

JUDGMENT OF THE COURT (Third Chamber)  
26 January 1989 \*

In Case 224/87

**Jean Koutchoumoff**, an official of the Commission of the European Communities, residing at 52 avenue de la Renaissance, Brussels, represented by Marcel Slusny, and subsequently by D. Lagasse and P. Delvaux, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérèse,

applicant,

v

**Commission of the European Communities**, represented by its Legal Adviser Joseph Griesmar, acting as Agent, assisted by Benoît Cambier, of the Brussels Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, Centre Wagner, Plateau du Kirchberg,

defendant,

APPLICATION

- (a) for the annulment of the refusal of the applicant's request that disciplinary proceedings be instituted against his head of division;
- (b) for an order that the Commission should grant the applicant the protection provided for under Article 24 of the Staff Regulations of Officials;
- (c) for compensation for the damage caused by the Commission's conduct;
- (d) for an order that the Commission should pay the applicant ECU 6 050 as compensation for damage suffered, and that it should pay the costs,

\* Language of the case: French.

THE COURT (Third Chamber)

composed of: F. Grévisse, President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

Advocate General: M. G. Tesauo

Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 19 October 1988,

having regard to the Opinion of the Advocate General, delivered at the sitting on 30 November 1988,

gives the following

**Judgment**

1 By application lodged at the Court Registry on 20 July 1987, Mr Koutchoumoff, an assistant in Directorate-General XIII (Strategy of Information Technology and Telecommunications) of the Commission, requested the annulment of the decision resulting from the Commission's failure to respond to his complaint of 27 November 1986, received on 22 December 1986, seeking the commencement of disciplinary proceedings against his superior, Mr Wilkinson. Mr Koutchoumoff also asks the Court to rule that he is entitled to the protection provided for under Article 24 of the Staff Regulations of Officials and to order the Commission to pay him compensation of ECU 6 050.

2 Mr Koutchoumoff, who was called to see his superior Mr Wilkinson on 2 June 1986, claims he was subjected to an assault by Mr Wilkinson from which his only means of escape was by making off in his car.

- 3 By a memorandum of 4 June 1986, Mr Koutchoumoff requested that 'the appointing authority should bring this matter before the Disciplinary Board'. The Commission made no response, and so the plaintiff submitted a complaint to the Commission on 27 November 1986 in which he reproduced the wording of his memorandum of 4 June. The Commission made no response to that complaint either, thus giving rise to an implied decision rejecting the complaint. The applicant has brought an action directed against that decision before the Court, in which he also asks for compensation for damage suffered.
- 4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the applicable Community legislation and the submissions made to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

### **The admissibility of the application**

- 5 The Commission raises three objections of inadmissibility against the application.
- 6 It argues first that the implied decision rejecting the complaint made on 27 November 1986 and contested by Mr Koutchoumoff merely confirms the implied rejection of his initial request of 4 June 1986 seeking the commencement of disciplinary proceedings against Mr Wilkinson, and is therefore not a measure which can be the subject of an appeal.
- 7 However, under Articles 90 and 91 of the Staff Regulations of Officials of the European Communities, an official may submit an appeal to the Court against a decision adversely affecting him taken by the appointing authority only after he has first submitted a complaint to that authority and that complaint has been rejected by an express or implied decision. Under the system laid down in the Staff Regulations the official must thus submit a complaint against the decision which he is contesting and then appeal to the Court against the decision rejecting his complaint. When those conditions are met, the action is admissible whether it is directed against the initial decision alone, the decision rejecting the complaint or both (judgment of 19 January 1984 in Case 260/80 *Andersen v Council* [1984] ECR 177, in particular at paragraphs 3 and 4), provided, however, that the complaint and the appeal were lodged within the periods prescribed by Articles 90 and 91 of the Staff Regulations, as in this case they were. The first objection raised by the Commission must therefore be dismissed.

- 8 The Commission argues secondly that in his complaints through official channels Mr Koutchoumoff never asked for Article 24 of the Staff Regulations to be applied on his behalf or for the award of damages.
- 9 With regard to the first point, the documents in the case show that by asking for disciplinary proceedings to be instituted against Mr Wilkinson it was the applicant's intention, in that way, to claim the protection provided for under Article 24 of the Staff Regulations.
- 10 With regard to the second point the Court has consistently held that an official may not submit to the Court conclusions with a subject-matter other than those raised in the complaint or put forward heads of claim based on matters other than those relied on in the complaint. The submissions and arguments made to the Court in support of those heads of claim need not necessarily appear in the complaint but must be closely linked to it (judgment of 20 May 1987 in Case 242/85 *Geist v Commission* [1987] ECR 2181). It follows that although Articles 90 and 91 of the Staff Regulations are designed to permit the amicable settlement of disputes which have arisen between officials and the administration, it is not the purpose of those provisions to bind strictly and absolutely the contentious stage of the proceedings, provided that the claims submitted at that stage change neither the legal basis nor the subject-matter of the complaint (judgment of 7 May 1986 in Case 52/85 *Riboux and Others v Commission* [1986] ECR 1555). That is the case particularly when, as here, the applicant requested in his complaint the annulment of a decision adversely affecting him, since such a request may, depending on the circumstances, imply a request for compensation for damage which may have been caused to the applicant by that decision. The objection of inadmissibility raised by the Commission in this respect against Mr Koutchoumoff's action must therefore also be dismissed.
- 11 Finally, although the Commission claims that during the proceedings the applicant has claimed compensation for heads of damage other than those mentioned in his application to the Court, the various types of damage mentioned are all related to the Commission's refusal to afford him the protection sought on the basis of Article 24 of the Staff Regulations. It follows that the subject-matter of the application before the Court has not been changed.

