

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
14 July 1998

Case T-42/97

Giorgio Lebedef
v
Commission of the European Communities

(Officials — Refusal to authorise ‘secondment on union duties’ to the person
designated by a trade union — Admissibility)

Full text in French II - 1071

Application for: first, annulment of a decision of the Commission of 12 May 1996 refusing to grant the applicant the ‘secondment on union duties’ requested by his trade union and to reconsider any ‘secondment on union duties’ granted in the past and, second, a declaration that the ‘secondment on union duties’ procedure is unlawful.

Decision: Application dismissed.

Abstract of the Judgment

Relations between the Commission and the trade unions and staff associations representing the staff (OSP) are governed by a framework agreement concluded on 20 September 1974 (framework agreement), which provides that the Commission is to grant those organisations a number of advantages.

Under the framework agreement the Commission may grant duly authorised union delegates the necessary time off work to allow them to pursue their union activities. This is commonly known as ‘secondment on union duties’.

The Commission restricts accession to the framework agreement to OSPs with at least one seat on the local staff committee. Before ‘secondment on union duties’ may be granted, however, the Commission, pursuant to a decision adopted in 1989 (1989 decision), requires that in addition to being a member of the framework agreement the OSP in question must have at least two seats on the central staff committee (CCP).

The applicant is one of the leaders of the union ‘Action & Défense – Luxembourg’. Following the November 1996 elections to the local staff committee of the Commission in Luxembourg, in which it obtained one seat, the union acceded to the framework agreement.

By letter of 12 January 1996 the applicant wrote to the administration requesting 'secondment on union duties' in his capacity as the person designated for that purpose by the executive committee of the union 'Action & Défense – Luxembourg' (A & D – L). He also requested that the administration reconsider all previous decisions granting 'secondment on union duties'. This request was the subject of an implied decision rejecting it. On 12 July 1996 the applicant submitted a complaint against the implied decision rejecting his request; this complaint was registered on 24 July 1996. By decision of 22 November 1996, which was notified to the applicant on 28 November 1996, the Commission expressly rejected his complaint.

Admissibility

The Court observes *in limine* that since the Commission expressly rejected the applicant's complaint in a decision which was notified to him on 28 November 1996, the application, which was lodged on 28 February 1997, was submitted within the three-month period prescribed in Article 91(3) of the Staff Regulations of Officials of the European Communities (Staff Regulations).

Concerning the failure to grant the applicant the authorisation requested, it should be observed that under Article 91 of the Staff Regulations acts adversely affecting an official can be challenged before the Court and that, according to an established line of decisions, it is acts affecting a given legal situation that constitute such acts. Since in the present case the applicant, who is one of the leaders of a union organisation, brought his action pursuant to that provision it is necessary to ascertain whether those conditions are met.

See: 193/87 and 194/87 *Maurissen and Others v Court of Auditors* [1989] ECR 1045, para. 13

It is apparent from the papers before the Court that the applicant was elected from his union's list to the local staff committee of the Commission in Luxembourg. It was following that election that, as shown in the documents joined to the file at the Court's request, the union, of which the applicant is one of the leaders, requested that he be granted 'secondment on union duties'. Pursuant to that decision the union requested the Commission, by letter of 12 January 1996 signed by the applicant in his capacity as secretary-general of the union A & D – L, that he be granted 'secondment'.

It follows from the foregoing that the applicant's action must be interpreted in the light of his position as an official and member of a union who has been nominated by the union for 'secondment on union duties'.

Although 'secondment on union duties' is an advantage granted to a trade union according to its election results, it confers on the official designated for secondment the right to engage in union business. Accordingly, a decision refusing to grant that advantage affects the official's own situation. Consequently, the decision adversely affects that official and confers on him an interest in applying for its annulment, and the principal claim, namely the annulment of the decision refusing the applicant 'secondment on union duties', is admissible.

See: *Maurissen and Others v Court of Auditors*, cited above, paras 19 and 20

The alternative claim, which, as the Commission rightly observes, is inconsistent with the basis of the principal application, must be considered as a whole. The second head of this claim, which seeks the annulment of all decisions relating to

‘secondment on union duties’, must be interpreted as a necessary consequence of the illegality of the procedure referred to in the first head of this claim (paragraph 23).

Concerning, first, the request that the Court declare the ‘secondment on union duties’ procedure illegal, the Court observes that even on the assumption that it may be construed as an application for annulment, the only act of the Commission to which the applicant refers in that regard is the 1989 decision. Having regard to the date on which that act was adopted, the time-limit for lodging an appeal, which is a matter of public policy and failure to comply with which may be raised by the Court of its own motion, expired long ago and the application is therefore out of time.

