

from the obligation incumbent upon it to check that the time-limits laid down by the Staff Regulations have been complied with.

2. The express rejection of a request after an implied decision rejecting that same

request cannot enable the official concerned to continue the pre-litigation procedure by opening for him a new period for lodging a complaint, since that rejection is purely in the nature of a confirmatory measure.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
17 October 1991 *

In Case T-129/89,

Klaus Offermann, an official of the European Parliament, residing in Luxembourg, represented by Fernand Entringer, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 2 Rue du Palais de Justice,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and Peder Kyst, a Member of its Legal Service, acting as Agents, assisted by D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the President of the Parliament refusing to grant the applicant a discharge in respect of his duties as Assistant Accounting Officer and Administrator of Imprest Accounts and to pay him the credit balance on the guarantee account,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Third Chamber),

composed of: C. Yeraris, President of the Chamber, A. Saggio and B. Vesterdorf,
Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 20 March
1991,

gives the following

Judgment

Facts and Procedure

- 1 Between July 1980 and April 1982 Mr Offermann performed the duties of Assistant Accounting Officer and Administrator of Imprest Accounts in the European Parliament. During the same period Mr de Compte performed the duties of Accounting Officer for the Parliament.
- 2 In his capacity as Administrator of Imprest Accounts, Mr Offermann was responsible for managing the Members' Cash Office which was intended for the payment of various allowances and travel expenses of the Members of the Parliament.
- 3 In July 1981 the Court of Auditors undertook an examination of that office pursuant to Article 206a(4) of the EEC Treaty. Its first findings, which were communicated to the Parliament in October 1981 and April 1982, were very critical.
- 4 On 30 April 1982 Mr Offermann was transferred.

- 5 On 6 July 1982 the Court of Auditors adopted a special report on the Members' Cash Office of the Parliament (Official Journal 1982 C 202, p. 1) in which it found serious infringements of the Financial Regulation of 21 December 1977 applicable to the General Budget of the European Communities (Official Journal 1977 L 356, p. 1, hereinafter referred to as 'the Financial Regulation') and requested the Parliament to take the necessary measures to clear the irregular transactions, recover the sums due and establish any responsibility on the part of the Accounting Officer, the Administrator of Imprest Accounts and the Financial Controller.
- 6 On 30 September 1982 the President of the Parliament, in his capacity as appointing authority, initiated disciplinary proceedings against Mr Offermann by forwarding to the Disciplinary Board a report on the complaints relating to the management of the Members' Cash Office.
- 7 On 13 October 1983 the Disciplinary Board issued a reasoned opinion in which it concluded that no disciplinary sanction should be imposed on Mr Offermann.
- 8 In a letter dated 18 November 1983 the President of the Parliament informed the applicant that although he had found that the applicant had failed to fulfil the obligations which he had in his capacity as assistant accounting officer and administrator of imprest accounts, he had reached the conclusion that no disciplinary measure should be taken against him.
- 9 By letter dated 19 December 1984 the applicant submitted two requests to the President of the Parliament under Article 90(1) of the Staff Regulations of Officials of the European Communities seeking compensation for the damage which he considered he had suffered as a result of the disciplinary proceedings initiated against him and claiming payment of the credit balance on the guarantee account which had been opened by the Parliament in his name pursuant to the provisions of Article 70(3) of the Financial Regulation.

- 10 In his reply of 8 May 1985 the President of the Parliament rejected the two requests as inadmissible. As regards the first, he considered that the appointing authority could not be held liable for any damage suffered in connection with the bringing of disciplinary proceedings, the legality of which had not been challenged within the time-limits laid down. The President considered the second request premature since a number of conditions laid down by the Financial Regulation and its measures of implementation were not satisfied, namely the Parliament had to decide whether the accounting officers should be discharged in respect of 1982 and the accounting officer and financial controller should first give favourable opinions.

- 11 By letter dated 12 July 1985 the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the President of the Parliament's decision of 8 May 1985 rejecting his requests.

- 12 By letter dated 24 July 1985 the President of the Parliament forwarded to the Court of Auditors a request drafted by the Committee on Budgetary Control of the Parliament for a fresh opinion on the most appropriate means of clearing the deficit found in the members' cash office for 1982.

