

JUDGMENT OF THE COURT
18 January 1990 *

In Joined Cases C-193/87 and C-194/87

Henri Maurissen, an official of the Court of Auditors of the European Communities, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, avocat à la cour d'appel, 11 boulevard Royal,

and

European Public Service Union, Luxembourg, whose registered office is in Luxembourg, in the person of its General Secretary, Adam Buick, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, avocat à la cour d'appel, 11 boulevard Royal,

applicants,

supported by

Internationale des services publics, whose registered office is in Ferney-Voltaire (France), represented by Michel Deruyver and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the chambers of Yvette Hamilius, avocat à la cour d'appel, 11 boulevard Royal,

intervener,

against

Court of Auditors of the European Communities, represented by Michaël Becker and Marc Ekelmans, acting as Agents, Lucette Defalque, of the Brussels Bar, and

* Language of the case: French.

Jean-Aimé Stoll, as Adviser, with an address for service in Luxembourg at the seat of the Court of Auditors,

defendant,

APPLICATION for the annulment of two decisions of the President of the Court of Auditors, namely:

- (i) the decision of 17 March 1987 instructing the internal messenger service of the Court of Auditors to temporarily refrain from assisting in circulating union circulars;
- (ii) the decision of 31 March 1987 refusing to grant representatives of the European Public Service Union time off work to enable them to attend meetings of the trade unions with the Commission of the European Communities on general staff matters,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and F. Grévisse, Judges,

Advocate General: M. Darmon
Registrar: J.-G. Giraud

having regard to the Report for the Hearing and further to the hearing on 17 October 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 December 1989,

gives the following

Judgment

- 1 By application lodged at the Court on 22 June 1987 and registered under No C-193/87, Mr Maurissen, an official of the Court of Auditors, brought proceedings under Article 91 of the Staff Regulations of Officials for the annulment of two decisions of the President of the Court of Auditors dated 17 and 31 March 1987 relating to participation in trade union activities within the Court of Auditors.
- 2 By application received at the Court on 22 June 1987 and registered under No C-194/87, the European Public Service Union, Luxembourg ('the Union'), brought proceedings under the second paragraph of Article 173 of the EEC Treaty for the annulment of the two aforesaid decisions.
- 3 It is evident from the documents before the Court that in a leaflet dated 26 February 1987 concerning the intentions of the Court of Auditors regarding the forward estimate of expenditure for 1988, the Executive Committee of the European Public Service Union, Luxembourg, criticized the planned increase in the number of temporary staff. According to the leaflet, such an increase was likely not only to harm the status of the European civil service but also to jeopardize the independence of the Court of Auditors and compromise its role as the 'financial conscience of Europe'.
- 4 On 17 March 1987, the President of the Court of Auditors sent to Mr Maurissen, the only official of the institution who was a member of the Executive Committee of the Union named at the foot of the leaflet, a letter in which he criticized the form and content of the leaflet and announced that he had decided temporarily to forbid the internal messenger service to distribute trade union circulars. In his letter he asked Mr Maurissen in future to address those leaflets to the Staff Committee, which could call on the internal messenger service for their distribution, and he stated that any other form of distribution was a matter for Mr Maurissen alone.
- 5 On 11 March 1987 the Secretary-General of the European Public Service Union, Luxembourg, had informed the President of the Court of Auditors that a union delegation had been set up at the Court of Auditors and asked him to agree to

give time off work to the members of the delegation designated to take part in meetings with the Commission of the European Communities on staff matters.

- 6 On 31 March 1987, whilst taking note of the establishment of a union delegation, the President of the Court of Auditors replied to the Secretary-General of the Union that he could not accede to the request for time off work.
- 7 These applications are directed against the aforesaid decisions of 17 and 31 March 1987.
- 8 Since the Court of Auditors challenged the admissibility of each of those applications, the Court of Justice decided to give a separate preliminary decision on those objections of inadmissibility.
- 9 By judgment of 11 May 1989, the Court declared Mr Maurissen's application admissible. It also declared admissible the claims made in the Union's application against the decision of 31 March 1987 but declared those made against the decision of 17 March 1987 inadmissible.
- 10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, 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.
- 11 In considering whether the applications are well founded, it should first be recalled that pursuant to Article 24a of the Staff Regulations 'Officials shall be entitled to exercise the right of association; they may in particular be members of trade unions or staff associations of European Officials'.
- 12 The Community institutions, and the bodies treated as such for the application of the Staff Regulations by virtue of Article 1 thereof, must refrain from doing anything which might impede the freedom of trade union activity recognized by Article 24a.

