

ORDER OF THE COURT

7 March 1994 *

In Case C-338/93 P,

Paul De Hoe, an official of the Commission of the European Communities, residing in Varese (Italy), represented by M. Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities of 28 April 1993 in Case T-85/92 *De Hoe v Commission of the European Communities*, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Ana Maria Alves Vieira, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: French.

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Díez de Velasco (Rapporteur) and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: C. Gulmann,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

- 1 By application lodged at the Court Registry on 1 July 1993, Paul de Hoe brought an appeal under Article 49 of the EEC Statute of the Court of Justice against the Order of 28 April 1993 in Case T-85/92 *De Hoe v Commission* [1993] ECR II-523 in which the Court of First Instance rejected as inadmissible his action, first, for the annulment of the Commission decision of 15 January 1992 to reorganize its services and secondly, for damages.
- 2 It is apparent from the findings of the Court of First Instance in its Order (paragraphs 1 to 11) that Mr De Hoe is an official of the Commission working at the Joint Research Centre at Ispra (Italy) (hereinafter referred to as 'the JRC'), where

until January 1992 he was responsible for the Documentation and Publications Office.

- 3 In the context of a departmental reorganization on 15 January 1992, that Office was attached to the Public Relations Department and the appellant was removed from the post that he had held until then. On 25 February 1992 he lodged a complaint under Article 90 (2) of the Staff Regulations, in which he sought to 'continue in his duties and responsibilities or in a strictly equivalent post in which he could carry on his occupation and use his abilities to the full' and also claimed that 'the damage caused (to him) should be made good'.
- 4 Since the Commission made no reply to that complaint, Mr De Hoe brought an action before the Court of First Instance on 2 October 1992.
- 5 The application entered before the Court of First Instance contained a third part, headed 'Points of law', which read as follows:

'(a) The applicant refers to the points which he has expanded in Annexes 4.1 to 4.21, page 10.

For those reasons and on any other grounds to be inferred, brought forward or supplied, even by the Court of First Instance of its own motion

the applicant, citing the Commission of the European Communities as the defendant, makes the following claims:

- (b) The Court of First Instance should declare null and void the defendant's decision rejecting the applicant's complaint under Article 90 of the Staff Regula-

tions, the defendant not having allowed the applicant to continue in his duties and responsibilities and/or in an equivalent post in which he could carry on his occupation and use his abilities to the full (see pages 2 and 3 of the complaint);

- (c) The Court should declare that, by refusing to allow the applicant to continue his duties, the defendant has imposed on him a disciplinary measure as provided for in Annex IX to the Staff Regulations without observing the administrative rules;
- (d) The defendant should be ordered to pay the applicant BFR 500 000 by way of material and non-material damages (see (b) above);
- (e) The defendant should be ordered to pay the applicant BFR 500 000 by way of material and non-material damages (see (c) above);
- (f) The applicant refers to the complaints in the documents lodged by him as a whole and, in particular, the circumstances set out in paragraph 2.11 on pages 6 and 7;
- (g) Consequently, the applicant asks that the defendant be ordered to pay him the sum of BFR 1 000 000 for material and non-material damage together (see (f) above);
- (h) The defendant should be ordered to pay interest at 8% on the sums due as above;
- (i) The defendant should be ordered to pay the costs of the case.'

6 On 19 November 1992, in a separate document, the Commission submitted a plea of inadmissibility, in which it contended that since the application did not state the summary of the pleas in law on which it was based, as provided for by Article 44 (1) of the Rules of Procedure of the Court of First Instance, the action was inadmissible.

7 On 18 January 1993, Mr De Hoe lodged his observations on the plea of inadmissibility, in which he requested the Court of First Instance to declare that the plea submitted by the Commission that the application was barred on the ground of inadmissibility was void.

8 In its Order (paragraphs 20 and 21), the Court of First Instance pointed out that, under the first paragraph of Article 19 of the EEC Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute, and Article 44 (1) (c) of the Rules of Procedure, every application must contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based. The Court of First Instance considered that, irrespective of any question of terminology, that statement must be clear and precise enough to enable the defendant to prepare its defence and the Court to exercise its judicial review. Furthermore, the Court of First Instance noted that the Court of Justice has held that a mere abstract statement of the grounds in the application does not alone satisfy the requirements of its Statute and of the Rules of Procedure and that the phrase 'a brief statement of the grounds', used in the Statute (and 'a summary of the pleas in law' used in the Rules of Procedure) means that the application must specify the grounds on which the action is based (judgment in *Joined Cases 19/69, 21/60 and 3/61 Fives Lille Cail and Others v Haute Autorité* [1961] ECR 281).

