

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
1 June 1994

Case T-4/93

Christian André
v
Commission of the European Communities

(Officials – Rejection by general meeting of staff of a proposed amendment to the Rules of the local Staff Committee – Application for annulment)

Full text in French II - 471

Application for: the annulment of the ‘decision’ adopted by the extraordinary general meeting of Commission staff in Luxembourg on 31 March 1992 and not amending Article 5 of the Rules of the local Staff Committee and, subject to the requirements of legal certainty, for annulment of all measures taken in application of that ‘decision’.

Decision: Application dismissed.

Abstract of the Judgment

A proposal to revise Article 5 of the Rules of the Staff Committee was rejected by the extraordinary general meeting of Commission staff for failure to attain a two-thirds majority of the members present. The applicant lodged a complaint against that 'decision' not to amend the provision in question and brought the present action after the implied rejection of his complaint.

Admissibility

Claims for the annulment of the 'decision' of the general meeting of 31 March 1992 and of the implied decision to reject the applicant's complaint

Since the conditions of admissibility of an action are a matter of public policy, the Court of First Instance may, in accordance with Article 113 of its Rules of Procedure, consider of its own motion whether the action is for the annulment of a measure against which proceedings may be brought for the purposes of Article 91(1) of the Staff Regulations (paragraph 16).

See: 6/60 *Humblet v Belgium* [1960] ECR 559, p. 570; T-130/89 *B. v Commission* [1990] ECR II-761; T-29/93 *Calvo Alonso-Cortés v Commission* [1993] ECR II-1389, para. 40

That is not the case here because the proposal to amend Article 5, cited above, did not receive the approval of the required majority and the general meeting cannot therefore be deemed to have adopted a measure producing legal effects in relation to that provision (paragraphs 16, 18 and 19).

The Court also dismisses the claim for annulment of the implied decision rejecting the complaint as inadmissible, because such a decision, whether implied or express, does not on its own constitute a measure against which an action lies (paragraph 21).

See: 33/79 and 75/79 *Kuhner v Commission* [1980] ECR 1677, para. 9; T-14/91 *Weyrich v Commission* [1991] ECR II-235, para. 43

The claim for the annulment of the measures taken in application of the 'decision' of the general meeting on 31 March 1992

Since the applicant's complaint does not concern the measures taken in application of the 'decision' in question, the claim for the annulment of those measures is inadmissible as they were not the subject of a pre-litigation procedure in accordance with Article 90 of the Staff Regulations (paragraph 25).

Operative part:

The application is inadmissible.