- 13 As the Court has held in the past (judgments of 8 October 1974 in Case 175/73 *Union syndicale, Massa and Kortner v Council* [1974] ECR 917, and Case 18/74 *Syndicat général du personnel v Commission* [1974] ECR 933), the freedom of trade union activity thus recognized means not only that officials and servants have the right without hindrance to form associations of their own choosing but also that such associations are free to do anything lawful to protect the interests of their members as employees.
- 14 It thus follows, in the first place, that the Community institutions and bodies may not prohibit their officials and servants from joining a trade union or staff association or from participating in trade union activities, or impose any penalty whatsoever on them by reason of such membership or activities.
- 15 It also follows that the Community institutions and bodies must allow trade unions and staff associations to fulfil their proper role, *inter alia* by keeping officials and servants informed, representing them *vis-à-vis* the institutions and other bodies and participating in consultations with those institutions and bodies on all matters affecting staff, and may not treat them differently without justification.
- 16 It is against that background that the lawfulness of the contested decisions must be appraised.

Mr Maurissen's conclusions directed against the decision of 17 March 1987

- 17 In support of his conclusions, Mr Maurissen makes two submissions: infringement of Article 24a of the Staff Regulations and breach of the principle of equal treatment for officials.

The first submission

- 18 The decision of 17 March 1987 prevents use of the internal messenger service to distribute trade union communications. It does not prohibit the distribution of such communications within the Court of Auditors; in particular, as is apparent from its very terms, that decision does not prevent trade union officials, using their own 'initiative', from having recourse to 'any other method of distribution'.
- 19 That decision thus does no more than withhold assistance which, if granted, would certainly have facilitated the action taken by Mr Maurissen as a trade union official, but the absence of which does not impede the exercise of his trade union activities.
- 20 Such a decision could only be criticized if a right to the assistance withheld by it could be derived, as Mr Maurissen claims, either from a general principle of labour law applicable within the Community legal order, from the Staff Regulations or the measures, whether unilateral or in the form of agreements, adopted for their implementation, or from the duty to safeguard officials' interests.
- 21 In that connection, it must be observed in the first place that, although freedom to engage in trade union activities constitutes a general principle of labour law, it cannot be extended so as to require Community institutions and bodies to make their messenger services available to trade unions for the distribution to staff of the communications issued by those organizations.
- 22 Article 24a of the Staff Regulations, which recognizes freedom of trade union activity in the European civil service, adds no details regarding the grant of such facilities. Moreover, that provision has not been supplemented in that respect either by a general implementing provision specific to the Court of Auditors or by an agreement between the Court of Auditors and any trade union or staff association.

23 Finally, it should be noted that the duty to safeguard the interests of officials relates to the individual relationship between the appointing authority and the officials and servants subordinate to it; it cannot be invoked to resolve problems concerning collective relations between Community institutions and bodies and trade unions or staff associations.

24 The first submission must therefore be dismissed.

The second submission

25 This submission alleges that the President of the Court of Auditors infringed the principle of equal treatment for officials by refusing to accord to trade union officials treatment as favourable as that granted by other Community institutions and bodies for the distribution of trade union communications.

26 Whilst it is true that certain other Community institutions and bodies provide facilities for that purpose, albeit under differing conditions, to trade unions or staff associations and their representatives, those facilities are, in the absence of any legal obligation laid down by the Staff Regulations, granted voluntarily in the exercise of powers relating to internal organization or by virtue of special agreements entered into between the institution or body and the representatives of its staff.

