

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
24 November 1999 \*

In Case T-109/98,

A.V.M., an official of the Commission of the European Communities, residing in Brussels, represented by Olivier Eben, of the Brussels Bar, with an address for service in Esch-sur-Alzette at the Chambers of Jean Tonnar, 29 Rue du Fossé,

applicant,

v

Commission of the European Communities, represented by Julian Carrell, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

\* Language of the case: French.

APPLICATION for the annulment of the Commission's decision of 10 October 1997 which imposed on the applicant the disciplinary measure of downgrading from Grade D 1, Step 8 to Grade D 2, Step 8, on the grounds that he had failed to comply with his obligations under the Staff Regulations of Officials of the European Communities,

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

composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges,  
Registrar: H. Jung,

makes the following

**Order**

**Facts giving rise to the proceedings**

- <sup>1</sup> The applicant was engaged by the Commission on 1 June 1971 as a Category D official.

- 2 As established by an investigation, two computers belonging to the Commission were stolen by the applicant on 27 and 28 May 1994.
- 3 The Director-General for Personnel and Administration, acting in his capacity as appointing authority, initiated, pursuant to Article 87 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), a disciplinary procedure in respect of the applicant, who had been heard on the matter. For the purposes of this procedure, the appointing authority brought the matter before the Disciplinary Board by a note dated 29 September 1994 which was accompanied by the report required by the first paragraph of Article 1 of Annex IX to the Staff Regulations stating the facts complained of and the circumstances in which they arose.
- 4 On 31 January 1995, having heard the applicant, assisted by his lawyer and by the trade union representative, and the applicant's witness, Dr Mancini, the Disciplinary Board delivered its reasoned opinion in accordance with Article 7 of Annex IX to the Staff Regulations and 'unanimously recommended [to the appointing authority] the imposition on Mr V. M. of the disciplinary measure referred to in Article 86(2)(e), namely downgrading from Grade D 1, Step 8, to Grade D 2, Step 8'.
- 5 On 8 March 1995 the appointing authority proceeded, in accordance with the third paragraph of Article 7 of Annex IX to the Staff Regulations, to hear the applicant's case. During the hearing, the applicant's lawyer, Mr Vogel, asked the Director-General of Personnel and Administration to stay the disciplinary proceedings and to order a re-assessment of the situation after a period of supervision, both administrative and medical.
- 6 At that hearing, the Director-General of Personnel and Administration, having warned Mr V. M. against any future improper conduct, indicated to him that he was prepared to place a certain trust in him, in view of the fact that Mr V. M. was

willing to mend his ways and to undergo the necessary medical examination. Consequently, the Director-General informed Mr V. M. that he was prepared to stay the disciplinary proceedings and to re-assess the situation in one year's time. He nevertheless expressly reserved the right to impose disciplinary measures on Mr V. M. once that period had expired, in the event of his conduct being found in the meantime to be unsatisfactory, and even though the period laid down in the third paragraph of Article 7 of Annex IX to the Staff Regulations would have expired. Mr V. M., with Mr Vogel's support, acknowledged that this course of action was in his best interests and indicated his agreement to it.

- 7 By letter of 4 June 1996, the Director-General of Personnel and Administration, having consulted both the applicant's immediate superior and the Medical Service, informed the applicant that he would stay the disciplinary proceedings for a further nine months.
- 8 On 8 July 1997 the appointing authority held a further hearing of the applicant under the third paragraph of Article 7 of Annex IX to the Staff Regulations.
- 9 On 10 October 1997, having established that the applicant had not complied with the requirement to undergo the requisite medical examination, the appointing authority took the decision to impose the disciplinary measure referred to in Article 86(2)(e) of the Staff Regulations, namely downgrading from Grade D 1, Step 8, to Grade D 2, Step 8, with effect from 1 November 1997.
- 10 By letter of 15 October 1997 addressed to the appointing authority and headed 'Complaint pursuant to Article 90 of the Staff Regulations', the applicant disputed several aspects of the decision imposing the disciplinary measure and made supplementary observations.

- 11 By letter of 26 November 1997, the applicant's adviser supplemented the complaint, setting out his reasons for disputing the legality of the disciplinary measure imposed. He claimed that the disciplinary measure should be annulled and that the disciplinary proceedings against the applicant should be closed and requested that no other disciplinary measures be taken in respect of the applicant. In a second letter dated 9 December 1997 addressed to the appointing authority, the applicant's adviser put forward further submissions concerning the time-limits laid down in Annex IX to the Staff Regulations and an alleged breach of medical confidentiality on the part of the doctor at the Administration's Medical Service.
- 12 On 16 February 1998, the appointing authority took the decision to reject the applicant's complaint of 15 October 1997. That decision was received by the applicant on 24 February 1998.

### **Procedure and forms of order sought by the parties**

- 13 By letter lodged at the Registry of the Court of First Instance on 17 April 1998, the applicant applied to the Court for legal aid pursuant to Article 94 of the Rules of Procedure, with a view to bringing an action against the Commission's decision of 10 October 1997 imposing the disciplinary measure of downgrading.
- 14 By an order of 17 June 1998, the President of the Fifth Chamber of the Court dismissed the applicant's application for legal aid on the ground that the applicant had not provided evidence of lack of means.
- 15 By application lodged at the Registry of the Court of First Instance on 20 July 1998, the applicant brought the present action.

