JUDGMENT OF THE COURT (FIRST CHAMBER)
4 JULY 1963[1]

Maurice Alvis
v Council of the European Economic Community[2]

Case 32/62

Summary

1. Officials — Disciplinary measures — Procedure to be followed by Community administrations — Preliminary determination of facts — Necessity

2. Appeals by officials—Dismissal on disciplinary grounds—Absence of preliminary notification — Apportionment of costs — Exceptional circumstances
(Rules of Procedure, Articles 69 (3), first subparagraph, and 70)

1. According to a generally accepted principle of law in force in the Member States of the EEC, Community institutions must allow their servants the opportunity of replying to allegations before any disciplinary measure is taken concerning them.
2. A failure of the administration to notify the applicant formally of the facts leading to dismissal which, although accompanied by notice, is based on disciplinary grounds, constitutes exceptional circumstances in which costs may be awarded according to Article 69 (3) of the Rules of Procedure.

In Case 32/62

MAURICE ALVIS, represented by Paul Marchal, advocate of the Cour d'Appel, Brussels, with an address for service in Luxembourg at the Chambers of Jean Welter, advocate of Luxembourg,

applicant,

v

COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Raffaello Fornasier, acting as Agent, with an address for service in Luxembourg at the office of Jacques Leclerc at the Secretariat of the Council, 3 rue Auguste-Lumière,

defendant,

Application for annulment of a notice of dismissal communicated to the applicant on 8 August 1962;

1 — Language of the Case: French.
2 — CMLR.

THE COURT (First Chamber)

composed of: L. Delvaux, President, A. Trabucchi (Rapporteur) and W. Strauß, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

By a letter dated 10 November 1961 the applicant was engaged for an indefinite period by the Secretariat of the 'Conference between the Member States of the European Communities and third countries which have applied for membership of those Communities' in Brussels as a member of the auxiliary staff. The letter of appointment contained a clause which provided that 'this agreement . . . may be terminated at any time by either party on one month's notice'.

By a letter dated 8 August 1962 from the Secretariat of the Conference, Mr Alvis was informed that his contract was terminated as from 9 August 1962. The letter continued as follows:

'This dismissal is based upon the reasons set out below which lead me to the conclusion that your attitude is incompatible with the conduct which one is entitled to expect from a servant of the Secretariat of the Conference between Member States of the European Communities and third countries which have applied for membership of those Communities.

First, during the months of January and February, you were involved in an incident which brought you into conflict with a British member of the Secretariat. It was agreed to overlook this incident, but its seriousness was made clear to you.

On a previous occasion you had reported for duty in a state of intoxication and a formal warning was then given to you by Mr Feipel.

There was a repetition of this conduct during the negotiations on the night of 4 to 5 August, as is confirmed by several of your colleagues. While in this condition you were responsible for several ill-considered actions which might have had serious consequences.

In these circumstances, you are requested not to report for work as from Thursday 9 August 1962, after settling your affairs with the administration. In accordance with the terms of your contract you will be allowed one month's notice.'

It was against this letter that Mr Alvis made the present application on 4 October 1962.

II — Conclusions of the parties

In his conclusions of 2 October 1962 the *applicant* requests the Court:

'to establish as fact and to rule that the notice communicated to the applicant on 8 August 1962 is unjustified and damaging and that it constitutes a wrongful act giving rise to compensation;

to order the defendant to withdraw the said notice in the same conditions as those in which it was given;

to order the defendant to pay to the applicant five million Belgian francs by way of compensation without prejudice to any increased sum which may be claimed in the course of the proceedings;

to order the defendant to pay interest to be fixed by the Court and the costs of the action.'

The *defendant* contends that the Court should:

'rule that both the principal and secondary claims of the applicant are unfounded;

accordingly, dismiss the application;

order the applicant to pay the costs.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. *The reasons stated for the letter of dismissal*

The *defendant* observes generally that the three acts alleged in the letter of dismissal to have been committed by the applicant 'are only individual manifestations of a general level of conduct on which its overall assessment of Mr Alvis was based'.

