

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
14 July 1997

Case T-123/95

B
v
European Parliament

(Temporary staff – Engagement on the basis of Article 2(c) of the Conditions of employment of other servants – Termination of employment pursuant to Article 47(2)(a) of those Conditions – Infringement of an essential procedural requirement – Compliance with a properly instituted internal procedure – Grounds for the decision terminating employment)

Full text in Italian II - 697

Application for: annulment of the decision terminating the applicant's contract of employment and for compensation for the various types of damage allegedly suffered by him as a result of such termination.

Decision: Application dismissed.

Abstract of the Judgment

By contract signed on 27 January 1989, the European Parliament, represented by the Chairman of the Group of the European Liberal Democratic and Reform Party ('the ELDR Group'), engaged the applicant on the basis of Article 2(c) of the Conditions of employment of other servants of the European Communities ('the Conditions'), as a member of the temporary staff in category B. The contract took effect on 15 February 1989 and was for an indefinite period in accordance with the third paragraph of Article 8 of the Conditions.

The applicant's contract of employment contained the following clause: 'Without prejudice to the provisions of Articles 48, 49 and 50 of the [Conditions], either party may terminate this contract on giving three months' notice to the other party.'

By letter of 27 September 1994, received on 30 September 1994, the Chairman of the ELDR Group informed the applicant of the termination of his contract as a member of the temporary staff, following decisions taken by the bureau of the group on 15 September 1994. The letter stated that the notice was served pursuant to Article 47(2)(a) of the Conditions with effect from 1 October 1994.

On 19 December 1994, the applicant, through the intermediary of his counsel, lodged a complaint against the decision terminating his contract as a member of the temporary staff with the ELDR Group and asked, *inter alia*, to be informed of the grounds for that decision. He took the view that, as it was a contract of indefinite duration, the decision to terminate it could be taken by the bureau of the ELDR Group only if there were a valid and reasonable ground for termination.

By letter of 23 February 1995, the Secretary-General of the ELDR Group replied to the applicant's complaint. While pointing out that 'Article 47[(2)](a) of the [Conditions] does not require the authority empowered to conclude contracts to state grounds for its decision to terminate the contract of indefinite duration of a member of the temporary staff', he indicated the reasons why the group 'was obliged to part with a number of its staff'. According to the letter, following the elections to the European Parliament of June 1994, the number of posts available to the ELDR Group was smaller than it had been in the previous parliamentary term, because of the smaller number of members in the group. The membership of the ELDR Group had also changed following those elections 'necessitating changes in the staff of the group secretariat on the basis of geographical spread'.

The temporary contract between the Parliament and the applicant ended on 31 March 1995. In accordance with the last part of Article 47(2)(a) of the Conditions, the end of the period of notice was suspended for three months by reason of the applicant's sick leave as attested by medical certificates dated 21 October, 18 November and 16 December 1994 which he produced.

The claims seeking annulment

The plea alleging infringement of an essential procedural requirement in that a properly instituted internal procedure was not complied with

The question raised by this plea in support of annulment is whether failure to comply with the internal procedure for giving the Staff Committee prior notice infringes an essential procedural requirement in the procedure leading to termination of a contract of employment between the applicant and the Parliament. If so, the termination of his contract would be unlawful. If not, the procedural irregularity would not be such as to make the termination of the contract of employment unlawful in the circumstances (paragraph 29).

To decide whether failure to comply with the requirement to give prior notice to the Staff Committee must be characterized as ‘infringement of an essential procedural requirement’ within the meaning of Article 173 of the EC Treaty, the purpose of that formality and the effect it may have on the content of the measure adopted by the competent authority must be considered. In that context, account must be taken of the legislative source of the formality in question and the position of that source in the legislative hierarchy (paragraph 32).

As regards the purpose of the formality provided for by Article 11 of Parliament’s internal rules, it must be accepted that Article 11 of those rules was adopted for the benefit of the members of the temporary staff concerned, since it enables the Staff Committee to hear those concerned and make representations to the competent authority. However, there is nothing to suggest that the purpose of the procedure in question is to consult the Staff Committee on the proposed termination of contracts. In particular, the terms of the rule in question do not require the delivery of the opinion of the Staff Committee as a condition for the validity of decisions terminating contracts for the employment of members of the temporary staff who were recruited on the basis of Article 2(c) of the Conditions. If that were required, the rule would have to fix the deadline by which the Staff Committee must give its opinion, but, in fact, the Staff Committee cannot prevent the termination of a contract of employment in accordance with Article 47(2)(a) of the Conditions by giving an adverse opinion or by failing to act (paragraph 34).