27 Such measures adopted on the initiative of the institutions or bodies themselves cannot be relied on in support of the allegation of infringement of the principle of equal treatment.

28 It follows that the second submission must be dismissed.

29 The conclusions in Mr Maurissen's application must therefore be dismissed in so far as they are directed against the decision of 17 March 1987.

The conclusions in the applications directed against the decision of 31 March 1987

30 The applicants' submission concerning freedom to engage in trade union activity, as guaranteed by Article 24a of the Staff Regulations, must be examined first.

31 Whilst recognizing the principle of freedom to engage in trade union activity, the Court of Auditors referred to the Council decision of 23 June 1981 establishing a consultation procedure. It maintained that although it is bound, by virtue of that decision, to grant time off work to the representatives of its staff appointed by trade unions or staff associations to attend meetings of the 'Consultation Committee' provided for in that decision, that obligation cannot be extended to preparatory meetings organized by the Commission.

32 It must be observed in the first place that the consultation procedure provided for in the Council decision of 23 June 1981 applies to 'Commission proposals to the Council relating to the amendment of the Staff Regulations of Officials of the Communities or the Conditions of Employment of other servants of the Communities or relating to the application of the provisions of the Staff Regulations or the Conditions of Employment concerning remuneration or pensions'.

33 That procedure is implemented through the 'Consultation Committee' comprising representatives of the Member States and of the administrative authorities of the Community institutions and bodies and also staff representatives designated by trade unions and staff associations.

34 It must also be observed that whilst, as far as amendments to the Staff Regulations and changes in remuneration and pensions are concerned, it is the responsibility of the Council to take the requisite decisions, that institution can act only on a proposal from the Commission and in close collaboration with the Commission. The proceedings of the Consultation Committee provided for in the decision of 23 June 1981 thus form part of a procedure the first stages of which take place within the Commission and at meetings between the Commission and representatives of the trade unions.

35 It follows that the Community institutions and bodies are required to respect such trade union activities as may prove necessary in order to ensure effective participation in that consultation process.^{1a} Freedom of trade union activity entails the possibility of trade unions participating in such consultation and thus taking part in decision-making.

36 Consequently, when the Commission decides to bring together the representatives of the trade unions or staff associations in order to prepare proposals to be submitted to the Council, those representatives must be granted the necessary facilities to enable them to participate in the meetings.

37 Trade union representatives must therefore be granted time off work for that purpose, under conditions to be laid down, unilaterally or by agreement, by the authorities of each of the Community institutions and bodies.

38 The decision of 31 March 1987 must therefore be annulled in so far as, in general terms and as a matter of principle, it refuses any time off work for the representatives of trade unions or staff associations in order to enable them to attend meetings organized by the Commission. Consequently, it is unnecessary to consider the applicants' second submission.

39 It follows from all the foregoing that the conclusions in the applications directed against the decision of 31 March 1987 of the President of the Court of Auditors must be upheld and the remainder of the conclusions in Mr Maurissen's application must be dismissed.

Costs

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

- 41 In Case 193/87, the Court of Auditors must bear its own costs. It must also be ordered to bear half the costs incurred by Mr Maurissen, who has obtained the annulment of one of the decisions contested by him in his application.
- 42 In Case 194/87, since the European Public Service Union has succeeded in one of its submissions and failed in the other, the parties, including the Internationale des services publics, which intervened in support of the European Public Service Union, must each be ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

- (1) **Annuls the decision of the President of the Court of Auditors of 31 March 1987;**
- (2) **Dismisses the remainder of Mr Maurissen's application;**
- (3) **In Case 193/87, orders the Court of Auditors to bear its own costs and to pay half of Mr Maurissen's costs, including those relating to the application for interim measures;**
- (4) **In Case 194/87, orders each of the parties to bear its own costs.**

Due

Slynn

Kakouris

Zuleeg

Schockweiler Koopmans Moitinho de Almeida Rodríguez Iglesias Grévisse

Delivered in open court in Luxembourg on 18 January 1990.

J.-G. Giraud

Registrar

O. Due

President