9 The Court of First Instance declared (paragraph 22 of the contested Order) that 'In the present case, the application does not contain, either in the part concerning the facts or in the part concerning the law, a statement, however brief, of the grounds or the legal arguments on which the application is based. Moreover, it considers that the reference made in the application to its annexes, as a whole, in order to set forth the points of law, satisfies neither the requirements of the first

paragraph of Article 19 of the Statute of the Court nor those of Article 44 (1) (c) of the Rules of Procedure. The Court of First Instance cannot substitute its own appraisal for that of the applicant and try to discover and identify, in the annexes, the grounds that might be considered to form the basis of the action (Order of the Court of First Instance in Case T-72/92 *Beuzher v Commission* [1993] ECR II-343) since, as the Commission rightly points out, the annexes are of merely probative and instrumental value. Furthermore, and whatever the circumstances, the Court of First Instance notes that in the case in point the annexes do not contain, any more than the body of the application, any plea at all that a general principle of the law relating to the employment of Community officials, a rule in the Staff Regulations or a rule deriving from case-law had been infringed.'

- 10 The Court of First Instance considered (paragraph 23 of the contested Order) that: 'Moreover, the fact that the entire content of the complaint has been reproduced in the body of the application does not satisfy the requirements of the abovementioned provisions of the Statute of the Court and the Rules of Procedure. In the circumstances of this particular case, the Court of First Instance considers that such incorporation is in no way different from an annex, since in any case the applicant, in his application, does not claim to recapitulate the grounds set out in the said complaint, if indeed the latter stated any ground at all.'
- 11 In those circumstances, the Court of First Instance considered (paragraph 24 of the contested Order) that 'the application, as submitted for the Court's determination, does not enable it to exercise judicial review either of the legality of the contested decision or of the validity of the applicant's claims for damages and it prevents the defendant from submitting an effective defence.'
- 12 With respect finally to the applicant's argument that he is entitled, in accordance with the judgment of the Court of First Instance in Case T-21/90 *Generlich v Commission* [1991] ECR II-1323, to develop his grounds in the reply, the Court of

First Instance noted (paragraph 25 of the contested order) that 'that right is conditional upon the ground in question having at least been stated in the application (see, in particular, paragraph 23 of the judgment relied on). In the case in point, the Court notes that no statement of the grounds, however brief, appears in the application.'

- 13 The Court of First Instance decided that the action must be dismissed as inadmissible.

- 14 In support of his appeal, the appellant puts forward nine pleas in law: the first is based on the infringement of Article 113 of the Rules of Procedure by the Court of First Instance. The second, fourth, fifth and sixth pleas, and also the first part of the eighth, concern the fact that that Court did not consider all the appellant's claims fully and comprehensively. In the third and ninth pleas the appellant complains that that Court misinterpreted the abovementioned judgment in *Generlich v Commission*. The seventh plea is that the Court of First Instance was wrong to declare that the reproduction of the entire contents of the complaint in the body of the application did not satisfy the requirements of the relevant provisions of the Statute of the Court and the Rules of Procedure. The second part of the eighth plea is based on the fact that, by not distinguishing the applicant's claims for damages from his other claims, the Court of First Instance prevented him from presenting his arguments on that point.

- 15 In its defence, the Commission contends that the appeal is clearly unfounded.

- 16 Under Article 119 of the Rules of Procedure of the Court of Justice, the Court may at any time dismiss an appeal where it is clearly inadmissible or clearly unfounded.