See: T-63/96 *Fichtner v Commission* [1997] ECR-SC II-563, para. 25

Next, in so far as these claims seek the annulment of the decision whereby the Commission refused to review its earlier decisions granting ‘secondment on union duties’, it must be emphasised that the only decisions to which the applicant referred in that regard at the complaint stage are dated 1992 and 1993. Since the time-limits prescribed in Articles 90 and 91 of the Staff Regulations are a matter of public policy and binding on the parties and the Court, any appeal against those decisions is out of time. An official cannot therefore by submitting to the appointing authority a request within the meaning of Article 90(1) of the Staff Regulations revive to his advantage a right of appeal against a decision which became final upon expiry of the abovementioned time-limits.

See: T-495/93 *Carrer and Others v Court of Justice* [1994] ECR-SC II-651, para. 20

Substance

The applicant puts forward two pleas in law, alleging a breach of Articles 24a, 25, 37, 38 and 39 of the Staff Regulations, the framework agreement and Convention No 151 of the International Labour Organisation (ILO) concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, which entered into force on 25 February 1981. By his first plea the applicant disputes the Commission decision impliedly refusing him 'secondment on union duties'. The second plea relates to the Commission's refusal to examine the legality and validity of 'secondment on union duties' granted in the past. Since the claim in support of which the second plea is put forward has been declared inadmissible, only the first plea falls to be examined as to its substance.

Article 24a of the Staff Regulations recognises the right of association and, in particular, the right of all officials to be members of trade unions. The relations between the Commission and the trade unions formed pursuant to Article 24a essentially follow the rules laid down in the framework agreement signed on 20 September 1974.

See: *Maurissen and Others v Court of Auditors*, cited above, para. 13

That agreement confers a number of advantages on the signatory trade unions. In order to enjoy these advantages the organisation concerned must meet certain conditions, which are justified by the cost which those advantages represent for the Commission. Thus the agreement fixes representativity thresholds which the organisations must reach in order to accede to the agreement, which the trade union of which the applicant is a leader was only able to do after the November 1996 elections.

Next, the Court observes that the framework agreement defers to subsequent decisions the determination of the conditions for granting some of the advantages in question. That is the case, in particular, of the possibility provided for in point 14 of granting time off work to delegates nominated by the unions, the detailed rules on which, as indicated in the second paragraph of that provision, are adopted by the Commission (paragraph 36).

It follows that, contrary to what the applicant claims, it is the framework agreement signed by his union which provides for the possibility of 'secondment on union duties' and requires the Commission to adopt the detailed rules for the grant of such secondment. Consequently, the applicant cannot claim that the fact that his organisation has signed the agreement is sufficient for him to be recognised as being entitled to 'secondment on union duties'. On the contrary, such a right exists only where the conditions laid down in the measures referred to in point 14 of the agreement are met by the applicant's trade union.

It is common ground that the 1989 decision regulates 'secondment on union duties' and sets a minimum representativity threshold of two seats on the CCP and that the applicant's organisation did not meet that condition. It follows that the applicant's union, which nominated him for 'secondment on union duties', did not meet the prescribed requirements and that, accordingly, the applicant cannot claim such secondment.

It follows from a consistent line of decisions that the Community institutions have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks.

See: 19/87 *Hecq v Commission* [1988] ECR 1681, para. 6; T-36/93 *Ojha v Commission* [1995] ECR-SC II-497, para. 81

The 1989 decision concerns the deployment of certain officials who, in their capacity as union delegates, are able, under the provisions of the Staff Regulations which recognise the right of participation, as under the framework agreement, to engage in union business. It was therefore adopted in the context of the discretion which case-law recognises that the institutions enjoy and, contrary to what the applicant suggests, having regard to the cost represented by granting secondment, the Commission is justified in setting conditions relating to representativity which the organisations in question must meet. The applicant cannot therefore call in question the legality of the 1989 decision.

The Court further considers that since 'secondment on union duties' is a consequence of the election results of each union, and therefore of their representativity, the applicant likewise cannot claim that the 1989 decision, in so far as it prescribes two seats on the CCP as a criterion of representativity, draws an unwarranted distinction between those organisations (paragraph 41).

Similarly, the lack of harmonisation in the electoral systems applicable in the various places of employment within the Commission results from Annex II to the Staff Regulations. The second paragraph of Article 1 of Annex II provides that the conditions for election to each local section of the staff committee are to be laid down by the general meeting of officials of the institution in service at the relevant place of employment, which means that different electoral systems can exist at each of those places. The applicant cannot therefore rely on the lack of harmonisation of the electoral systems, which is a direct consequence of Annex II to the Staff Regulations, to denounce as arbitrary the requirement that the union concerned must have won two seats on the CCP.

Operative part:

The application is dismissed.