

Case T-139/89
(Summary publication)

Gabriella Virgili-Schettini

v

European Parliament

(Official — Leave — Compensation for unused leave)

Summary of the Judgment

1. *Officials — Actions — Prior complaint through official channels — Formal conditions — Complaint drafted by the official's lawyer — Signature of the person concerned — Not a substantial formality*
(Staff Regulations, Art. 90)
2. *Procedure — Bringing of actions — Authority to act ad litem — Proof of authority not required*
(Rules of Procedure, Art. 38(3))
3. *Officials — Leave — Annual leave — Carrying-over of unused leave — Detailed procedure for so doing not specified*
(Staff Regulations, Art. 57; Annex V, Art. 4, first paragraph)
4. *Officials — Leave — Annual leave — Withdrawal on the ground of undisputed absences due to illness — Not permissible*
(Staff Regulations, Art. 57)

1. In accordance with well-established case-law, no form is prescribed for complaints through official channels made by an official; such complaints must be interpreted and understood by the administration with all the care that a large and well-equipped organization owes to those having dealings with it, including members of its staff.

As it is not possible to prohibit the seeking of legal advice by those concerned at the preliminary stage (see judgment in Case 54/77 *Herpels v Commission* [1978] ECR 585), the official is for that reason perfectly entitled to leave to his lawyer the task of drafting the complaint.

- Where it is not in dispute that the complaint emanated from the official, who also defined its scope, a requirement that the official sign the complaint drafted by his lawyer would constitute a wholly unreasonable formality lacking in any legislative basis and alien to the spirit of the case-law.
2. The lawyer acting for a party is not required to produce a duly executed authority to act, subject to proof, if challenged, that he is so authorized (see judgment in Case 14/64 *Gualco v High Authority* [1965] ECR XI-4, p. 2).
 3. As the provisions relating to the carrying-over of annual leave from one calendar year to the next nowhere specify how and when the proof of 'reasons [arising from] the requirements of the service' justifying the carrying-over of more than 12 days' leave must be furnished, a challenge concerning such carrying-over cannot have any object other than the existence of such reasons.
 4. The administration may not put forward an official's absences on account of illness where these are not the subject of any contestation on its part, as a ground for depriving him of his entitlement to full annual leave.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
26 September 1990 *

In Case T-139/89,

Gabriella Virgili-Schettini, a former member of the temporary staff of the European Parliament, residing at Mamer (Grand-Duchy of Luxembourg), represented by Vic Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 4 rue Tony-Neuman,

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,

* Language of the case: French.