

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
21 April 1993 \*

In Case T-5/92,

**Santo Tallarico**, an official of the European Parliament, residing in Mamer (Luxembourg), represented by Alain Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 51 Rue Albert 1er,

applicant,

v

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the European Parliament of 28 October 1991 refusing to provide the applicant assistance under Article 24 of the Staff Regulations of officials of the European Communities,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Biancarelli, President, B. Vesterdorf and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 11 December 1992,

gives the following

\* Language of the case: French.

## Judgment

### Facts

- 1 The applicant, Santo Tallarico, is an official of Category C at the European Parliament (hereinafter 'the Parliament'). He was recruited on 1 December 1983 pursuant to the special conditions for disabled persons and was established as an official on 2 February 1986.
- 2 It appears from the documents in the case file that, for a number of years, the applicant has been the subject of malicious acts, taking the form, *inter alia*, of the following incidents which occurred in his office in the Parliament building in Luxembourg: a forced drawer in April 1986; destruction of an electrical socket in April 1986; anonymous and abusive telephone calls during 1986; theft of two framed personal photographs on 13 July 1987; theft of a tapestry on 17 July 1987; damage to three pictures on 20 and 21 July 1987; disappearance of his orthopaedic chair on 5 August 1987; lock of his office door damaged and blocked on 21 December 1988 and 13 January 1989; damage to his office door on 5 January 1990, and disappearance of a typewriter from his office on 5 November 1990.
- 3 Furthermore, the applicant describes other malicious acts committed against him outside his office: 'interference' with the amplifiers which he looks after in the Parliament buildings in Strasbourg on 11 and 12 June 1991; damage to the bodywork of his vehicle in the Parliament car park in Luxembourg on 27 May and 31 October 1991.
- 4 Following the commission of each of those malicious acts, the Security Office of the Parliament carried out an inquiry, as appears in particular from the following documents: memorandum sent on 19 August 1987 by Mr X, an official in the Infrastructure and Internal Services Division, to the Director of the Security Office; memorandum sent on 26 May 1988 by the Director of the Security Office to the Secretary-General; memorandum sent by the Director of the Security Office to the applicant on 24 January 1989; memorandum sent by the Director of the Security Office to the Secretary General on 7 February 1989; memorandum sent on 4 Octo-

ber 1989 by the Director-General of Administration to the senior member of staff in the Security Office and, finally, the memorandum of 5 February 1991 sent by the Director of the Security Office to the jurisconsult of the Parliament. None of those inquiries enabled the persons responsible to be identified and, according to the latter memorandum, 'all these inquiries have led to the conclusion that there is bad feeling between Mr Tallarico and his colleagues and that it cannot be concluded that there have been clear criminal acts'. The conclusions of that memorandum are confirmed by a memorandum from the Legal Service of 29 April 1991 to the Secretary-General of the Parliament, setting out the opinions of the persons consulted, namely the Director of the Security Office, the Director-General of Administration, the institution's medical officer and the jurisconsult of the Parliament.

- 5 Furthermore, in order to put a stop to the aforementioned occurrences, the Parliament decided to adopt various measures at a meeting which took place on 30 June 1988 and at which the Director of the Security Office, a member of the Legal Department, a member of the Staff Committee and the applicant were present. It was agreed that Mr Tallarico could approach the head of the Security Office straight away about any difficulty that he encountered, so that an in-depth investigation could be carried out and the perpetrators of the malicious acts prosecuted.
  
- 6 Following a further meeting, which took place on 13 July 1988 between the Director of the Internal Services Department and the applicant, accompanied by a member of the Staff Committee, the Parliament adopted the following measures: the applicant was allocated an office of his own and given a key enabling him to lock it, internal and external telephone calls to the applicant were intercepted and he was given a secret telephone number which was not listed in the Parliament's telephone directory.
  
- 7 On 14 September 1988, at the request of the Director-General of Personnel, the Budget and Finance, the applicant underwent an examination by the medical officer. After that examination, Mr Tallarico stated that he was very satisfied with the situation and made it known that he was not interested in a transfer.
  
- 8 In connection with further measures taken by the Parliament to put an end to the incidents, the Director of the Security Office informed the Secretary-General of the

Parliament in a memorandum of 7 February 1989 that he had, first, made the security guards aware of the problem, secondly, ordered an 'observation and security service' to be set up, consisting of frequent rounds in the vicinity of the applicant's office, and, finally, specially notified the chief inspector of security in the building. An internal memorandum to the Security Office dated 27 September 1989 reiterated those measures.