The *applicant* contends that no reference was made to this general assessment either in the letter of dismissal or in any other document.

(a) As regards the first incident

The *applicant* asserts that on 16 February 1962 Mr Newing, a British servant of the Secretariat of the Conference, entered his office and criticized him for certain errors of translation, calling him 'silly' in front of Mr Michael Powell. After examining with competent colleagues the translation to which exception had been taken, the applicant came to the conclusion that only one of the criticisms made by Mr Newing was justifiable.

The applicant states that the letter sent by him to Mr Newing on 19 February 1962 was a letter of explanation and emphasizes that he was the injured party; the letter of dismissal was therefore wrong in claiming that the applicant had provoked a serious incident.

In its statement of defence the *defendant* emphasizes the sarcastic, insolent and threatening tone used in the letter to Mr Newing, copies of which had also been sent to the Head of the Translation Department and to Mr Alvis's lawyers in London. The defendant states that Mr Newing had used the word 'silly' to describe not Mr Alvis himself but only his errors of translation.

(b) As regards the second incident

According to the *applicant*, the incident in question resulted not from his alleged state of intoxication but merely from his reaction to the lack of consideration shown him; this consisted in his being kept at work on numerous occasions during the night and at weekends without any valid reason. He explained this forcefully to the head of department (Mr Buyken) and his secretary (Miss Potz) one evening when he was detained until 9.30 p.m. without dinner. Following this protest, which was attributed to his alleged state of intoxication, the applicant was called upon by Mr Feipel to explain his conduct.

The *defendant* again states that on the evening of 11 July 1962 Mr Alvis was

in fact in a state of intoxication whilst on duty. The defendant relies for this allegation principally upon a statement signed by Miss Potz.

Furthermore, the defendant states that it was well-known in the Translation Department of the Conference that Mr Alvis drank during working hours, as is shown by the fact that on his departure the messenger had to remove about twenty empty bottles, mainly of whisky and brandy.

In his reply the *applicant*, while admitting that 'on occasions when kept in the office beyond normal hours without anything to eat, he had a drink with a colleague', states that the bottles removed on his departure came from a reception given for Mr Battin.

The *defendant* replies that at the reception in honour of Mr Battin only two bottles of whisky had been served.

(c) As regards the third incident

The 'ill-considered actions which might have had serious consequences' referred to in the letter of dismissal consist, as the *defendant* indicates in its statement of defence, in the throwing of four or five empty glasses from the gallery of the ninth floor into the main entrance of the office block in the Rue des Quatre-Bras where several journalists were gathered.

The *applicant* expressly denies this. He emphasizes moreover that, as the defendant itself admits, this incident, like the earlier one, is alleged to have occurred outside working hours.

According to the *defendant*, the responsibility of Mr Alvis for this incident is proved beyond all reasonable doubt by the written evidence produced. Moreover, it states that Mr Alvis should have considered himself on duty whenever he was pursuing his occupation as a translator at the Secretariat of the Conference.

(d) As regards the evidence given concerning the allegations against him, the *applicant* disputes the validity of the inquiries made by the defendant, since they had been held without his knowledge and without his being able to defend himself. The statements collected were not taken under oath and the witnesses were questioned about incidents which are not specified in the letter of dismissal. Furthermore, the applicant states that, contrary to the view taken by the defendant, the evidence of Mr Van Audenhoven and Mr Andrien does not show that it was the applicant who was responsible for throwing three glasses. On this point the conclusions drawn by the defendant are merely unsubstantiated suppositions.

The *defendant* emphasizes again that the inquiry held showed beyond all reasonable doubt that Mr Alvis and Mr Cohen were involved in the glass-throwing incident and that the latter had admitted dropping a glass. It has not been possible to identify a third person who appears to have been present on the occasion.

