JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
7 March 1996

Case T-146/94

Calvin Williams
v
Court of Auditors of the European Communities

(Officials – Obligations – Acts incompatible with the dignity of the public service – Duty of loyalty – Disciplinary proceedings – Removal from post)

Application for: the annulment of the decision of the Court of Auditors of 24 June 1993 removing the applicant from his post without reduction of or withdrawal of entitlement to retirement pension.

Decision: Dismissal.

Abstract of the Judgment

As part of his campaign for election to the Staff Committee of the Court of Auditors, the applicant distributed in the premises of the Court of Auditors two documents which were considered defamatory, as a result of which he was suspended from office and subjected to the disciplinary proceedings provided for in Annex IX to the Staff Regulations applicable to officials of the European Communities (Staff Regulations). When the matter was referred to the Disciplinary Board, it stated its opinion that the disciplinary measure provided for in Article 86(2)(f) of the Staff Regulations should be applied. On 24 June 1993 the appointing authority took its decision as to the disciplinary measure to be imposed on the applicant, namely, in view of the seriousness of the breaches of duty with which he was charged and of both the aggravating and the mitigating circumstances cited, removal from his post without reduction of or withdrawal of his entitlement to a retirement pension. In that decision the appointing authority found that the applicant was the author of the two documents containing insulting and defamatory remarks and attacking the honour of the Members and certain servants of the Court of Auditors and the Members of other institutions, and that those documents were published in that they were addressed to persons outside the Court of Auditors and were distributed in the cafeteria and the restaurant, where people from outside the institution were able to see them. Moreover the appointing authority considered that the two documents distributed by the applicant represented a breach of both the first paragraph of Article 12 of the Staff Regulations, in that they reflected on the office of Principal Administrator, the position which he held, and the first paragraph of Article 21 of the Staff Regulations, as the remarks made constituted, by their very nature, a breach of the duty of loyalty incumbent on all officials towards the institution for which they work and their superiors.

On 23 September 1993, having been notified of that decision, the applicant lodged at the general secretariat of the Court of Auditors a document entitled 'Complaint pursuant to Article 90(2) of the Staff Regulations' which referred to a document attached to it containing the same pleas, complaints and arguments as those contained and developed in the application he made to the Court of First Instance. On the same day the applicant lodged an application at the Court of First Instance, registered as Case T-522/93 and served on the Court of Auditors on 27 September. On 24 September 1993, the Secretary General acknowledged receipt of the

complaint lodged at the Court of Auditors on 23 September 1993 and pointed out that the document referred to was not attached. By order of 16 December 1993, the Court dismissed the application in Case T-522/93 as inadmissible on the grounds that it had been made prematurely. On 24 January 1994, the Court of Auditors ruled on the complaint lodged by the applicant on 23 September 1993, dismissing it as inadmissible and, in any event, as unfounded.

The applicant then brought the present action and, at the same time, submitted an application for interim relief which was dismissed by order of the President of the Court in Case T-146/94 R *Williams* v *Court of Auditors* [1994] ECR-SC II-571.

Admissibility

As the purpose of the pre-litigation procedure is to promote the amicable settlement of a dispute which is based on a complaint, the appointing authority must be in a position to know in sufficient detail the arguments the official is relying on against an administrative decision. Accordingly, the complaint must contain an outline of the pleas and arguments relied on against the administrative decision which it contests (paragraph 44).

See: 133/88 *Del Amo Martínez* v *Parliament* [1989] ECR 689, para. 9; T-32/89 and T-39/89 *Marcopoulos* v *Court of Justice* [1990] ECR II-281, para. 28

The complaint did not contain an outline of any plea or argument. It comprised two pages, the first of which bore two stamps recording receipt of the document; on the second page reference was made to an attached document containing all the pleas, complaints and arguments to be developed in the application which the applicant declared his intention to lodge at the Court of First Instance that day. Accordingly, the detailed arguments were to be found, not in the complaint itself, but in another

document, which, the applicant alleged, was attached to his complaint. This is denied by the defendant (paragraphs 45 and 46).

It is not the task of the person responsible for receiving administrative documents on behalf of an institution to check whether reference is made to any attached document and whether that document is actually attached to the first document. The stamps are merely evidence that a document was lodged on the date shown, but they have no probative value as to the number of pages of that document. If the administration realizes, on receipt of a document, that a document referred to in it is not attached, it is bound to inform the signatory of this and ask him to supply the missing document within a short period of time. That requirement cannot be regarded as constituting a breach of the principle that time-limits are a matter of public policy and are not at the discretion of the parties or of the Court. Legal certainty, which is the justification for requiring that time-limits be observed, is not compromised if the complaint was lodged within the period prescribed (paragraphs 47 and 48).