- 9 At the end of 1990 Mr Tallarico's situation was reviewed by his immediate superiors, the Security Office, the Legal Service and the medical officer. That review led to the finding that various incidents had occurred which could not be categorized as serious or criminal and that there had been no success in identifying the perpetrators. It was also established that, despite the measures taken on the applicant's behalf, the problems had not been resolved; likewise it was found that the applicant was extremely sensitive, that he had poor relations with his colleagues and that his reactions were sometimes out of proportion to the events which occurred. Following that review, further measures were taken:
- on the suggestion of the medical officer, the applicant was offered treatment by a specialist to help him overcome his problems, which he refused;
  - he was offered the opportunity to go and see the welfare officer and a member of the Secretary-General's Cabinet, who would be willing to see him to discuss any wishes he might have.
- 10 By letter of 12 November 1990 sent to the Directorate-General of the Parliament's Registry (Security Office), Mr Tallarico submitted an application designed to set in motion Article 24 of the Staff Regulations of the European Communities ('the Staff Regulations'), requesting the protection of the institution on the basis of its duty to provide assistance. Furthermore, by letter of 27 February 1991 sent to the Director-General of Personnel, the Budget and Finance, the applicant made a request pursuant to Article 25 of the Staff Regulations for an investigation to be carried out into the aforementioned malicious acts preceding that date. The Parliament construed that letter as a further request by the applicant for assistance complementary to the request of 12 November 1990.

- 11 By letter of 10 May 1991, the Secretary-General of the Parliament replied as follows to the applicant's request for assistance:

'Further to your request I have asked the relevant departments to check once again all the matters which you describe in your request and to take every possible measure susceptible of preventing this type of incident. However, the outcome of the investigation is that neither can it be concluded that there is a threatening or aggressive attitude in the department towards you or your property nor are there any further preventative measures to be taken in addition to the ones which have already been taken on your behalf since September 1988.

I am sincerely sorry to see you in a troubled and distrustful state of mind, but, believe me, no one in your work environment is moved by negative feelings towards you. Trust your colleagues, because I am convinced that they trust and will continue to trust you.

Also, although I am sensitive to your request, it is, however, in that same spirit and with that same frankness that I believe it worth reminding you that good relations between colleagues are only achieved on a mutual basis. However, even if you have been subjected to certain spiteful acts, you should not on that account give in to those petty acts by proclaiming yourself to be a victim, instead you should react positively by re-establishing your contacts with your colleagues rather than isolating yourself further.

I would therefore appeal to your courage and open-mindedness, since matters remain at present within limited proportions. In this perspective of mutual assistance, you can still approach — if need be — our welfare officer. For my part, I would point out that Mr X from my Cabinet is also willing to see you to discuss any wishes you might have.

I therefore expect you to respond bravely and manfully, because you are capable of it. Moreover, I have found in all your colleagues in your department a willingness to establish a climate of trust and cooperation, as is necessary in any group of people working together.'

- 12 By letter of 5 July 1991, the applicant lodged a complaint pursuant to Article 90(2) of the Staff Regulations, in which he claimed that the incidents of which he was a victim were all recorded by the Security Service and that he could not accept the conclusions of the Secretary-General to the effect that his complaint was baseless. He observed that no inquiry had been initiated in order to discover the perpetrators of the malicious acts repeatedly carried out against him, and that his cooperative attitude towards the institution was evidenced by the fact that he had informed the Security Office of each of the malicious acts of which he had been a victim. He considered that the Secretary-General's conclusion indicated a deliberate intention not to seek out the culprits.
- 13 By memorandum of 28 October 1991, the Secretary-General of the Parliament rejected the applicant's complaint while confirming the substance of his letter of 10 May 1991, to which he expressly referred.

#### **Procedure and forms of order sought**

- 14 It was in those circumstances that, by application lodged at the Court Registry on 29 January 1992, the applicant brought this action.
- 15 The applicant claims that the Court should:
- declare the application admissible and well founded;
  - declare that the Parliament failed to fulfil its obligations under Article 24 of the Staff Regulations;
  - order the Parliament to provide him assistance 'following the threats and attacks made to his person and property';
  - order the Parliament to pay him the sum of one ECU by way of compensation for non-material damage;

— order the Parliament to pay the whole of the costs.

16 The Parliament claims that the Court should:

— declare the application inadmissible, if not unfounded;

— make an order for costs in accordance with the applicable provisions.

17 Upon hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry. Nevertheless, it was decided to ask the Parliament to produce all the documents concerning the inquiry referred to in the Secretary-General's reply of 10 May 1991 to the applicant's request for assistance and any documents relating to any other inquiries which may have been previously carried out into Mr Tallarico's situation. In response to that request, the Parliament produced a number of documents on 23 November 1992.