Furthermore, the *applicant* points out that there are several inaccuracies in the statement given by Miss Potz regarding the incident of 11 July 1962.

2. *On the damaging and prejudicial nature of the dismissal*

(a) The *applicant* criticizes the public and formal way in which he was notified by the defendant of the decision to dismiss him. He had been summoned, flanked by two colleagues, into the office of a superior, who formally handed him the letter of 8 August, without allowing him to give any explanation.

In addition, while admitting that he was paid for the month following his dismissal, the applicant states that the circumstances of his dismissal were damaging since he was not given notice within the meaning of the contract of service but was dismissed there and then, without even being allowed to continue working as he should normally have done.

The defendant states that Mr Alvis was merely received by Mr Dubois, his head of department, in the presence of Mr Buyken, his immediate superior, and Mr Ferrari, head of Personnel, both of whom had carried out the inquiry into the glass-throwing incident. The defendant asserts furthermore that Mr Alvis was given an opportunity by Mr Dubois to make any observations he wished in front of two witnesses, but that Mr Alvis had assumed a negative and arrogant attitude.

The *applicant* observes that, since the letter gave no details on which he could base such observations, it would have been difficult for him to make any. In particular, as regards the third incident, he states that, in order for him to be able to defend himself, the details given by the defendant only in the statement of defence should also have been given in the letter of dismissal.

(b) In response to the *applicant's* complaint that he had received no reply to the two letters of protest of 10 and 22 August 1962 sent by his counsel, the *defendant* states that it had thought that no reply was necessary, as it considered that it was acting correctly, and did not therefore intend to reverse its decision.

(c) As regards the loss suffered as a result of the dismissal, the *applicant* states that not only has he suffered non-material damage as a result of the prejudicial nature of the dismissal, but he has also suffered considerable material loss, principally because of his age, owing to the fact that he suddenly found himself without a job in a foreign country and will henceforward be unable to obtain any position whatever in an international organization.

The *defendant* replies that the applicant has not shown that any damage has been suffered. Moreover, while recognizing that the applicant's career in international agencies is finished as a result of the charges made against him in the letter of dismissal, he must bear responsibility for this himself, first, because he failed in his duties and, secondly, because he publicized his dismissal.

3. *The law applicable*

The *applicant* invokes Belgian law (in particular Article 1134 of the Civil Code and Article 14 of the Law of 7 August 1922) and contends that the letter giving him notice did not in law set out the allegations made against him in sufficient detail. Moreover, considering the errors in the dates in the second and third paragraphs of the letter of 8 August (the second incident mentioned therein actually occurred after and not before the first incident, while the third occurred during the night of 3 to 4 August and not 4 to 5 August, as is stated in the letter), the incidents described therein must be disregarded *a priori*, while the first incident with Mr Newing which occurred in January and February was certainly not sufficient to justify dismissal.

The *defendant* replies that contracts of employment made between the Community and its servants are contracts under public law, which are subject to general rules of administrative law and are therefore not governed by the Belgian Law on contracts of employment. This is shown by the judgments of this Court in Joined Cases 43, 44, 45 and 48/59. On this point the defendant emphasizes that the rules actually relating to auxiliary staff at the time when Mr Alvis was engaged allowed for dismissal with mere notice and did not require reasons to be given. Moreover, the rules at present in force relating to auxiliary staff expressly impose the obligation to give reasons for a decision of dismissal only where the contract is terminated without notice (Articles 74 and 76 of the Conditions of employment of other servants of the Communities). The defendant gave reasons for

the disputed decision simply in order to conform with the principle of sound public administration, which requires such reasons to be given for any administrative decision as proof that it was properly taken.

Alternatively, the defendant observes that, even if the Belgian Law were applicable, Mr Alvis's contract, under which remuneration exceeded 180 000 Belgian francs per year, did not fall under Article 14 of the Law of 7 August 1922 (See Article 35 of the consolidated Laws).