The Court points out that the defendant was served by the Court Registry with the application lodged by the applicant which contained all the pleas and arguments relied on against the decision in issue. Accordingly, two days after the expiry of the time-limit the defendant was able to acquaint itself with the applicant's arguments and thus to define its position on the subject (paragraph 49).

Since the defendant was in a position to have precise knowledge of the applicant's arguments, and in its decision rejecting the complaint it rejected it as unfounded and since, having considered them, it replied in detail to the same pleas and arguments as those put forward in the application, it follows that the plea of inadmissibility

raised by the defendant is unfounded and that the application must be declared admissible (paragraphs 50 to 52).

Substance

The application for annulment

The plea alleging infringement of the first paragraph of Article 12 of the Staff Regulations

– Does the applicant's conduct reflect on his position?

The first paragraph of Article 12 of the Staff Regulations is intended to ensure that Community officials, in their conduct, present a dignified image which is in keeping with the particularly correct and respectable behaviour one is entitled to expect from members of an international civil service. Accordingly, the content of the concept of conduct reflecting on an official's position, which cannot depend on the subjective view the official concerned takes of the tasks entrusted to him within a Community institution, must be analysed by reference to that criterion. The Court points out that insulting remarks do reflect on an official's position (paragraphs 64 to 66).

See: T-146/89 *Williams* v *Court of Auditors* [1991] ECR II-1293, paras 76 and 80

As the two documents in issue contain statements which are insulting and prejudicial to the honour of Members of the Court of Auditors and those of other institutions and also to that of officials and other servants, they must be regarded as expressions of opinions which reflect on the applicant's position (paragraph 67).

The respect which, as a member of the staff of an institution, an official owes to his position is not confined to the particular time at which he carries out a specific task, but is due from him under all circumstances and, in particular, during an election to the Staff Committee, since his position as an official is, specifically, a condition for his being a candidate (paragraph 68).

The Court points out that where an official considers that certain of the measures adopted by an institution were taken in breach of provisions of the Treaties, he is free to have recourse to all the legal remedies available to him or take appropriate action, but in doing so he must comply with the principles laid down in the Staff Regulations, that is to say he must observe, in both his written and oral utterances, the obligation of reserve and moderation incumbent on all officials (paragraph 69).

See: *Williams* v *Court of Auditors*, above, para. 80

The Court is of the view that the decision in issue correctly considered that the documents in question reflected on the applicant's position and that, accordingly, that complaint must be rejected (paragraphs 70 and 71).

– The public nature of the opinions expressed

A limited distribution within an institution of notes which reflect on an official's position, even as part of an administrative procedure, meets the condition of public expression of opinion required by the first paragraph of Article 12 of the Staff Regulations for there to be an infringement of that article. In that respect, the Court considers that not only is the negative image which an official presents outside the institution to which he belongs likely to reflect on his position but so too is his conduct within the institution, where it is particularly important that he behave in

a dignified and respectful way towards that institution and all those working there (paragraphs 79 and 80).

See: *Williams* v *Court of Auditors*, above, para. 76

The two documents in issue were made public both internally and externally. On the question of external publicity, the applicant himself admitted that the distribution of the two documents in the restaurant of the institution brought them to the attention of outsiders and that he had sent copies to persons outside the institution. Moreover, it is common knowledge that the restaurants of the Community institutions are used by officials of the various institutions and by members of their families (paragraphs 81 and 82).

The Court considers that the defendant was right in taking the view that the documents in question had been published internally and externally and that the applicant's complaint accordingly had to be rejected. Similarly, the defendant rightly considered that the documents and their distribution constituted an infringement of the first paragraph of Article 12 of the Staff Regulations. Accordingly, that plea must be rejected (paragraphs 83 to 86).

The plea alleging breach of the first paragraph of Article 21 of the Staff Regulations

The first paragraph of Article 21 of the Staff Regulations lays down a duty of loyalty and cooperation for all officials in respect of the institution to which they belong and their superiors. This duty of loyalty and cooperation entails not only positive obligations but also, *a fortiori*, a negative obligation, in general terms, to refrain from conduct likely to prejudice the dignity and respect due to the institution and its authorities (paragraphs 96 and 97).