- 13 By decision of 3 October 1985 the President of the Parliament rejected the applicant's complaint on the ground that neither the request contained in the letter of 19 December 1984 nor the complaint of 12 July 1985 was admissible since they had both been lodged outside the time-limit laid down in Article 90 of the Staff Regulations.

- 14 On 7 November 1985 the Court of Auditors gave its opinion that the accounting officer and administrator of imprest accounts were liable under Article 70 of the Financial Regulation.

- 15 By decision of 11 July 1986 the Parliament granted a discharge to its President for the 1982 financial year and authorized him to grant discharge to its accounting officers for the same period 'excluding therefrom the sum of ECU 91 263 and the matters relating thereto described in the letter from the President of the Court of Auditors dated 7 November 1985 and the accompanying advice of the Court of Auditors'. It further instructed its President to take appropriate action to resolve the outstanding matters (Official Journal 1986 C 227, p. 154).
- 16 By letter dated 5 August 1988, received on 10 August 1988, the applicant made two further requests to the President of the Parliament seeking his discharge as assistant accounting officer and administrator of imprest accounts for the period to 30 April 1982 and the payment to him of the credit balance on the guarantee account opened in his name. The applicant cited, among other reasons justifying his claims, the fact that the Parliament by its decision of 11 July 1986 had authorized the President to grant a discharge to the accounting officers for the 1982 financial year.
- 17 In his reply of 10 December 1988 the President of the Parliament rejected those requests on the main ground that the aforementioned decision of the Parliament had not authorized him to discharge the accounting officers in respect of certain matters.
- 18 By letter dated 17 March 1989 the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the President's refusal.
- 19 By decision of 4 July 1989 the President of the Parliament rejected the applicant's complaint on the ground that it contained no new factors.
- 20 In those circumstances, by application lodged at the Court Registry on 9 August 1989, Mr Offermann claimed the annulment of the decision of the President of the Parliament of 4 July 1989.

- 21 By order of 15 November 1989 the Court of Justice referred the case to the Court of First Instance pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.
- 22 The written procedure, which took place partly before the Court of Justice and partly before the Court of First Instance, followed a normal course.
- 23 Upon hearing the Report of the Judge-Rapporteur the Court of First Instance (Third Chamber) decided to open the oral procedure and at the same time requested the Parliament to produce a document and to provide certain particulars which it considered relevant for the resolution of the case.
- 24 On 15 February 1991 the Parliament lodged the document requested and its reply to the written questions of the Court of First Instance.
- 25 The hearing took place on 20 March 1991. At the hearing the defendant's representative lodged an additional document at the request of the Court of First Instance. The parties' representatives were heard and replied to the questions put by the Court.

Forms of order sought by the parties

- 26 The applicant claims that the Court of First Instance should:
- (i) declare the application formally admissible and well founded;

- (ii) amend or annul the contested decision;
- (iii) declare that the decision to be taken constitutes a discharge of the applicant as regards the duties which he performed as assistant accounting officer until 30 April 1982;
- (iv) in consequence order that the special allowance due to the applicant should be paid to him without delay;
- (v) order the European Parliament to pay the costs;
- (vi) reserve his rights.

27 The defendant contends that the Court of First Instance should:

- (i) declare the application inadmissible in so far as it seeks to claim the refund of the credit balance on the guarantee account pursuant to Article 90 of the measures of implementation of the Financial Regulation;
- (ii) dismiss the remainder of the applicant's action as unfounded;
- (iii) order the applicant to pay the costs in accordance with Article 70 of the Rules of Procedure of the Court of Justice.

Admissibility

28 In its defence the defendant raised an objection of inadmissibility regarding that part of the action in which the payment of the credit balance on the guarantee account was sought. In support of that objection it claimed that on 12 July 1985 the applicant had already lodged a complaint with the same object as the present

proceedings, namely the refusal of the President of the Parliament to pay him the said credit balance on the ground that the Parliament's accounting officer had not been discharged in respect of the financial year in question and that that complaint had been rejected by decision of 3 October 1985. Citing the judgment of the Court of Justice in Case 17/71 *Tondonati v Commission* [1971] ECR 1062, it maintains that, by lodging an administrative complaint with the same object as a measure which has become unchallengeable and by bringing an action before the Community Court against the rejection of that complaint, an official cannot re-open a period which he has allowed to expire.