Moreover, even if the reasons for dismissal given in the letter could be regarded as unjustified or insufficient, the only compensation under Belgian law open to the applicant on termination of the contract would be payment in lieu of notice of a sum equal to his remuneration for that period. This payment has already been made (Article 20 of the consolidated Laws and the Cour d'Appel, Brussels, 15 October 1949, PAS. 1949, II, p. 110).

IV — Procedure

The procedure followed the normal course.

V — Measures of inquiry

By an Order dated 1 February 1963, the First Chamber of the Court decided that the following facts should be proved by witnesses:

(1) Did the applicant, being in a state of intoxication on the night of 3 to 4 August 1962, throw glasses into the Rue des Quatre-Bras from the floor on which his office was situated?

(2) Prior to this incident, had the applicant reported for duty in a state of intoxication?

By an Order dated 11 March 1963, the First Chamber of the Court decided to examine the following witnesses:

Messrs G. Andrien,
G. Battin,
J. Buyken,
L. Bouveroux,
H. Cohen,
A. Dubois,
A. Feipel,
A. Ferrari,
Y. Galichon,
Miss F. Hogard,
Mr P. Marlow,
Miss G. Potz,
Mr G. Van Audenhoven.

With the exception of Mr J. Buyken and Mr H. Cohen who were absent, the First Chamber of the Court examined these witnesses at the hearing on 20 March 1963.

Grounds of judgment

The application was made in the required form and within the required time-limit.

The defendant has raised no preliminary objection of inadmissibility.

1. On the improper and prejudicial nature of the dismissal procedure

A—The applicant claims that the defendant dismissed him without first giving him any opportunity of submitting his defence, by informing him of the incidents on which his dismissal was based.

The defendant does not dispute this claim.

According to a generally accepted principle of administrative law in force in the Member States of the European Economic Community, the administrations of these States must allow their servants the opportunity of replying to allegations before any disciplinary decision is taken concerning them.

This rule, which meets the requirements of sound justice and good administration, must be followed by Community institutions.

The observance of this principle is even more important when, as in this case, the allegations are capable of resulting in the dismissal of the servant concerned. Indeed, it appears from the text of the letter of dismissal that it was a disciplinary measure, even though the notice stipulated in the contract of employment was given.

Thus, the defendant disregarded its obligation to allow the applicant to submit his defence before being dismissed.

Nevertheless the Court, in exercise of its unlimited jurisdiction under Article 91 of the Staff Regulations of officials of the European Economic Community, considers that, in this case, the failure of the defendant to observe this obligation is not sufficient to annul the decision of dismissal. This failure does not justify the award of damages to the applicant, but should nevertheless affect the apportionment of costs between the parties.

In fact, in the absence of a procedure allowing him to be heard, the applicant had no other means of presenting his defence than by making an application for annulment of the decision of dismissal.

B—The applicant complains of the publicity given by the defendant to the communication of the decision of dismissal, namely in front of two responsible heads of department.

This procedure cannot be described as damaging; it is reasonable that, considering the reasons which led the Council to take the decision in question, the communication of this decision to the applicant should have been made before the two responsible heads of department, whose presence was also justified by reason of any observations which the applicant might have made, as he was expressly invited to do.

The applicant might claim to have suffered from the publicity given to the decision of dismissal only if the allegations made against him by the defendant proved to be unfounded.

2. On the reasons for the dismissal

The letter of dismissal alleges that the applicant was involved in three separate incidents.

It is appropriate to consider in the first place the third and most serious incident, the throwing of glasses from the ninth floor into the street on 3 August 1962, which had a decisive bearing on the dismissal of the applicant.

The witnesses Hogard, Galichon and Van Audenhoven have established that at the time when the glasses were thrown, between 8.30 and 8.55 p.m., the applicant was in an obvious state of intoxication on the balcony of the ninth floor of the block in which his office was situated, and that glasses were thrown from this balcony into the Rue des Quatre-Bras or in front of the main entrance of the office block.

