

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
9 July 2002

Case T-70/01

**Pier V. Aimone**  
v  
**Court of Justice of the European Communities**

(Officials – Leave on personal grounds – Refusal of reinstatement –  
Compulsory resignation – Articles 40(4)(d) and 49, second paragraph, of the  
Staff Regulations)

Full text in Italian . . . . . II - 575

**Application for:** first, annulment of the decision of the Court of Justice of  
22 May 2000 requiring the official to resign from his post  
with effect from 1 June 2000 and, secondly, compensation  
to make good the non-material and psycho-physiological  
damage allegedly suffered as a result of that decision.

**Held:** The application for annulment is dismissed. The claim for  
damages is dismissed. The parties are ordered to bear their  
own costs.

## Summary

*1. Officials – Compulsory resignation – Principle of the right to a fair hearing – Obligation to hear the official concerned – Scope – Obligation to hear the official concerned before the Joint Committee delivers its opinion – None (Staff Regulations, Art. 49, second para.)*

*2. Officials – Leave on personal grounds – Reinstatement – Administration's offer of post subject to reasonable time within which to take up duty – Concept of reasonable time (Staff Regulations, Art. 40(4)(d))*

*3. Officials – Leave on personal grounds – Reinstatement – Administration's obligation to offer the official a post – Offer relating to a specific vacancy – Refusal of post offered on two occasions – Compulsory resignation (Staff Regulations, Art. 40(4)(d))*

1. The obligation laid down in the second paragraph of Article 49 of the Staff Regulations to hear the official concerned before the reasoned decision requiring resignation is taken by the appointing authority is an embodiment of the principle of the right to a fair hearing.

Since the stage at which the hearing of the official concerned must take place, namely, before or after the Joint Committee delivers its opinion, is not laid down by the second paragraph of Article 49 of the Staff Regulations, that provision must be construed as intending to ensure the most effective possible observance of the right of the official concerned to a fair hearing. The purpose of the provision is to give him an opportunity to express his views at the vital stages of the procedure concerned. In that regard, the right of the official concerned to a fair hearing is

observed most effectively when he is in a position to express his views with full knowledge of all the facts and circumstances which are at the disposal of the appointing authority and, in particular, on the content of the Joint Committee's opinion.

Since the relevant decision under the second paragraph of Article 49 is taken by the appointing authority and not by the Joint Committee, an additional opportunity to submit observations before the matter is referred to the Joint Committee cannot be considered necessary for the protection of the right of the official concerned to a fair hearing where he has the opportunity to submit observations on that opinion to that authority.

(see paras 34-37)

See: Opinion of Advocate General Lenz in 12/87 *Heyl v Commission* [1988] ECR 2943, 2949, point 32; T-169/95 *Quijano v Commission* [1997] ECR-SC I-A-91 and II-273, para. 44; T-211/98 *F v Commission* [2000] ECR-SC I-A-107 and II-471, para. 28

2. When a vacant post in an administration is filled, regard must be had to the exigencies of the public service rather than to the personal convenience of officials. Consequently, when the competent authority offers a post to an official at the end of his leave on personal grounds, in accordance with Article 40(4)(d) of the Staff Regulations, allowing him a reasonable time within which to take up duty, his refusal or failure to take up the post on the date which has been fixed is to be treated as a refusal, which is not inconsistent with a purely formal acceptance of the post which is not subsequently put into effect.

The concept of reasonable time in the context of Article 40(4)(d) of the Staff Regulations must be assessed objectively taking account of the need to reconcile, on the one hand, the administration's obligation to make two offers of reinstatement to the official, in particular in a post corresponding to his grade which falls vacant in his category or service, and, on the other hand, the fact that there is no obligation on the part of the institution to leave open a vacant post in order to suit the convenience of the official. Whether or not the time allowed by the administration for reinstatement in public office is reasonable depends on the particular circumstances of the case. Consequently, a relatively short time could be regarded as reasonable if it is justified in the context of the previous relations between the institution and the official.

(see paras 55-56)

3. Article 40(4)(d) of the Staff Regulations does not provide for the possibility for the administration to make an offer of reinstatement in the general sense, but provides for reinstatement of an official in a vacant post corresponding to his grade and to his category or service, provided that he satisfies the requirements for that post. It follows that, pursuant to that provision, the institution is required to offer the official a specific vacancy in such a post. If an official declines the post offered to him, he retains his right to reinstatement when the next vacancy corresponding to his grade occurs in his category or service, subject to the same proviso. If he declines a second time, the applicant may be required to resign in accordance with the procedure laid down by Article 40(4)(d) of the Staff Regulations. An official cannot simultaneously claim that he is prepared, in principle, to be reinstated and refuse the vacant post offered.

(see para. 63)