

Case T-26/89

Henri de Compte v European Parliament

(Officials — Disciplinary measures — Downgrading)

Judgment of the Court of First Instance (Third Chamber), 17 October 1991 ... II - 785

Summary of the Judgment

1. *Officials — Disciplinary measures — Initiation of disciplinary proceedings — Limitation period — No limitation period — Period within which final discharge must be given to an accounting officer — Not relevant*
(*Staff Regulations, Arts 86 to 89; Annex IX; Financial Regulation, Art. 72*)
2. *Officials — Disciplinary measures — Disciplinary proceedings — Reopening after judicial annulment of the sanction on grounds of formal defects — Resumption of the proceedings at the point at which the defect arose*
(*Staff Regulations, Annex IX*)
3. *Officials — Disciplinary measures — Procedure before the Disciplinary Board — Time-limits laid down in Article 7 of Annex IX — Obligation on the administration to act within a reasonable period — Failure — Consequences*
(*Staff Regulations, Annex IX, Art. 7*)
4. *Officials — Disciplinary measures — Disciplinary proceedings — Article 6 of the European Convention on Human Rights not applicable*
(*Staff Regulations, Annex IX*)

5. *Officials — Disciplinary measures — Procedure before the Disciplinary Board — Communication of the complete file to the person concerned — No obligation in the absence of a request by the person concerned*
(*Staff Regulations, Annex IX, Arts 2 and 7, first paragraph*)
6. *Budget of the European Communities — Implementation — System of advance funds — Administration — Responsibilities of the accounting officer and the administrator of advance funds — Distinction*
(*Financial Regulation, Art. 17, third paragraph, and Arts 20, 49, 63 and 70*)
7. *Officials — Disciplinary proceedings — Sanction — Lawfulness — Decision taken at the conclusion of proceedings brought against another official — Not relevant*
(*Staff Regulations, Art. 86*)
8. *Officials — Disciplinary proceedings — Sanction — Discretion of the appointing authority — Judicial control — Scope — Limits*
(*Staff Regulations, Arts 86 to 89*)

1. In regulating the disciplinary system applicable to Community officials in Articles 86 to 89 and in Annex IX, the Staff Regulations do not provide for any limitation period with regard to the initiation of disciplinary proceedings. In order to fulfil its function of ensuring legal certainty, a limitation period must be fixed in advance by the Community legislature.

In the absence of such a limitation period in the Staff Regulations, it cannot be accepted that the expiry of the period laid down by Article 72 of the Financial Regulation for delivery of a final discharge to an accounting officer can result in the barring of all disciplinary proceedings against the latter. Disciplinary proceedings, which are independent of other administrative proceedings, are designed to safeguard the internal order of the public service, whereas the delivery of a final discharge, as provided for under Article 72 of the Financial Regulation, is designed to

verify officially the accuracy and propriety of the accounts and, more specifically, their presentation and auditing, in order that an end may be put to the uncertainty regarding the liability of the accounting officer concerned for a given financial year.

This distinction between the two types of proceedings, however, does not mean that no substantive account can be taken, in the context of disciplinary proceedings, of findings made and conclusions reached in the decision on final discharge.

2. In a case where, following the annulment by the Court, for reasons of a formal defect, of a decision by the appointing authority imposing a disciplinary sanction on an official, that authority reopens the disciplinary proceedings, such reopening cannot be regarded as a fresh reference of the matter to the competent auth-

orities, but must be seen as a resumption of the proceedings from the point at which the formal defect confirmed by the Court arose.

3. Although the time-limits laid down in Article 7 of Annex IX to the Staff Regulations for the delivery by the Disciplinary Board of its reasoned opinion and the adoption by the appointing authority of its decision are not mandatory, they do constitute rules of sound administration the purpose of which is to avoid, in the interests both of the administration and of officials, unjustified delay in adopting the decision terminating the disciplinary proceedings. Disciplinary authorities are therefore under an obligation to conduct disciplinary proceedings with due diligence and to ensure that each procedural step is taken within a reasonable period following the previous step. Failure to comply with that period (which can be assessed only in the light of the specific circumstances of each set of proceedings) may not only render the institution liable but may also result in the measure adopted after the expiry of the period being declared void.
 4. Article 6 of the European Convention on the Protection of Human Rights does not apply to what are strictly disciplinary matters within the public service in view of the fact that such proceedings do not come within the scope of 'penal proceedings' referred to in that article.
 5. It follows from Article 2 and the first paragraph of Article 7 of Annex IX to the Staff Regulations that the official against whom disciplinary proceedings have been initiated and his advisers are entitled to be informed of all the facts on which a decision has been based in sufficient time to submit their observations. However, in the absence of a request to that effect, no obligation on the part of the appointing authority to communicate the complete file to the official in question can be inferred from the Staff Regulations.
 6. The respective powers and responsibilities of the accounting officer and the administrator of advance funds are defined in particular, so far as the administration of advance funds is concerned, by the third paragraph of Article 17 and by Articles 20, 49, 63 and 70 of the Financial Regulation, in addition to the articles in that regulation dealing with the measures of implementation. Those articles provide that the setting up and consequently the modification of an advance funds office is to be the subject of a decision by the budgetary authorities. The administrator of advance funds is required to keep account of the funds at his disposal and of expenditure effected, in accordance with the instructions of the accounting officer, to whom he is responsible for the making of payments. The role of the accounting officer, which is to ensure collection or payment of sums by the institution, is not limited in this area to the issuing of instructions. He is required to carry out checks, normally on the spot and without warning, on the funds allocated to the administrator of advance funds and on his accounts.
- It follows from this division of responsibilities between the accounting officer and the administrator of advance funds that it is the latter who is primarily

responsible for the advance funds office and that he may be discharged from that responsibility only if he has received contrary instructions from the accounting officer. On the other hand, the accounting officer is jointly responsible if, once informed of possible irregularities, he fails to take appropriate measures or refrains from carrying out ordinary or extraordinary checks on the accounts of the advance funds office.

It also follows that responsibility for the production and retention of supporting documents for advance funds rests in the first instance on the administrator of advance funds. The accounting officer, who is required to check the accounts of the advance fund and to issue instructions to the administrator of advance funds, becomes jointly responsible from the moment at which he fails to issue appropriate instructions for the retention of those documents.

7. In view of the fact that each set of disciplinary proceedings is distinct and separate and that an applicant may not rely, in support of his claim, on an

unlawful act committed in favour of another, an official cannot rely on the fact that no disciplinary sanction was imposed on another official, against whom disciplinary proceedings were brought in respect of facts connected with those of which the former is accused, for the purpose of contesting the sanction imposed on him.

8. Once the truth of the allegations against an official has been established, it is for the appointing authority to choose the appropriate sanction. In view of the fact that Articles 86 to 89 of the Staff Regulations do not specify any fixed relationship between the measures provided for and the various types of failures by officials to comply with their obligations, the determination of the sanction to be imposed in each individual case must be based on a comprehensive appraisal by the appointing authority of all the particular facts and the aggravating or mitigating circumstances peculiar to each individual case. The Court cannot substitute its own judgment for that of the appointing authority except in the case of a manifest error or misuse of powers.