [1997] ECR I-1239, paragraph 37, and Case C-317/97 P *Smanor and Others* v *Commission* [1998] ECR I-4269, paragraph 20, and judgment in Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251, paragraph 61).

34 In the present case, as stated in paragraphs 27 to 30 above, the appellant criticises the Court of First Instance for having failed to comply with the principles laid down in its own case-law. By pointing out that, according to that case-law, a failure to comply with the time-limits in question (which can be appraised only in the light of the circumstances specific to each case) may not only render the institution concerned liable, but may lead to the measure adopted after expiry of the time-limits being declared void, the appellant claims that the Court of First Instance failed to fulfil its obligation to appraise the circumstances specific to the case and, consequently, its obligation to declare the contested decision void.

35 In the light of those factors, the second limb of the plea in law states precisely the contested elements of the judgment under appeal and also the legal arguments in support of the request to have it set aside.

36 Second, the Parliament contends that the appellant's criticisms in respect of the Parliament's arguments before the Court of First Instance relate to the appraisal of the facts by the Court of First Instance and are therefore inadmissible on appeal. Similarly, in so far as the appellant's complaints in respect of the Court of First Instance's appraisal of the circumstances specific to the case are tantamount to requesting the Court of Justice to make a fresh appraisal of the facts, they are necessarily inadmissible in an appeal, which, according to Article 51 of the EC Statute of the Court of Justice, is limited to points of law.

37 In that regard, it should be recalled 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. The Court of First Instance has exclusive jurisdiction, first, to establish

the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts. When the Court of First Instance has established or assessed the facts, the Court of Justice has jurisdiction under Article 225 EC to review the legal characterisation of those facts by the Court of First Instance and the inferences in law it has drawn from them (see, *inter alia*, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 48 and 49, and Case C-284/98 P *Parliament* v *Bieber* [2000] ECR I-1527, paragraph 31).

38 In the present case, as may be seen clearly from paragraphs 27 to 30 above, the appellant's criticisms in respect of the arguments which the Parliament raised before the Court of First Instance seek to call into question the latter's legal characterisation of the elements of fact on which the Parliament relied in order to justify exceeding the time-limits in question. It was specifically in the light of those elements that the Court of First Instance held that the conditions for declaring a decision void laid down in its own case-law were not satisfied.

39 In the light of those considerations, it must be concluded that the second limb of the plea in law is admissible.

Substance

40 As regards the substance, it should be pointed out that the case-law referred to in paragraph 21 of this judgment, namely that the time-limits laid down in Article 7 of Annex IX to the Staff Regulations are not mandatory, merely established that the fact that those time-limits are exceeded does not of itself necessarily have the consequence that a disciplinary decision adopted after their expiry must be annulled.

41 As is quite clear from that line of decisions (*Van Eick* v *Commission*, paragraph 1, *F.* v *Commission*, paragraph 29, and *M.* v *Council*, paragraph 15), the Court of Justice only adjudicated on the submission that a disciplinary measure adopted outside the time-limits laid down in Article 7 of Annex IX to the Staff Regulations must be annulled.

42 It follows that the Court did not adjudicate in that line of decisions on the question whether the fact that the time-limits laid down in Article 7 of Annex IX to the Staff Regulations are exceeded to a considerable extent, amounting to an infringement of the rules of sound administration, may in certain cases mean that the disciplinary decision adopted after their expiry must be declared void.

43 In that regard, it cannot be precluded that the fact that those time-limits are exceeded to a considerable extent may in certain cases amount to an infringement of a general principle of Community law applicable to such proceedings. More specifically, such a situation may prevent the person concerned from defending his interests effectively or cause him to have a legitimate expectation that no disciplinary measure will be imposed.

44 In such exceptional circumstances, a delay in adopting a disciplinary decision would constitute a breach of the rights of defence or of the principle of the protection of legitimate expectations, which would justify the decision being declared void by the Community judicature.

45 However, that is not the case here. Although it is true that the time-limit of three months laid down in Article 7 of Annex IX to the Staff Regulations for the opinion of the Disciplinary Board where an inquiry has been held was exceeded by nine months, and thus to a considerable extent, it none the less remains that

the appellant has not put forward any legal argument or factual element capable of proving that he was thereby prevented from defending his interests effectively or caused to have a legitimate expectation that no disciplinary measure would be imposed on him. Nor has any argument of that type been raised by the appellant as regards the fact that the time-limit of one month within which the appointing authority is required to take its decision was exceeded.

46 Having regard to the foregoing considerations, therefore, the second limb of the plea in law must be rejected as unfounded.

47 In those circumstances, the appeal must be dismissed.

Costs

48 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. Article 70 of the Rules of Procedure provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, by virtue of the second paragraph of Article 122 of the Rules of Procedure, Article 70 is not applicable to appeals brought by officials or other servants of an institution against that institution. Since the appellant's appeal has been unsuccessful he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. **Dismisses the appeal;**

2. **Orders Z to pay the costs.**

Macken Colneric Gulmann

Puissochet Skouris

Delivered in open court in Luxembourg on 27 November 2001.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber