

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
26 March 1997

Case T-119/96

X
v
European Parliament

(Officials — Action for annulment — Prior complaint through administrative channels — Plea of inadmissibility)

Full text in French II - 225

Application for: annulment of the decisions of the European Parliament to treat the applicant's absences from his work between March and October 1995 as unauthorized.

Decision: Application dismissed.

Abstract of the Order

The applicant is an official of the European Parliament. In the course of 1995 several decisions of the Parliament considered various periods of the applicant's absence from work between March and October 1995 to be unauthorized. The

decisions were adopted pursuant to Article 60 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'). On the basis of those decisions, first the applicant's annual leave was used up and then the remaining unauthorized absences were deducted from his remuneration for the last months of 1995.

On 11 January 1996 the applicant sent to the Secretary General of the Parliament a letter headed 'Procedure under Article 90(1) of the Staff Regulations'. The annexes to that letter included *inter alia* all the notes sent by the Heads of the Parliament's Personnel Department and 'Staff Regulations and Personnel Management' Department both to the Head of the Accounts Department and to the applicant himself, together with the applicant's comments. The applicant's view is that he had on several occasions been absent for medical consultations or for reasons of health. He enclosed with his letter two medical certificates drawn up by his psychiatrist. In his comments, the applicant pointed out in particular that his immediate superior ought to have made oral or written observations about his absences and that he had not been informed in sufficient time of the measures taken concerning him. In addition, he objected to the manner in which the administration attached his pay in order to cover the periods of absence treated as unauthorized.

The applicant's comments on the Parliament's last note attached to the letter of 11 January 1996 end in 'Conclusions', point 1 of which is couched in the following terms:

'What right has the administration to:

- exhaust my stock of leave?
- to attach all or part of my pay for September to December inclusive?
- to stop my standing orders, which caused me a great deal of difficulty with my creditors (banks)?

all, as you will just have seen, utterly disregarding the rules of common courtesy and our Staff Regulations.'

The Secretary General of the Parliament replied by letter of 18 April 1996. First of all, he stated: 'By letter dated 11 January 1996, you made a request pursuant to Article 90(1) of the Staff Regulations for reconsideration of your absences between March and October 1995, which were classified as unauthorized by the Head of the Personnel Department, the competent appointing authority.' After commenting on the various periods of absence in question, he concluded: 'For all those reasons, I consider that your absences were correctly treated as unauthorized and there has been neither irregularity nor abuse of powers in the handling of the file of your absences on the part of the Personnel Department. I therefore reject your request submitted pursuant to Article 90(1) of the Staff Regulations.'

Admissibility

The precise classification of a letter or note is a matter for the Court alone and not for the parties. A letter by which an official asks the Secretary General of the institution to which he belongs to determine, not whether one or more decisions adversely affecting him are lawful, but more generally whether there are grounds for challenging his treatment by his immediate superior, and more generally, the administration, does not constitute a complaint within the meaning of Article 90(2) of the Staff Regulations (paragraphs 20, 22 and 23).

See: T-586/93 *Kotzonis v ESC* [1995] ECR II-665, para. 21

The application must accordingly be dismissed as inadmissible, on the ground that in breach of Article 91(2) of the Staff Regulations the applicant had not previously submitted a complaint through official channels.

Operative part:

The application is dismissed as inadmissible.