18 On 3 December 1992 the applicant submitted his observations on the documents produced by the Parliament.

19 At the hearing on 11 December 1992 oral argument was heard from the parties' representatives and they answered questions put by the Court.

20 At the end of the hearing, the President of the Third Chamber suspended the oral procedure in order to allow the parties to attempt to reach an out-of-court settlement.

- 21 By letter of 12 February 1993, the Parliament informed the Court that the attempts to reach an out-of-court settlement had not been successful because the applicant was not in agreement and had submitted further requests for pecuniary compensation and promotion to grade B in connection with the settlement sought to be reached.
- 22 By letter of 15 February 1993, supplemented by a further letter dated 25 February 1993, the applicant informed the Court that an out-of-court settlement had not been possible, not because of financial considerations, but because the parties had failed to reach agreement on the wording of a settlement. At the same time, he confirmed that on 7 January 1993 he had requested the Parliament to pay him compensation and that request, albeit forming part of an overall arrangement, went beyond the confines of the dispute before the Court.
- 23 In those circumstances the oral procedure was closed on 17 February 1993.

**Submissions seeking the annulment of the decision of 28 October 1991 refusing to grant the applicant assistance under Article 24 of the Staff Regulations**

- 24 The applicant has put forward two pleas in support of this head of the form of order sought, the first alleging that the decisions of 10 May and 28 October 1991 of the Secretary-General were inadequately reasoned, the second alleging infringement of Article 24 of the Staff Regulations. Since those two pleas are closely linked, the Court considers that they should be examined jointly.

*Arguments of the parties*

- 25 The applicant argues that, in its decision of 28 October 1991 rejecting his complaint, the Parliament bases itself exclusively on the contents of the memorandum of 10 May 1991 responding to his request of 12 November 1990. However, that memorandum, according to which it cannot be concluded that there is a threatening or aggressive attitude towards the applicant in the department, does not provide any explanation as to the reason why the malicious acts duly recorded by the staff authorized to that end were supposedly non-existent. The applicant adds that

the answer given by the Parliament does not allow him to adduce any proof to the contrary or to assert his grounds of defence.

26 The applicant also observes that the malicious acts of which he was a victim were established and accurately recorded by the Security Office of the Parliament. Accordingly, the Secretary-General of the Parliament made a manifest error of assessment when he considered that the complaint laid before him was baseless. Since the relevant departments had recorded the real existence of the facts complained of, which came within the scope of Article 24 of the Staff Regulations, the Parliament should have taken the necessary steps in order to protect him. The applicant considers that the Parliament made no practical proposal for achieving an effective solution to the problem and that its Secretary-General merely contested, in a general manner, the attacks which he has undergone. Therefore, he considers that the Parliament has failed to fulfil the duty to afford assistance provided for in Article 24 of the Staff Regulations.

27 Lastly, the applicant argues that, although the solutions adopted by the Parliament were inadequate in order to bring about an improvement in his situation, this is not attributable to him. He considers that the institution should make new proposals to deal with his situation and not ask him, as the victim, to resign himself to the situation.

28 The Parliament argues that the application can be considered to be well founded only if the institution has failed to fulfil its duty to have regard for the applicant's welfare. However, the Parliament contends that it made numerous attempts in order to assist Mr Tallarico. It refers in this context to all the measures taken, as set out above (see paragraphs 4 to 9). It also points out that each of the malicious acts reported by the applicant was immediately examined by the Security Office and that on several occasions the applicant's immediate superiors and the senior staff of the administration and the medical officer saw him in order to hear his complaints and examine his situation. Accordingly, the Parliament considers that it has entirely fulfilled its duty to have regard to the welfare of officials and that it has even gone beyond that which an official, even one in a difficult situation, has a right to expect of it. According to the Parliament, Article 24 of the Staff Regulations provides for protection of officials which is based on the principle of the duty to have regard to

their welfare, that is to say, the appointing authority has to deal with all officials as a *bonus pater familias*. It considers that it has amply fulfilled that obligation.

### *Findings of the Court*

- 29 According to the first paragraph of Article 24 of the Staff Regulations, 'The Communities shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory act or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties'.
- 30 The Court points out that it has been consistently held that, although Article 24, in particular the first paragraph thereof, is devised primarily to protect the officials of the European Communities against attacks by third parties, the duty to provide assistance laid down in Article 24 also exists in a case in which the perpetrator of the acts referred to by that provision is another official of the Communities (see the judgments of the Court of Justice in Case 18/78 *Mrs V v Commission* [1979] ECR 2093, paragraph 15, and in Case 178/80 *Bellardi-Ricci v Commission* [1981] ECR 3187, paragraph 23).
- 31 It also appears from that case-law that when an institution is faced with an incident which is incompatible with the good order and tranquillity of the service, it must intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case with a view to ascertaining the facts and, consequently, taking the appropriate action in full knowledge of the facts.
- 32 It must therefore be considered whether in this case, as the applicant argues, the Parliament has not taken the appropriate measures in the circumstances of the case and, whether, therefore, the Parliament failed to fulfil the duty to provide assistance under Article 24 of the Staff Regulations.