16 The applicant claims that the Court should:

- annul the Commission's decision which imposed on him the disciplinary measure of downgrading from Grade D 1, Step 8, to Grade D 2, Step 8 and reinstate him in his former grade;
- order that the disciplinary proceedings against him be closed;
- order that no other disciplinary measure be taken in respect of him;
- order the Commission to pay all of the costs.

17 The Commission contends that the Court should:

- dismiss the action as unfounded;
- make an appropriate order as to costs.

## Admissibility

### *Arguments of the parties*

- 18 In his application the applicant argues that, in view of there having been an interval in which the application for legal aid was made, the action was commenced within the three-month time-limit starting with the date on which the applicant was notified of the rejection of his complaint.
- 19 The Commission, while not disputing the admissibility of the action, in view of the application for legal aid made within the three-month period following the express rejection of the complaint, is, however, uncertain as to the implication of the order of the Court of First Instance in Case T-92/92 AJ *Lallemand-Zeller v Commission* [1993] ECR II-31 and asks whether time should be prevented from running for the purposes of commencing an action only in a case in which the applicant himself, without the assistance of a lawyer, makes an application for legal aid. The Commission draws attention to the fact that, in the present case, the application for legal aid was made by the applicant's lawyer.

### *Findings of the Court*

- 20 Under Article 113 of the Rules of Procedure, the Court may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action and give its decision in accordance with Article 114(3) and (4). In the present case, the Court considers that it has sufficient information from the documents before it and that it is unnecessary to open the oral procedure.
- 21 It is settled case-law that the conditions governing the admissibility of an action, as laid down in Articles 90 and 91 of the Staff Regulations, in particular those

relating to the time-limit for bringing an action, are a matter of public policy and that the Community judicature may, therefore, examine them of its own motion (judgment of the Court of Justice in Case C-246/95 *Coen v Belgian State* [1997] ECR I-403, paragraph 21 and order of the Court of First Instance in Case T-37/93 *Stagakis v Parliament* [1994] ECR-SC II-451, paragraph 17). In the present case, it is necessary to consider whether the action was commenced within the period of three months prescribed by Article 91(3) of the Staff Regulations.

- 22 Under Article 91(3) of the Staff Regulations that period runs from the date of notification of the decision taken in response to the complaint. In the present case time started to run on 24 February 1998.
- 23 Under Article 101(1)(b) of the Rules of Procedure of the Court of First Instance, the period expired on 24 May 1998. Since the applicant resides in Belgium, he is entitled to an extension, on account of distance, of two days by virtue of Article 102(2) of the Rules of Procedure of the Court of First Instance and Article 1 of Annex II to the Rules of Procedure of the Court of Justice.
- 24 It follows that the period within which the present action should have been brought expired on 26 May 1998 unless, as the applicant claims, it was extended or suspended by the making of the application for legal aid.
- 25 In this respect, it should be noted that the Rules of Procedure of the Court and, in particular, Articles 94 to 97 relating to legal aid, contain no provision under



which the making of an application for legal aid has any effect on the calculation or running of a period prescribed for commencing an action.

- 26 Since 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, there can be no derogation from the application of those rules unless there is a quite exceptional case of unforeseeable circumstances or *force majeure* as required by the second paragraph of Article 42 of the EC Statute of the Court of Justice (see judgment of the Court of Justice in Case 42/85 *Cockerill-Sambre v Commission* [1985] ECR 3749, paragraph 10, judgment of the Court of Justice in Case 276/85 *Cladakis v Commission* [1987] ECR 495, paragraph 11, and order of the Court of Justice in Case C-239/97 *Ireland v Commission* [1998] ECR I-2655, paragraph 7).
- 27 It cannot therefore be accepted that the making of an application for legal aid, in itself and independently of the circumstances of the case, has the effect of extending or suspending the period prescribed for bringing the action.
- 28 In the present case the applicant has not put forward any arguments with a view to establishing that exceptional circumstances, capable of constituting either a case of unforeseeable circumstances or *force majeure*, prevented him from commencing the action within the time-limit prescribed by the Staff Regulations. As is evident from the order of 17 June 1998 dismissing the application for legal aid, the applicant did not provide evidence of lack of means and was in fact in a position, as he acknowledged in his application for legal aid, to secure, throughout the period prior to commencing the action, the services of a lawyer who, in addition, advised him in connection with the application for legal aid. It

would have been possible for the applicant to bring an action before the expiry of the period prescribed for that purpose.

- 29 The order in *Lallemand-Zeller v Commission* referred to above is not relevant in this context, given the differences between that case and the present case. The case giving rise to the order in *Lallemand-Zeller* concerned a well-founded application for legal aid made by an applicant who lacked means and did not have the assistance of a lawyer.
- 30 Since the application was not lodged at the Court Registry until 20 July 1998 and the proceedings should have been, and could have been, commenced by 26 May 1998 at the latest, the action is out of time.
- 31 The present action must, therefore, be dismissed as inadmissible.

## Costs

- 32 In accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules, in proceedings between the Communities and their servants, the institutions are to bear their own costs. Since the applicant has been unsuccessful, the parties shall bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. The action is dismissed as inadmissible.
2. The parties shall bear their own costs.

Luxembourg, 24 November 1999.

H. Jung

Registrar

R. García-Valdecasas

President