See: 3/66 *Alfieri* v *Parliament* [1966] ECR 437 at p. 448; *Williams* v *Court of Auditors*, above, para. 72

The remarks made by the applicant in his two documents, which were held to be insulting and defamatory, constitute, by their very nature, a serious breach of the duty of loyalty and cooperation incumbent on all officials towards the institution to which they belong and their superiors. The insulting and defamatory statements made by the applicant in the documents in issue refer almost exclusively to the way in which the Court of Auditors performs its task of auditing accounts within the institutional framework of the Community. Thus, the scope of the duty of loyalty and cooperation incumbent on the applicant with regard to the institution to which he belongs and his superiors must be assessed in the light of the fact that, as an official, he participates in the performance of the task of auditing accounts which is entrusted to the institution to which he belongs. The fact that the remarks in issue were made in a campaign for election to the Staff Committee of the Court of Auditors is irrelevant in that respect. Observance of that duty of loyalty and cooperation is required not only in the performance of the specific tasks entrusted to an official, but extends to the whole relationship between the official and the institution. An electoral campaign concerning a body set up under the Staff Regulations falls within the sphere of relations between an official and his institution, and the obligation set out in the first paragraph of Article 21 of the Staff Regulations cannot be disregarded in that context (paragraphs 98 to 100).

See: *Williams* v *Court of Auditors*, above, para. 72

As to the right of an official to express his opinions freely, it need only be observed that under no circumstances can that right be exercised by means of defamatory or insulting statements (paragraph 101).

The defendant correctly described the distribution of the two documents as constituting an infringement of the first paragraph of Article 21 of the Staff Regulations. That plea must therefore be rejected (paragraphs 102 and 103).

The plea alleging breach of the principle of proportionality and the failure to state relevant reasons

– The scope of the plea

The choice of the appropriate disciplinary measure is at the discretion of the appointing authority, once the facts alleged in support of the charge against the official have been established, and the Community judicature cannot censure the appointing authority's choice of disciplinary measure unless the penalty imposed is disproportionate to the facts found against the official (paragraph 106).

See: 13/69 *Van Eick* v *Commission* [1970] ECR 3, paras 24 and 25; 46/72 *De Greef* v *Commission* [1973] ECR 543, paras 44 to 46; 228/83 *F.* v *Commission* [1985] ECR 275, para. 34; 175/86 and 209/86 *M.* v *Council* [1988] ECR 1891, para. 9; *Williams* v *Court of Auditors*, above, para. 83

The determination of the disciplinary measure to be imposed is based on a comprehensive appraisal by the appointing authority of all the particular facts and circumstances in each individual case, since Articles 86 to 89 of the Staff Regulations do not specify any fixed relationship between the various kinds of breach of duty by officials and do not specify the extent to which the existence of aggravating or mitigating circumstances is to affect the choice of disciplinary measure. The Court's role is therefore limited to considering whether the weight given to aggravating and mitigating circumstances by the appointing authority was proportionate, bearing in mind that, in so doing, the Court cannot assume the role of the appointing authority as regards that authority's value judgments on this matter (paragraphs 107 and 108).

See: 403/85 *F.* v *Commission* [1987] ECR 645, para. 26; *Williams* v *Court of Auditors*, above, para. 83

– The first aggravating circumstance

The Court cannot accept the first argument put forward by the applicant to the effect that the language he used was intemperate and ill-considered because of his psychological problems. The Court takes the view that the statements made by the applicant several months after the drafting of the documents in question cannot but confirm the appointing authority's view that the language used was deliberate and carefully considered (paragraph 116).

Nor can the Court accept the applicant's second argument that the remarks made in an election campaign are liable to involve some intemperate language. The Court has held (see paragraph 67) that the documents in issue contained insulting and defamatory remarks and that nothing can justify the use of that kind of language, even in an election campaign. Secondly, and purely for the sake of completeness, it should be pointed out that the insulting and defamatory statements by the applicant in the documents in issue refer almost exclusively to the way in which the Court of Auditors performs its task of auditing accounts in the institutional framework of the Community and that that task, which is described in Articles 188a and 188c of the EC Treaty, does not in any sense fall within the terms of reference of the Staff Committee to which the applicant wished to be elected. The terms of reference of the Staff Committee, as set out in Article 9 of the Staff Regulations, concern exclusively the internal operation of an institution and participation in staff management. There was therefore no connection between the work of the body to which the applicant wished to be elected and the content of the texts he had written. Accordingly, the statements contained in them cannot be regarded as possibly justifiable because made in the context of an election campaign, since they had absolutely no connection with the work of the body to which the applicant wished to be elected (paragraph 117).

