

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
13 December 1996

Case T-128/96

Giorgio Lebedef
v
Commission of the European Communities

(Officials – Refusal by the Commission to distribute through its internal messenger services communications to the staff from an independent trade union – Legal interest in bringing proceedings – Admissibility – Claim for damages – Subject-matter of the dispute – Summary of the pleas in law – Admissibility)

Full text in French II - 1679

Application for: first, annulment of the decision of the Head of the Unit within the Commission's Directorate-General for Personnel and Administration (DG IX) responsible for relations with official bodies representing the staff and with the trade unions and staff associations, refusing to arrange the distribution through the Commission's internal messenger services of communications from the independent trade union Action & Défense – Luxembourg (A & D – L) to the Commission's staff in Luxembourg and, second, compensation for the damage suffered.

Decision: Application inadmissible. No need for a ruling on the application for leave to intervene.

Abstract of the Order

The applicant, an official of the Commission assigned to the Statistical Office of the European Communities (Eurostat), Luxembourg, is the secretary general of the independent trade union Action & Défense – Luxembourg ('A & D – L').

A & D – L, formed on 7 June 1995, adopted its constitution and elected its first executive committee on 21 September 1995. It was subsequently refused the right to distribute its communications to staff members through the Commission's internal messenger services.

By communications of 18 and 19 October 1995, the applicant requested the Head of the unit responsible for relations with official bodies representing the staff and with the trade unions and staff associations ('the Trade Union and Staff Association Unit') within the Commission's Directorate-General for Personnel and Administration (DG IX) to explain the reasons for, and to withdraw, that refusal.

The Head of the Trade Union and Staff Association Unit replied to those two communications by letter of 26 October 1995. He explained that the decision refusing authorization for the distribution to staff members of information from A & D – L was based on Article 21 of the Agreement of 20 September 1974 on Relations between the Commission and the Trade Unions and Staff Association ('the framework agreement'), to which A & D – L was not a signatory.

On 20 December 1995 the applicant submitted a complaint under Article 90(2) of the Staff Regulations of officials of the European Communities ('the Staff Regulations') concerning the refusal by the Head of the Trade Union and Staff

Association Unit 'to arrange the distribution through the Commission's internal messenger services of communications from the independent trade union [A & D – L] to the Commission's staff in Luxembourg', the letter of 26 October 1995 referred to above and the question of compensation for the damage suffered.

By decision of 15 March 1996, the Member of the Commission responsible for personnel matters adopted the 'Practice rules concerning the publication of communications from trade unions and staff associations not signatories to the framework agreement and from representatives on registers of electors not submitted by trade unions or staff associations' ('the practice rules'). The relevant part of those rules provides: 'Trade unions and staff associations which are not signatories to the framework agreement with the Commission [...] are [authorized] to use the reproduction and messenger facilities of the Commission in order to inform the staff of their activities. Organizations complying with the principles set out in Chapter I.2(a) and (b) of the framework agreement are to be regarded as trade unions or staff associations within the meaning of these practice rules.'

The Head of the Trade Union and Staff Association Unit communicated the practice rules to the President of A & D – L by letter dated 15 March 1996. In that letter, he informed him of their implementation and stated: 'After a trial period of about two years (including the period of the next elections under the Staff Regulations), [the practice rules] may be reappraised with a view to their possible revision.'

The applicant's complaint was rejected by decision of 10 May 1996, which was notified to the applicant by letter of 14 May 1996. The decision stated that the practice rules had 'the effect of placing all trade unions and staff associations on an equal footing as regards the distribution through the intermediary of the Commission of communications concerning their respective activities' and that 'the solution arrived at fully answers the request submitted by the applicant'.

Admissibility of the claims

Where a party applies to the Court of First Instance under Article 114(1) of the Rules of Procedure for a decision on admissibility not going to the substance of the case, the Court may give its ruling, in accordance with Article 114(3), without organizing any oral procedure. Similarly, the Court may give its decision without any oral procedure where it examines, of its own motion, whether there exists any absolute bar to proceeding with the action, pursuant to Articles 113 and 114(3) and (4) of the Rules of Procedure. In the present case, the documents before the Court are such as to enable a decision to be given on the Commission's application concerning the admissibility of the claim for annulment without any oral procedure. They enable the Court, under the same conditions and of its own motion, to rule on the admissibility of the claim for compensation (paragraph 14).

The claim for annulment

The action must be construed as seeking annulment of the decision of the Head of the Trade Union and Staff Association Unit refusing to arrange the distribution through the Commission's internal messenger services of communications from A & D – L to the Commission's staff in Luxembourg, which was confirmed by the letter dated 26 October 1995 ('the contested decision') (paragraph 18).

An applicant's interest in bringing an action is to be appraised at the time when the action is brought (paragraph 19).

See: Case T-49/91 *Turner v Commission* [1992] ECR II-1855, para. 24

The contested decision was replaced by the decision adopting the practice rules taken by the Member of the Commission responsible for personnel matters on 15 March 1996, pursuant to which trade unions and staff associations which are not

signatories to the framework agreement, of which A & D – L is one, 'are [authorized] to use the reproduction and messenger facilities of the Commission in order to inform the staff of their activities'. The decision of 15 March 1996 is therefore equivalent to an annulment of the contested decision (paragraph 20).

Since the applicant's claim in this respect was already satisfied before the action was brought on 14 August 1996, he does not have a legitimate interest in seeking annulment of the contested decision. The fact that the practice rules may, after a trial period of about two years, be reappraised with a view to their possible revision is immaterial. Although that reappraisal could, in the long term, prompt the administration to adopt a fresh decision refusing to allow A & D – L to use the Commission's reproduction and messenger facilities in order to distribute its communications to staff members, if A & D – L has not in the meantime become a signatory to the framework agreement, that does not confer on the applicant a vested, present interest in bringing proceedings for annulment of the contested decision (paragraph 21).

In those circumstances, the claim for annulment must be declared inadmissible, without there being any need to rule on the other pleas of inadmissibility raised by the Commission (paragraph 22).

The claim for compensation

Under Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must state the subject-matter of the proceedings and a summary of the pleas in law on which it is based. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to give a ruling, if necessary without other supporting information. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible, the essential points of fact

and law on which it is based must be apparent from the text of the application itself, at the very least summarily, provided that the statement is coherent and comprehensible (paragraph 24).

See: Case T-387/94 *Asia Motor France and Others v Commission* [1996] ECR II-0000, para. 106

An application which is insufficiently precise must be declared inadmissible, since an infringement of Article 19 of the Statute of the Court of Justice and of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance constitutes an absolute bar to proceeding with a case, which the Court may consider at any time of its own motion in accordance with Article 113 of those Rules (paragraph 25).

See: Case T-64/89 *Automec v Commission* [1990] ECR II-367, paras 73 and 74

There is no need to rule on the application of Union Syndicale – Luxembourg for leave to intervene (paragraph 28)

Operative part:

The action is dismissed as inadmissible.

There is no need to give a ruling on the application for leave to intervene.

The applicant is ordered to bear all his own costs and to pay the costs of the Commission. The Union Syndicale – Luxembourg is ordered to bear its own costs.