

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
22 November 1990 *

In Case T-162/89,

Michèle Mommer, a former member of the auxiliary staff of the European Parliament, residing in Brussels, represented by Christian Georges, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Victor Elvinger, 4 rue Tony Neuman,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, assisted by Hugo Vandenberghe, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for payment of arrears of emoluments and mission expenses,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

composed of: R. Schintgen, President of Chamber, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 4 October 1990,

gives the following

* Language of the case: French.

Judgment

The facts giving rise to the application

- 1 The applicant, who has a degree in journalism and 15 years' work experience, was employed at the European Parliament (hereinafter referred to as 'Parliament') in Brussels as a member of the auxiliary staff working for the group of the European People's Party (hereinafter referred to as 'the EPP Group') as follows:
 - (i) 26 October 1987 to 30 April 1988: contract at the expense of the General Secretariat for the replacement of an absent staff member;
 - (ii) 1 May to 9 July 1988 and 25 July 1988 to 30 April 1989: contract at the expense of the Group for the provision of supplementary staff;
 - (iii) 1 May to 30 June 1989: contract at the expense of the General Secretariat for the replacement of an absent staff member.
- 2 The contract of employment concluded between the applicant and Mr A. Baldanza, acting in his capacity as Director *ad personam* in the Personnel Division of the Parliament, stipulated, *inter alia*, that the applicant's basic monthly salary would be BFR 73 648, which corresponded to her being graded in Category C, Group VI, class 2.
- 3 The applicant alleges that, in order to make up the discrepancy between, on the one hand, her qualifications, which were those for classification in a Category A post, and the level of responsibility required for the tasks which she had to perform and, on the other hand, her salary, the President of the EPP Group and the applicant had agreed that a monthly emolument of BFR 25 000 would be paid to her on top of her monthly salary.
- 4 On 14 February 1989, the applicant sent to the EPP Group a bill for emoluments in the amount of BFR 230 000, from which BFR 173 000 by way of advances had to be deducted.

- 5 By letter dated 2 June 1989, the Secretary-General of the EPP Group replied that, apart from the auxiliary contract which had been offered to the applicant, the Group had at no time assumed any other commitments towards her and that it consequently regarded the bill for emoluments sent by the applicant as having no effect.

- 6 By letter dated 14 June 1989, the applicant submitted a complaint within the meaning of Article 90(2) of the Staff Regulations against that decision to the Personnel Division of the Parliament. In that letter, she stated that the BFR 230 000 in emoluments which she had claimed in the bill of 14 February 1989 represented the salary adjustment which had been agreed between herself and the EPP Group and was to be charged against the budget for the Group's centralized information campaign.

- 7 No reply was received to that letter.

Procedure

- 8 Those are the circumstances in which the applicant, by way of an application lodged at the Registry of the Court of First Instance on 4 December 1989, brought the present action which, according to the very wording of the application, is directed against the Secretary-General of the EPP Group at the European Parliament and seeks payment of the principal sum of BFR 76 708, plus interest, representing the balance of the bill for emoluments together with mission expenses totalling BFR 46 288 after deducting BFR 199 580 received by way of advances. In accordance with the practice followed by the Court of Justice, the application was entered in the Registry of the Court of First Instance as an action brought against the European Parliament.

- 9 The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry.

10 The hearing took place on 4 October 1990. The parties' representatives submitted oral argument and replied to the questions posed by the Court.

11 The applicant claims that the Court should order the Group of the European People's Party to pay to the applicant the sum of BFR 76 708, plus legal interest and costs.

12 The defendant contends that the Court should:

- (i) declare the application to be inadmissible, or at least unfounded;
- (ii) make a ruling as to costs in accordance with the applicable provisions.

13 In her reply, the applicant further maintains that the Court should:

- (i) take note that the defendant, in the person of the Secretary-General of the EPP Group, has not submitted a statement of defence;
- (ii) declare that the application is admissible and well founded.

Admissibility

14 Parliament, as defendant, claims that the action brought against the Secretary-General of the EPP Group is inadmissible. It claims that, in order to be capable of forming the subject-matter of an action based on a contractual obligation of Parliament *vis-à-vis* a member of the auxiliary staff, such an obligation

would have had to originate either from Parliament itself, which is not alleged in the present case, or from a person to whom Parliament has delegated powers. It concludes that the action brought against the Secretary-General of the EPP Group is inadmissible on the ground that no powers had been delegated to that person which would allow him to bind Parliament with regard to the payment to the applicant of additional financial advantages.