- 29 The applicant seeks to rebut the defendant's argument by claiming that the discharge given by the Parliament to its President on 11 July 1986, that is to say almost nine months after the decision refusing his first complaint, constitutes a new fact justifying the bringing of the present proceedings. He observes, furthermore, that the Parliament raised that objection for the first time during the judicial proceedings. If it were to be regarded as well founded the appointing authority would have misled him as to his legal position and hence the Parliament would have in any event to be ordered to pay the costs.
- 30 Before ruling on that objection of partial inadmissibility raised by the defendant the Court should consider of its own motion, pursuant to Article 92(2) of the Rules of Procedure of the Court of Justice which at the date of the hearing were applicable *mutatis mutandis* to proceedings before the Court of First Instance, whether the action as a whole was brought within the time-limit laid down by the Staff Regulations.
- 31 Under Article 90(1) of the Staff Regulations any official may request the appointing authority to take a decision relating to him. Nevertheless the Court has consistently held that that right does not allow an official to circumvent the procedure and time-limits laid down in Articles 90 and 91 of the Staff Regulations for the lodging of a request, a complaint and an appeal. Those time-limits are a matter of public policy since they were laid down with a view to ensuring clarity and legal certainty and the parties are absolutely bound by them (see in particular the judgments of the Court of Justice in Case 232/85 *Becker v Commission* [1986]

ECR 3401 and Case 161/87 *Muysers and Tülp v Court of Auditors* [1988] ECR 3037 together with the judgment of the Court of First Instance in Case T-58/89 *Williams v Court of Auditors* [1991] ECR II-77 and the order of the Court of First Instance in Case T-14/91 *Weyrich v Commission* [1991] ECR II-235).

32 Furthermore the last indent of Article 91(3) of the Staff Regulations, which reads 'where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh', cannot apply at the stage of the request and before the complaint is lodged. That specific provision, which relates to the rules for calculating periods for filing appeals, must be interpreted literally and strictly. It follows that the express rejection of a request after an implied decision rejecting that same request cannot enable the official concerned to continue the pre-litigation procedure by opening for him a new period for lodging a complaint, as that decision is in the nature of a purely confirmatory measure (see the order of the Court of First Instance in Case T-38/91 *Coussios v Commission* [1991] ECR II-763).

33 In the present case, having regard to the provisions of Article 90(1) and the last indent of Article 91(3) of the Staff Regulations considered above, it is clear that by reason of the silence maintained by the President of the Parliament the request of 5 August 1988 received on 10 August 1988 was rejected by implied decision on 10 August 1988. Under Article 90(2) of the Staff Regulations the applicant then had three months in which to lodge a complaint against that implied decision of rejection. It is also common ground that there was no complaint lodged by the applicant before 10 March 1989, when that period expired. The express rejection of the request of 5 August 1988 by the reply from the President of the Parliament of 20 December 1988, which was purely confirmatory of the previous implied decision of rejection, did not re-open the time-limits of the pre-litigation procedure for the benefit of the applicant. It follows that the applicant's complaint of 17 March 1989, which was directed against that confirmatory measure and lodged more than three months after the implied rejection of the request, cannot constitute a due prior complaint to the appointing authority enabling the pre-litigation procedure prior to these proceedings to be continued.

- 34 Furthermore, the fact that the defendant did not point out that the complaint was out of time during the pre-litigation stage cannot, as the applicant wrongly maintains, deprive the administration of the right to raise an objection of inadmissibility at the stage of the Court proceedings, still less exempt the Court from the obligation incumbent upon it to check that the time-limits laid down by the Staff Regulations have been complied with (see also the judgments of the Court of First Instance in Case T-130/89 *B v Commission* [1990] ECR II-761; Case T-6/90 *Petrilli v Commission* [1990] ECR II-765; Case T-19/90 *Von Hoessle v Court of Auditors* [1991] ECR II-615 and Case T-54/90 *Lacroix v Commission* [1991] ECR II-749).
- 35 It follows from the above, and without its being necessary to consider the objection of partial inadmissibility raised by the Parliament, that the whole of the action must be dismissed as inadmissible.

Costs

- 36 Under Article 69(2) of the Rules of Procedure of the Court of Justice the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. However, Article 70 of those Rules provides that, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the application;
2. Orders the parties to bear their own costs.

Yeraris

Saggio

Vesterdorf

Delivered in open court in Luxembourg on 17 October 1991.

H. Jung
Registrar

B. Vesterdorf
President