33 The Court finds that it appears from the documents in the case-file that, faced with the malicious acts to which the applicant was subjected, the Parliament took a series of measures with a view to identifying the perpetrators of those acts, preventing their reoccurrence and putting the applicant's mind at ease, namely:

- the drawing-up of a report by the Security Office and the opening of an inquiry following each malicious act reported by the applicant;
- increasing surveillance on the floor where the applicant's office is located, by stepping-up the security rounds and making Security Office staff aware of the applicant's particular case;
- the numerous meetings, as mentioned above, held between the applicant and senior staff from the departments of the administration and the Security Office of the institution for the purposes of carrying out inquiries and identifying the culprits;
- the continuous opportunity which the applicant had to approach the Director of the Security Office, a member of the cabinet of the Secretary-General of the Parliament and the institution's welfare services;
- the allocation of a personal office which could be locked by the applicant;
- the interception of telephone calls by the switchboard, then, in the light of the ineffectiveness of that measure, the allocation of a secret telephone number;
- the offer of a possible transfer.

34 In those circumstances, and having regard to the nature and extent of the malicious acts, the Court considers that the body of measures taken by the Parliament, as

noted above, must be regarded as being proportionate and appropriate to the circumstances of this case. Those measures sought, as far as possible, to identify the perpetrators of the malicious acts, prevent their reoccurrence and put the applicant's mind at rest. It is precisely that approach which characterizes the Secretary-General's letters of 10 May and 28 October 1991. Accordingly, the Parliament has not failed to fulfil its duty to provide assistance under Article 24 of the Staff Regulations.

- 35 As regards the statement of reasons of the decision of 28 October 1991, it should be noted that that decision is expressly reasoned by reference to the response of 10 May 1991 from the Secretary-General to the applicant's request. As the Court of Justice and the Court of First Instance have consistently held, the requirement that a decision adversely affecting a person should state the reasons on which it is based is intended to enable the Community judicature to review the legality of the contested decision and to provide the person concerned with details sufficient to allow him to ascertain whether the decision is well founded or whether it is vitiated by an error which would allow its legality to be contested (judgment of the Court of Justice in Case 195/80 *Michel v Parliament* [1981] ECR 2861; judgment of the Court of First Instance in Case T-23/91 *Maurissen v Court of Auditors* [1992] ECR II-2377).
- 36 In this case, suffice it to say that, even if the contested decision concludes, in general terms, that there was no 'threatening or aggressive attitude towards the applicant in the department', that decision, contrary to the applicant's assertion, does not deny the actual existence of the malicious acts alleged by the applicant, attempts to reassure the applicant and confirms that all the appropriate measures have already been taken in order to avoid a repetition of such acts. Moreover, first, the applicant was able to contest the legality of the contested decision in full knowledge of the facts by deploying all his pleas and arguments; secondly, the Community judicature was in a position fully to review the legality of the decision. Accordingly, it must be held that the decision of 10 May 1991 and, consequently, the decision of 28 October 1991 are not vitiated by the defect in the statement of reasons alleged by the applicant.

**Submissions seeking an order that the Parliament pay the applicant the sum of one ECU by way of compensation for non-material damage**

- 37 It is sufficient for the Court to note, as it has been held above, that the decisions of 10 May and 28 October 1991 are not vitiated by any illegality constituting maladministration by the Parliament of such a kind as to warrant its being ordered to make good the non-material damage alleged by the applicant. Since the applicant based his submissions for the purposes of compensation simply on the unlawfulness of those decisions, those submissions must in any event be rejected.

**Submissions seeking that the Court order the Parliament to provide assistance to the applicant**

- 38 As has been consistently held, it is not for the Court, in the context of judicial review, to issue directions to the Community authorities or to substitute its decision for that of those authorities (see, most recently, Joined Cases T-33/89 and T-74/89 *Blackman v Parliament* [1993] ECR II-249). Accordingly and in any event, those submissions must be dismissed as inadmissible.
- 39 It follows from the foregoing that the application must be dismissed in its entirety and there is no need to rule on the objection of inadmissibility raised by the Parliament.

**Costs**

40 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the application;**
2. **Orders the parties to bear their own costs.**

Biancarelli

Vesterdorf

García-Valdecasas

Delivered in open court in Luxembourg on 21 April 1993.

H. Jung

J. Biancarelli

Registrar

President