- 17 Before examining the pleas raised by the appellant, it should be borne in mind that the Court has consistently held that under Article 168a of the EEC Treaty and Article 51 of the Statute of the Court appeals are limited to grounds concerning the infringement of rules of law, to the exclusion of any challenge relating to the facts as determined by the Court of First Instance at its absolute discretion (see, in particular, the judgment in Case C-18/91 P *V. v Parliament* [1992] ECR I-3997, paragraph 15). Similarly, Article 112 (1) (c) of the Rules of Procedure of the Court of Justice provides that the appeal must contain the pleas in law and the legal arguments relied on in support of it.
- 18 It follows from those provisions that an appeal must indicate precisely which elements of the contested judgment it challenges, and also the legal arguments which specifically support the appeal.
- 19 In that connection, the Court finds, first, that the abovementioned requirement is not satisfied by the pleas in law stated by the appellant which, while criticizing the examination made in substance by the Court of First Instance of his claims as a whole (second, fourth, fifth and sixth pleas and also the first part of the eighth), confine themselves to repeating or reproducing word for word the arguments previously submitted to the Court of First Instance, including those based on facts dismissed by that court, without containing any legal argument in support of the forms of order sought in the appeal. In reality, those pleas seek to obtain merely a re-examination of the application and the reply containing the plea of inadmissibility submitted to the Court of First Instance, which is outside the jurisdiction of the Court.
- 20 Those pleas in law must, consequently, be dismissed as clearly inadmissible.

21 The pleas in law and arguments that the appellant has raised for the first time before this Court must next be considered.

22 With respect to the first plea concerning the infringement of Article 113 of the Rules of Procedure of the Court of First Instance, the appellant claims that the Court of First Instance misapplied that provision by permitting the Commission to plead that the application was barred on the ground of inadmissibility whereas only the Court of First Instance has jurisdiction to consider of its own motion whether there exists an absolute bar to proceeding with a case.

23 On that point, it must be noted that Article 114 of the abovementioned Rules of Procedure allows any defendant who has been given notice of an originating application to apply by separate document to the Court of First Instance for a decision on admissibility.

24 Therefore, the first plea must be dismissed as clearly unfounded.

25 In his third and ninth pleas, the appellant claims that the Court of First Instance misapplied the abovementioned judgment in *Generlich v Commission*.

26 On this point, it must be noted that, in accordance with Article 112 (1) (c) of the Rules of Procedure, the appeal must contain the pleas in law and legal arguments relied on. In his appeal, the appellant confines himself to saying that the Court of First Instance ought to have interpreted the abovementioned judgment differently, without putting forward any legal argument in that respect.

27 Those pleas must, therefore, be dismissed as clearly inadmissible.

28 In his seventh plea, the appellant complains that the Court of First Instance was mistaken in maintaining that the reproduction in the body of the application of the entire content of the complaint did not satisfy either the requirements of the first paragraph of Article 19 of the Statute of the Court or those of Article 44 (1) (c) of the Rules of Procedure.

29 On that point, it must be noted that in the circumstances of the present case, the mere reproduction in the body of the application of the entire content of the complaint cannot mitigate the failure to state the grounds on which the action is based. Consequently, the Court of First Instance was right to hold, at paragraph 23 of its order, that such reproduction did not satisfy the requirements contained in the abovementioned provisions of the Statute of the Court and the Rules of Procedure.

30 Therefore, that plea must be dismissed as clearly unfounded.

31 With respect to the second part of the eighth plea, the appellant claims that, by not distinguishing the applicant's claims for damages from his other claims, the Court of First Instance prevented him from presenting his arguments on that point.

32 In that connection, it is sufficient to state that the application does not contain any statement of the grounds on which those claims are based either and that, consequently, the Court of First Instance was correct in considering the action to be inadmissible in its entirety.

33 That being so, that plea must be dismissed as clearly unfounded.

34 It follows from the foregoing considerations taken as a whole that the pleas in law submitted by the appellant in support of his appeal are either clearly inadmissible or clearly unfounded and must, therefore, be dismissed pursuant to Article 119 of the Rules of Procedure.

Costs

35 Under Article 70 of the Rules of Procedure, in proceedings between the Communities and their servants the institutions are to bear their own costs. Nevertheless, it follows from the second paragraph of Article 122 of the Rules of Procedure that that rule does not apply in the case of an appeal brought by an official or other servant of an institution.

36 Article 69 (2) of the Rules of Procedure must therefore be applied, according to which the unsuccessful party is to be ordered to pay the costs. Since Mr De Hoe has been unsuccessful, he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT

hereby:

1. **Dismisses the appeal;**
2. **Orders Mr De Hoe to pay the costs of the proceedings.**

Luxembourg, 7 March 1994.

R. Grass

Registrar

O. Due

President