Under no circumstances can internal measures adopted by the Community institutions legally establish rules which derogate from the provisions of the Staff Regulations. It must be noted that the requirement that the competent authority give prior notice to the Staff Committee in the case of the termination of the contract of a member of the temporary staff recruited on the basis of Article 2(c) of the Conditions is not laid down by those Conditions, nor does it derive from a provision of the Staff Regulations applicable by analogy to members of the temporary staff. Nor yet is its source to be found in a general provision for giving effect to the Staff Regulations provided for by article 110 but solely in an internal measure, introduced voluntarily by the Parliament. In the circumstances, the Court cannot accept that the

formality required by the Parliament's internal rules is, prima facie, an essential procedural requirement (paragraph 36).

See: 782/79 *Geeraerd v Commission* [1980] ECR 3651, para. 13; 791/79 *Demont v Commission* [1981] ECR 3105, para. 8; 343/82 *Michael v Commission* [1983] ECR 4023, para. 16

Although the formality of giving prior notice to the Staff Committee laid down in the Parliament's internal rules is compulsory for the institution which adopted it voluntarily, failure to comply with it cannot be characterized as an infringement of an essential procedural requirement, in that, although such failure amounts to a wrongful act on the part of the administration, it could not have had a decisive impact on the procedure leading to the termination of the applicant's contract of employment (paragraph 39).

See: T-386/94 *Allo v Commission* [1996] ECR-SC II-1161, paras 60 and 61

This being so, the Court takes the view that the applicant is not entitled to rely on the wrongful omission on the part of the Parliament to obtain annulment of the decision to terminate his contract of employment. The plea in support of annulment on the ground of failure to comply with a properly instituted internal procedure must, therefore, be dismissed (paragraph 41).

The plea alleging failure to state grounds for the contested act

A decision adversely affecting a member of staff contains an adequate statement of grounds if the measure which is the subject-matter of the action was taken in circumstances known to the person concerned and enables him to be aware of the scope of the decision taken in his regard (paragraph 51).

See: C-116/88 and C-149/88 *Hecq v Commission* [1990] ECR I-599, para. 26; T-80/92 *Turner v Commission* [1993] ECR II-1465, para. 62; T-158/94 *Brunagel v Parliament* [1996] ECR-SC II-1131, para. 106

In the circumstances, the Court finds, without there being any need to rule whether an obligation to state grounds was incumbent on the Parliament in the present case, that there was an adequate statement of grounds for the decision to terminate the applicant's contract of employment (paragraph 54).

The plea alleging an error in the grounds for the contested measure

In considering the previous plea, the Court has already held that the letter sent to the applicant by the Chairman of the ELDR Group and the letter sent in reply to his complaint, contain an adequate statement of grounds for the decision taken about him, since the decision to terminate his contract of employment was taken in circumstances which were known to him and enabled him to be aware of the scope of it. Moreover, the decision was necessitated by changes in the membership of the ELDR Group and, in particular, by the fact that no member of the national party to which the applicant was linked was elected to the European Parliament in the elections of June 1994 (paragraph 68).

The termination of a contract of indefinite duration, in accordance with Article 47(2) of the Conditions where notice has been given as laid down in the contract, lies within the discretion of the competent authority. The Court may not therefore review the basis on which that discretion was exercised, except where a patent error or a misuse of power can be proved (paragraph 70).

See: 25/80 *De Briey v Commission* [1981] ECR 637, para. 7; T-45/90 *Speybrouck v Parliament* [1992] ECR II-33, paras 97 and 98

In view of the underlying purpose of the engagement of temporary staff on the basis of Article 2(c) of the Conditions, mutual trust is an essential element of the contracts of all temporary staff engaged under that article. Distinctions between different categories of staff in that respect cannot be compatible with the Conditions (paragraph 72).

A political group of the Parliament has exclusive authority to determine the conditions it considers necessary to maintain the relationship of mutual trust on which the engagement of a member of the temporary staff under Article 2(c) of the Conditions is based. The existence of that relationship of trust is not based on objective criteria and, by its nature is not subject to review by the courts (paragraph 73).

This plea in support of annulment cannot be upheld as the applicant has not proved that the grounds given for the contested decision were vitiated by any error. The claims seeking annulment of the contested decision must, therefore, be dismissed in their entirety (paragraph 76).

The claims seeking compensation

As the Court has dismissed the claims seeking annulment put forward by the applicant, it follows that the decision to terminate his contract of employment is not vitiated by any illegality and does not entail any liability on the part of the Parliament. Accordingly, the applicant's claims seeking compensation for the various types of damage allegedly suffered by reason of that termination must be dismissed. As a result, the ancillary claims, seeking the appointment by the Court of an expert to establish the existence of long-term psychological damage to the applicant, must also be dismissed (paragraph 82).

Operative part:

The application is dismissed.