- 15 The applicant replies that, even though her contract of employment was concluded with Parliament, Parliament specified that the EPP Group would bear the expenses connected with her engagement. According to her, the Secretary-General of that Group, who, as such, has legal capacity, did not act as an agent of the Parliament, but rather as the holder of rights and obligations. As the agreement regarding emoluments is derived from her contract of employment, she argues that she was correct to bring her action before the Court of First Instance, which has unlimited jurisdiction under Article 91(1) of the Staff Regulations in disputes of a financial character.
- 16 In reply to a question put by the Court at the oral hearing, the representative of the applicant repeated that his client was seeking judgment against the Secretary-General of the EPP Group.
- 17 In order to assess whether Mrs Mommer's application is admissible, it is necessary to refer to the following texts:
- (i) Article 179 of the EEC Treaty: 'The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment';
 - (ii) Article 91(1) of the Staff Regulations: 'The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction';

- (iii) The first paragraph of Article 2 of the Staff Regulations: 'Each institution shall determine who within it shall exercise the powers conferred by these Staff Regulations on the appointing authority';
- (iv) Article 3(1) of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities: 'The Court of First Instance shall exercise at first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof:
 - (a) in disputes between the Communities and their servants referred to in Article 179 of the EEC Treaty and in Article 152 of the EAEC Treaty ... '.

- 18 As the Court of Justice has held in numerous judgments (see the judgments in Case 18/63 *Wollast (née Schmitz) v EEC* [1964] ECR 85; in Case 80/63 *Degreef v Commission* [1964] ECR 391; in Case 78/63 *Huber v Commission* [1964] ECR 367; in Case 26/63 *Pistojs v Commission* [1964] ECR 341; in Case 102/63 *Boursin v High Authority of the ECSC* [1964] ECR 691; in Case 28/64 *Müller v Councils of the EEC and EAEC* [1965] ECR 237; in Case 43/64 *Müller v Councils of the EEC, EAEC and ECSC* [1965] ECR 385; and in Case 307/85 *Gavanas v Economic and Social Committee and Council* [1987] ECR 2435), it follows from the aforementioned provisions of the EEC Treaty and the Staff Regulations first that the appointing authority acts in the name of the institution which designated it, so that acts concerning the legal position of officials and which may adversely affect them must be attributed to the institution to which they are attached and secondly that any appeal must be brought against the institution from which the act having an adverse effect emanated.
- 19 The Court notes that in this case the applicant did not bring her action against the institution with which she signed the contract of employment, namely Parliament, but rather — and this is a point which the applicant stressed in her statement of reply and at the hearing — against a different authority, namely the Secretary-General of a political group.
- 20 That finding itself is sufficient in order for the Court to declare Mrs Mommer's application inadmissible.

- 21 Furthermore, even if the action brought by a former member of staff of Parliament against a political group in Parliament could be declared admissible, and even supposing that the parallel contractual undertaking on which the applicant relies against the Secretary- General of the EPP Group existed, the Court should still dismiss the action as inadmissible. It is uncontested that in any event the undertaking relied on in this case was agreed outside the scope of the Conditions of Employment applicable to the applicant. Under Article 179 of the EEC Treaty and Article 3(1) of the Council Decision of 24 October 1988, cited above, the Court of First Instance has jurisdiction in disputes between the Community and its servants only 'within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment'. Furthermore, according to the very terms of her contract of employment, the applicant was recruited 'on the terms laid down in the Conditions of Employment applicable to Other Servants of the Communities'.
- 22 It follows that any other terms, since they are outside the scope of the Staff Regulations or the Conditions of Employment of Other Servants of the Communities, fall outside the jurisdiction of the Court of First Instance.
- 23 It follows from all of the foregoing considerations that the application must be dismissed as inadmissible.

Costs

- 24 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the Court of First Instance by virtue of the third paragraph of Article 11 of the Council Decision of 24 October 1988, cited above, 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 institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- (1) Dismisses the application;**
- (2) Orders the parties to bear their own costs.**

Schintgen

Edward

García-Valdecasas

Delivered in open court in Luxembourg on 22 November 1990.

H. Jung
Registrar

R. Schintgen
President