Although it is not certain that the applicant himself threw these glasses, it is at least clear that he was at that moment on the balcony and that he has done nothing to show that he was not responsible for these incidents.

In all the circumstances therefore, the applicant can reasonably be regarded as in part responsible for this act which was capable both of injuring third parties and of bringing discredit upon the European institutions.

This view is confirmed by the fact that the applicant has failed to provide, either to his immediate superiors or to the Court, the least indication or information as to what he was doing and where he was on the evening of 3 August 1962, between 8.30 and 8.55 p.m.

Moreover, this glass-throwing incident must be considered in the light of the previous conduct of the applicant.

As regards the second incident, that of 11 July 1962,—being in a state of intoxication whilst on duty—it appears from the statements of the witnesses Potz and Battin that the applicant, by his conduct, at least caused a disturbance to the work of the department.

There is no dispute over the substance of the first incident, the letter addressed on 19 February 1962 by the applicant to Mr Newing.

There is no doubt that, in the circumstances, the tone of this letter is not in accordance with the rules to be followed by a servant of a European institution.

Even though the administration at that time saw fit to overlook this incident, its gravity was nevertheless pointed out to the applicant.

It appears from the foregoing that the truth of the facts on which the contested decision is based has been sufficiently established in law, and that they reveal an attitude and conduct incompatible with the functioning of the European institutions.

The application must therefore be dismissed.

Costs

The applicant has failed in his application.

Under the terms of Article 70 of the Rules of Procedure of the Court of Justice of the European Communities, without prejudice to the second subparagraph of Article 69 (3) of those Rules, in proceedings by servants of the Communities, institutions shall bear their own costs.

Under the terms of Article 69 (3) of the above Rules, where the circumstances are exceptional, the Court may order that the parties bear their own costs in whole or in part.

In this case, as stated above, the failure of the defendant to allow the applicant to submit his defence before his dismissal has undoubtedly encouraged the applicant to make an application to the Court. It is therefore reasonable to order the defendant to pay four-fifths of the balance of the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the parties;
Upon examining the witnesses;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to Article 179 of the Treaty establishing the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses Application 36/62 as unfounded;**

2. **Orders the costs incurred by the defendant to be paid by that party. The balance of the costs shall be apportioned, and shall be borne as to four-fifths by the defendant and as one-fifth by the applicant.**

Delvaux Trabucchi Strauß

Delivered in open court in Luxembourg on 4 July 1963.

A. Van Houtte
Registrar

L. Delvaux
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL M. LAGRANGE DELIVERED ON 26 MARCH 1963[1]

Mr President,
Members of the Court,

I

This case has been given such extensive treatment in both the written and the oral procedures that I am prompted to limit my own account to the very minimum. This applies in particular to certain questions of fact on which you have all had an opportunity to form an opinion and I do not intend to discuss these matters in detail again. I should like above all to emphasize the legal aspects of the dispute.

Mr Alvis was employed under contract as a member of the auxiliary staff by the Secretary-General of the Councils from 6 November 1961 in connection with the Conference between the Member States of the European Communities and third countries which had applied for membership of those Communities. The contract was for an indefinite period terminable by one month's notice given at any time by either party. However, the first three months were considered as a 'trial period' after which the employment became 'definitive'.

The contract was terminated by a decision dated 8 August 1962, signed by the Director-General, in the form of a notice of dismissal taking effect from the following day and giving reasons which clearly showed it to be of a disciplinary nature. However, the decision ended with the following words: 'In accordance with the terms of your contract you will be allowed one month's notice' indicating that the equivalent of one month's salary would be paid to the applicant despite his immediate dismissal.

By an application dated 27 September 1962, Mr Alvis sought first the annulment of the decision taken on 8 August

1 — Translated from the French.