

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
15 May 1996

Case T-326/94

Konstantinos Dimitriadis
v
Court of Auditors of the European Communities

(Officials – Staff report – Damages and interest)

Full text in Greek II - 613

Application for: annulment of the applicant's staff report dated 13 July 1994 and compensation for the damage allegedly suffered.

Decision: Application dismissed.

Abstract of the Judgment

The applicant has been an official in Grade LA 6, step 3, at the Court of Justice since 1 February 1994. Previously, from 14 May 1990 to 31 January 1994, he was employed as a Greek-language translator in the Translation Service of the Court of Auditors.

The applicant's end-of-probationary-period report dated 22 June 1992 was co-signed by Mr K., head of the Greek-language section and Mr G., who was Head of the Language Service until 31 October 1993.

On 25 March 1993 the applicant wrote a note to the Head of the Language Service, Mr G., to inform him of the situation in the Greek section. In his note he challenged the professional competence of his direct hierarchical superior, Mr K., and accused him of failing to carry out almost any translation work himself and of giving his wife, who was also a translator in the same section, preferential treatment. He further contested his own initial classification in LA 7, step 1, and asked to be transferred to another Community institution. In reply to that note from the applicant, Mr K. wrote a note to Mr G. setting out the arrangements and reasons for the division of work between the Greek-language translators and proposing that the difference in the number of pages translated by each translator should be made up.

On 27 January 1994 the appointing authority formally requested the applicant to attend an interview in accordance with the first paragraph of Article 87 of the Staff Regulations of Officials and Other Servants of the European Communities. The applicant was alleged to have failed in his duty of loyalty to his direct hierarchical superior, Mr K., the allegation being supported by three cases where he had purportedly refused work. On 28 January 1994 the applicant sent the appointing authority a reply to that request to attend for interview.

Following two sets of disciplinary proceedings, the appointing authority concluded, first, that there was no need to take further measures, namely of a disciplinary nature, against Mr K., given the situation as a whole, and secondly that no disciplinary measure should be taken against the applicant, since two of the three cases of refusing to work had not been proved and the third case (of 25 November 1993) did not in itself justify the adoption of a disciplinary measure.

The applicant's initial staff report, for the period from 14 February 1992 to 31 December 1993, was drawn up on 18 February 1994 by the Head of the Court of Auditors' Language Service, Mr F., who only took up his functions on 1 November 1993. The staff report states that the assessor consulted Mr G., head of the Language Service until 31 October 1993, and Mr K., the applicant's hierarchical superior.

On 21 February 1994 the applicant sent to the appointing authority a note headed 'Complaint concerning Mr F.', in which he objected to the fact that Mr G. had been consulted when his staff report was being drawn up and accused Mr F. of having threatened to give him a bad report if he did not withdraw his claim against Mr K. The applicant also claimed damages of LFR 100 000 as compensation for non-material damage.

On 8 March 1994 Mr F. confirmed his initial marking, stating in the report as follows:

'I had a further conversation with Mr G. on the afternoon of 3 March 1994, during which I consulted him for the express purpose of drawing up Mr Dimitriadis's staff report. That conversation did not cause me to amend the assessment already made in the staff report.'

By a note of 28 March 1994 the applicant appealed against his staff report.

On 7 July 1994 the Joint Reports Committee concluded that there was no need to propose that the staff report be amended.

After a conversation with the assessor and with the official assessed, and having consulted the Joint Committee on Staff Reports, the appeal assessor confirmed the initial marking and transmitted the definitive staff report to the applicant under cover of a note dated 13 July 1994.

First plea in law: misuse of power

According to settled case-law, a decision is only vitiated by misuse of power if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (paragraph 40).

See: T-80/92 *Turner v Commission* [1993] ECR II-1465, para. 70

Second plea in law: infringement of essential procedural requirements

With regard the applicant's allegation that Mr F. did not consult Mr G. for the purpose of drawing up the applicant's staff report, the Court notes that when the witnesses were heard, at the applicant's request, both Mr F. and Mr G. confirmed under oath that they had discussed the applicant's case in the course of their conversations (paragraph 59).

With regard to the applicant's allegation that his staff report was drawn up by Mr K. alone, it must first be noted that the applicant bases that assertion solely on the fact that Mr F. allegedly did not consult Mr G. Since it has been established that Mr F. did in fact consult Mr G., that objection must be dismissed. The Court points out, furthermore, that Mr F. was bound, pursuant to Article 2 of the General Provisions for implementing Article 43 of the Staff Regulations, to consult Mr K., having regard to his status as the applicant's direct hierarchical superior (paragraph 64).

Lastly, the Court finds that since the applicant, who has confined himself to mere unsupported assertions, has not adduced any substantive evidence to establish that the interview which he had with the assessor on 3 March 1994 took place in circumstances such as to amount to a breach of an essential procedural requirement. On the contrary, following that interview, at which the applicant complained principally that Mr F. had not consulted Mr G., Mr F., the assessor, immediately contacted Mr G. again in order to re-examine the applicant's case (paragraph 65).

Third plea in law: lack of and inconsistency in the statement of reasons

Staff reports, which are not decisions within the meaning of Article 25 of the Staff Regulations, are governed by the specific provisions laid down in Article 43 thereof. The fresh decision by the Court of Auditors of 26 March 1992 adopting General Provisions for implementing Article 43 do not provide, contrary to the situation in the cases relied upon by the applicant, that there is a duty to explain any change in the analytical assessment as regards an official's previous staff report. Under Article 6 of the new general implementing provisions and point E.2.2.(b) of the Staff Reports Guide, an explanation is required only for the extreme marks of '1' and '5' (paragraph 82).

See: 122/75 *Küster v Parliament* [1976] ECR 1685, paras 24 and 25; 178/86 *Turner v Commission* [1987] ECR 5367; T-23/91 *Maurissen v Court of Auditors* [1992] ECR II-2377

At all events no automatic and absolute comparison can be made between the staff report at issue and the applicant's end-of-probationary-period report (paragraph 83).

First, those two reports have distinct functions, the end-of-probationary-period report being principally intended to evaluate the probationary official's fitness to carry out the work corresponding to his post and to be appointed an official, whereas the primary function of the staff report is to provide the administration with periodic information, which is as complete as possible, on the performance of their duties by officials (paragraph 84).

See: T-63/89 *Latham v Commission* [1991] ECR II-19, para. 27

Secondly, the two types of reports contain assessment headings and a marking system that are different. It is the necessary result of a change in the method of assessment, in particular by way of different headings and marking, that there can be no fixed correlation between the old and the new method of making the report. (paragraph 85).

See: T-40/89 *Turner v Commission* [1990] ECR II-55, para. 23

Fourth plea in law: manifest error of assessment

Value judgments relating to officials in staff reports are not subject to review by the Court except as regards any irregularities of form or manifest errors of fact vitiating the assessments made by the administration or any misuse of power (paragraph 104).

See: *Latham v Commission*, cited above

The concept of ‘having the confidence of his superiors’ referred to in the Staff Reports Guide as a factor in the assessment of the official’s ‘sense of responsibility’ refers not only to performance of his various tasks and the quality of his work, but also to the official’s attitude and conduct in general (paragraph 105).

Operative part:

The application is dismissed.