

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
23 April 1996

Case T-113/95

Giuseppe Mancini
v
Commission of the European Communities

(Officials – Admissibility – Time-limit for submitting a complaint)

Full text in Italian II - 543

Application for: annulment of the decision by which the applicant was
relieved of his duties.

Decision: Dismissed.

Abstract of the Judgment

On 21 March 1994, at an interview with Mr W., Director of the Institute of Systems Engineering and Informatics (ISEI) at the Joint Research Centre (JRC) at Ispra, the applicant, an official in the scientific and technical services, who had himself in a

letter of 11 January 1994 specifically informed the Director of his intention to leave his post, was told he was relieved of his functions as ‘CEO Project Manager’.

On 24 March 1994 the applicant submitted a request within the meaning of Article 90(1) of the Staff Regulations of Officials of the European Communities for the purpose of obtaining confirmation as to whether the measure had been adopted and, if so, confirmation of the grounds and a summary of the facts on which it was based.

On 24 October 1994 the applicant submitted a complaint within the meaning of Article 90(2) of the Staff Regulations to which an express reply from the appointing authority was received only on 20 April 1995.

Admissibility

The time-limits laid down by Articles 90 and 91 of the Staff Regulations for submitting complaints and commencing actions are a matter of public policy and cannot be left to the discretion of the parties.

See: T-54/90 *Lacroix v Commission* [1991] ECR II-749, para. 24

According to settled case-law, only measures directly and immediately affecting the legal situation of the persons concerned may be regarded as adversely affecting them.

See: T-14/91 *Weyrich v Commission* [1991] ECR II-235, para. 35

The possibility that a legally actionable decision may take oral form is not in principle precluded either by a provision of general scope or by any special provision in the Staff Regulations. In particular, Article 90(2) of the Staff Regulations, which provides that officials may submit to the appointing authority a complaint against an act adversely affecting them, does not prevent such an act from being expressed orally. Furthermore, the possibility that an act may take oral form is not precluded by Article 25 of the Staff Regulations, which requires any decision relating to a specific individual to be communicated in writing at once to the official concerned. The communication is an act subsequent to the decision already adopted and having prior existence.

See: 316/82 and 40/83 *Kohler v Court of Auditors* [1984] ECR 641, paras 9 to 11; 125/80 *Arning v Commission* [1981] ECR 2539

In this case the applicant was relieved of his functions, following an interview on 21 March 1994, with immediate effect and without notice. Moreover, at that interview the applicant was informed by Mr W. that the Director General of the JRC, Mr C., had already given his agreement to the measure three days previously.

In those circumstances, although the absence of written communication in accordance with Article 25 of the Staff Regulations may have given rise to doubt as to whether the decision was well founded since, according to settled case-law, the obligation to state reasons set out in that article is intended specifically to enable the Community judicature to review the legality of the decision in question and the person concerned to ascertain whether it is well founded, nevertheless the applicant could not have been unaware of the direct and immediate effect of the measure on his legal situation, as indeed is clear from his request and complaint.

The decision notified by the Director of the ISEI at the interview on 21 March 1994 therefore constitutes an act adversely affecting the official within the meaning of Article 90(2) of the Staff Regulations.

It is apparent from the general scheme of Articles 90 and 91 of the Staff Regulations that where the competent authority has taken, with regard to an official, a decision which adversely affects him, that official may no longer open the pre-litigation procedure at the stage of a request, but must submit a complaint directly against the act adversely affecting him, as prescribed by Article 90(2).

See: *Weyrich v Commission*, cited above, para. 34

Hence the complaint lodged on 24 October 1994 is out of time.

Moreover, even if the applicant's letter of 24 March 1994 headed 'Request' within the meaning of Article 90(1) of the Staff Regulations was re-classified as a 'complaint' within the meaning of Article 90(2) of the Staff Regulations, the application lodged on 8 May 1995 would also be inadmissible because it was made well after the time-limit laid down in the second indent of Article 91(3) of the Staff Regulations.

Lastly, according to settled case-law, the fact that an institution replies to the substance of an administrative complaint submitted out of time does not have the effect of derogating from the system of mandatory time-limits laid down in Articles 90 and 91 of the Staff Regulations or of depriving the administration of its right at the stage of judicial proceedings to raise an objection of inadmissibility on the ground that the complaint was out of time.

See: *Weyrich v Commission*, cited above, para. 42

Pursuant to the first subparagraph of Article 87(3) of its Rules of Procedure, the Court of First Instance may, where the circumstances are exceptional, order that the costs be shared. In this case the application was mostly motivated by the desire to obtain from the appointing authority written communication of the decision. Despite the requirement laid down in Article 25 of the Staff Regulations the purpose of which, according to consistent case-law, is to enable it to be ascertained whether a decision is well founded and lawful, and despite reminders from the applicant, the appointing authority did not address to him any written communication whatsoever during the pre-litigation stage. Only after this application had been lodged did the applicant obtain a letter from the appointing authority.

Operative part:

The application is dismissed as inadmissible.

The Commission shall bear its own costs and two-thirds of the applicant's costs.