

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
7 May 2003

Case T-23/01

Eugène Émile Marie Kimman
v
Commission of the European Communities

(Officials – Annual leave – Posting to a third country –
Plea of illegality)

Full text in French II - 649

Application for: annulment of the decision of 25 May 2000 by which the Commission reduced the applicant's annual leave for 2000 by one day.

Held: The decision of the Commission of 25 May 2000 is annulled in so far as it reduces the applicant's annual leave for 2000 by one day. The Commission is ordered to pay the costs.

Summary

1. Officials – Actions – Pleas in law – Misuse of powers – Definition

2. Officials – Leave – Annual leave – Officials posted outside the Community – Indirect reduction of annual leave by amendment, for the officials concerned, of the list of public holidays – Misuse of power – Illegality (Staff Regulations, Art. 57; Annex X, Art. 6; Rules establishing the list of public holidays of officials of the European Communities)

1. A misuse of powers is deemed to exist if it is proven that the institution, in adopting the contested act, was pursuing an objective other than that pursued by the rules in question or if it is apparent, on the basis of objective, relevant and consistent evidence, that the act in question was adopted for purposes other than those stated.

(see para. 40)

See: T-35/96 *Rasmussen v Commission* [1997] ECR-SC I-A-61 and II-187, para. 70

2. The days of leave to which an official is entitled on the one hand, and the public holidays determined by the institutions without creating an entitlement on the part of the official, on the other, are different in nature and are therefore not interchangeable. There is therefore no need, as a rule, to take account, for the purpose of determining public holidays, of the number of days' leave to which officials are entitled.

It follows that the Commission commits a misuse of power in using its discretion under Article 1(3) of the Rules establishing the list of public holidays of officials of the European Communities to amend that list, in respect of its staff, in order to eliminate a supposed imbalance in days of annual leave between officials posted in the territory of the Community, who receive 24 to 30 days' leave per year under Article 57 of the Staff Regulations, and those posted to a third country, who receive five calendar days for each month of service under Article 6 of Annex X to the Staff Regulations.

Article 6 of Annex X to the Staff Regulations confers on the officials concerned an entitlement which they cannot be denied, directly or indirectly, unless that provision has been amended according to the special procedure provided for that purpose.

(see paras 41, 43, 47, 49)