Furthermore, the opinion of the Disciplinary Board of 10 July 1992 was that the fact that the insulting and defamatory remarks were made in writing was an aggravating circumstance. Accordingly the applicant's complaint must be rejected (paragraphs 118 and 119).

– The second aggravating circumstance

The applicant's argument has no factual basis. It has been found (see paragraph 81) that the leaflets were distributed internally and externally and that the applicant himself acknowledged that the distribution of the documents in the restaurant and cafeteria had brought them to the attention of persons not belonging to the Court of Auditors and that he had sent copies to persons outside the institution. Moreover, in the Disciplinary Board's opinion of 10 July 1992 the distribution of the documents in issue in the restaurant and cafeteria of the Court of Auditors at a time when persons from outside the institution were present was held to constitute an aggravating circumstance. Accordingly, the complaint must be rejected (paragraphs 123 to 125).

– The third aggravating circumstance

The aggravating circumstance under consideration is not the fact that the applicant's actions were inappropriate but the fact that he reoffended, that is to say he had recourse to actions comparable to those for which disciplinary measures had already been applied to him in the past. In that connection, the Court of Justice has held that, notwithstanding the gravity of the charges made, the administration is justified in imposing only a mild penalty, taking into account circumstances independent of the complaints made, such as the absence of any previous disciplinary measure. Conversely, it may be inferred from that decision that the appointing authority is entitled to take into account as an aggravating circumstance the fact that a disciplinary measure was imposed previously (paragraph 128).

See: 27/64 and 30/64 *Fonzi* v *Commission of the EAEC* [1965] ECR 481 at p. 501

The documents before the Court show that the applicant had already been the subject of two disciplinary measures on account of matters similar to those in point in the present case, that is to say, a note lacking the most elementary courtesy towards a superior and documents the terms of which had been held to be insulting and defamatory with regard to the Court of Auditors, its Members and servants. The latter decision was the subject of an action which the applicant brought before the Court and which resulted in the judgment of 26 November 1991 in *Williams* v *Court of Auditors*, cited above. That judgment upheld in its entirety the disciplinary measure imposed on the applicant. The fact that the events which gave rise to the present dispute took place during an election campaign, whereas in the previous disciplinary proceedings the facts alleged against the applicant fell within a different context, is not such as to invalidate the appointing authority's finding that the applicant's behaviour was recidivist in nature. Moreover, the notes which gave rise to the disciplinary measure which was the subject of the judgment of 26 November 1991 in *Williams* v *Court of Auditors*, cited above, and the leaflets which gave rise to the applicant's removal from his post by way of a disciplinary measure, were held to contain insulting and defamatory statements about Members of the Court of Auditors (paragraphs 129 to 131).

Finally, it should be pointed out that in the opinion of the Disciplinary Board of 10 July 1992 it was considered that the existence of previous disciplinary measures for documents held to be discourteous, calumnious or defamatory constituted an aggravating circumstance. The Court therefore considers that the defendant was entitled to take into account as an aggravating circumstance the fact that the applicant had already been the subject of two disciplinary measures for activities similar to those in this case. Accordingly, the applicant's complaint must be rejected (paragraphs 132 to 134).

In the light of all the foregoing considerations the Court finds that there is nothing which could justify the conclusion that the disciplinary measure imposed was disproportionate to the conduct complained of and to the aggravating circumstances rightly found to exist by the appointing authority. It also follows that the contested decision contains an appropriate statement of reasons in that it clearly sets out the facts alleged against the applicant and the factors which led the appointing authority

to have recourse to the penalty of removal from his post. Accordingly, the plea must be rejected and the application for annulment must be dismissed as unfounded (paragraphs 135 to 138).

The other claims

As to the applicant's claim for full reinstatement in office, the Court points out that the Community judicature cannot, without encroaching on the rights and powers of the administrative authorities, issue directions to a Community institution. Accordingly, that claim must be dismissed as inadmissible (paragraph 139).

See: T-15/91 *Bollendorff* v *Parliament* [1992] ECR II-1679, para. 57

Since the application for annulment is unfounded, the other claims made in the event of annulment of the decision to remove the applicant from his post no longer have any purpose. Accordingly, the application must be dismissed in its entirety (paragraphs 140 and 141).

Operative part:

The application is dismissed.