- 12 However, the Commission is correct in maintaining that it is not for the Court to order the administration to afford Mr Koutchoumoff the protection to which he considers himself entitled. The conclusions submitted in that regard must therefore be rejected as inadmissible.

**Application for annulment of the Commission's refusal to accord Mr Koutchoumoff the protection provided for under Article 24 of the Staff Regulations**

- 13 Mr Koutchoumoff claims that the Commission breached its duty to have regard for his welfare by not investigating the incident of 2 June 1986 and that it infringed Article 24 of the Staff Regulations by not instituting disciplinary proceedings against Mr Wilkinson as a result of the assault which he committed against the applicant.
- 14 It must be observed first of all that the duty of the institutions of the Community under Article 24 of the Staff Regulations to protect officials against threats, insulting or defamatory acts or utterances, or any attacks to which they are subjected, which also covers attacks on those officials by other officials, only arises once the facts in question have been established.
- 15 Although, as the Court has held (judgment of 14 June 1979 in Case 18/78 *Mrs V. v Commission* [1979] ECR 2093), faced with an incident which is incompatible with the good order and tranquillity of the service the administration is required to intervene with all the necessary vigour so as to ascertain the facts and, having done so, to take the appropriate action in full knowledge of the matter, the administration is not required to institute an investigation on the basis of mere allegations by an official.
- 16 It is incumbent upon the official who is seeking the protection to which he is entitled under Article 24 of the Staff Regulations to provide at least some evidence of the reality of the attacks of which he claims he was the victim. It is only when that evidence is provided that the Commission is under an obligation to take the necessary measures, in particular to carry out an inquiry, with the cooperation of the complainant, to determine the facts which gave rise to the complaint.

- 17 It is clear from the documents in the case that there is a considerable discrepancy between Mr Koutchoumoff's version of the incident of 2 June 1986 and that of Mr Wilkinson. Mr Wilkinson claims that he merely attempted to make Mr Koutchoumoff sign an acknowledgement of receipt of his periodic report and that he decided to follow Mr Koutchoumoff when the latter claimed that he had to report to the medical centre, in order to see whether Mr Koutchoumoff was using that pretext to avoid being given his periodic report. Furthermore, at no time has Mr Koutchoumoff put forward any specific evidence to support his version of events, particularly during the interview he had on 12 May 1987 with the Director for Personnel; he has refused even to name witnesses, on the pretext that they could be subjected to pressure.
- 18 It is true that during the written procedure the applicant proposed that the Court should hear the evidence of two witnesses, and proposed additional witnesses at the hearing.
- 19 It is not necessary to rule on the propriety of those requests for the admission of oral evidence. The Court's task is only to assess the lawfulness, with regard to Article 24 of the Staff Regulations, of the Commission's refusal to grant the protection provided for by that provision, and it does not have the power to substitute itself for the Commission or to order the Commission to grant that protection.
- 20 The lawfulness of the Commission's refusal to take steps on the basis of Article 24 must therefore be assessed in the light of the information that the Commission had at its disposal when it took the contested decision.
- 21 It must be said that at that time the applicant had manifestly failed to provide any evidence whatsoever in support of his allegations.
- 22 Consequently, and without it being necessary to hear the proposed evidence of witnesses, the Court must hold that in the circumstances of the present case the Commission could lawfully consider that the facts as related by Mr Koutchoumoff were not sufficiently established and could therefore refuse to take any steps pursuant to Article 24 of the Staff Regulations.

- 23 It follows from the foregoing that the Commission has not committed an unlawful act or omission of such a kind as to entitle Mr Koutchoumoff to compensation and that his application for annulment and for the grant of compensation must be dismissed.

### **Costs**

- 24 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Third Chamber)

hereby:

- (1) Dismisses the application.**
- (2) Orders the parties to bear their own costs.**

Grévisse

Moitinho de Almeida

Zuleeg

Delivered in open court in Luxembourg on 26 January 1989.

J.-G. Giraud  
Registrar

F. Grévisse  
President of the Third Chamber