

ORDER OF THE COURT (Second Chamber)
13 July 2000 *

In Case C-8/99 P,

Carmen Gómez de Enterría y Sanchez, a former official of the European Parliament, residing in Luxembourg (Luxembourg), represented by E. Boigelot, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Schiltz, 2 Rue du Fort Reinsheim,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) in Case T-131/97 *Gómez de Enterría y Sanchez v Parliament* [1998] ECR-SC I-A-613 and II-1855, seeking to have that judgment set aside,

the other party to the proceedings being:

European Parliament, represented by M. Peter, Head of Division in the Legal Service, and J. Sant'Anna, also of the Legal Service, acting as Agents, assisted by

* Language of the case: French.

D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant at first instance,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. Hirsch (Rapporteur) and V. Skouris, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

- ¹ By application lodged at the Registry of the Court of Justice on 14 January 1999, Mrs Gómez de Enterría y Sanchez, a former official of the European Parliament, brought an appeal under Article 49 of the EC Statute and the relevant provisions of the ECSC and Euratom Statutes of the Court of Justice against the judgment of the Court of First Instance in Case T-131/97 *Gómez de Enterría y Sanchez v Parliament* [1998] ECR-SC I-A-613 and II-1855 ('the judgment under appeal'), in

which the Court dismissed her application for annulment of the decision taken by the Parliament at its meeting of 15 and 16 July 1996 on the basis of Article 50 of the Staff Regulations of officials of the European Communities, retiring her in the interests of the service and rejecting her applications for two other posts in the same grade ('the decision at issue').

- 2 Reference is made to paragraphs 1 to 3 and paragraphs 4 to 20 of the judgment under appeal for the legal provisions and the facts on which the case is based.

The judgment under appeal

- 3 The Court of First Instance declared the action inadmissible in so far as it sought annulment of the part of the operative part of the decision at issue which confirmed that the applicant's application for the post of Director-General in the Directorate-General for Sessional Services (DG 1) of the Parliament had not been accepted, since that application had been rejected on 2 February 1995 by the Bureau of the Parliament ('the Bureau'), the appointing authority, and had not been the subject of any complaint or action for annulment.
- 4 As to the substance of the action, the Court of First Instance rejected the first plea, which alleged infringement of the first paragraph of Article 176 of the EC Treaty (now the first paragraph of Article 233 EC), on the ground that reinstatement of the applicant was not the only measure available in order to give full effect to the judgment in Case T-82/95 *Gómez de Enterría y Sanchez v Parliament* [1996] ECR-SC I-A-211 and II-599 ('the judgment of 14 May 1996'), which had annulled an earlier decision of the Bureau dated 30 November 1994 to retire the applicant. In the view of the Court of First Instance, the solution adopted by the Parliament of regularising the applicant's administrative and financial position with retroactive effect made it possible to reconcile the applicant's interests with those of the service and of the new Director-General appointed to her former post in September 1995, and met the requirements of proper administration (paragraph 38).

- 5 The Court of First Instance also considered that the decision at issue could not be regarded as unlawful merely because it referred expressly to the decision which had been annulled by the judgment of 14 May 1996, since the operative part and the procedure which led to its adoption were different (paragraph 39).
- 6 As regards the second plea, alleging breach of the rights of the defence, the Court of First Instance held that, since the parties were agreed that the applicant's letter of 4 July 1996 to the President of the Parliament containing her observations had been attached to the confidential note of the Secretary-General of the Parliament ('the Secretary-General') and that that note had been brought to the knowledge of the members of the Bureau at its meeting on 15 and 16 July 1996, it was for the applicant to show that her observations of 4 July 1996 had not been taken into consideration by the Bureau; however, she had not adduced any evidence of that (paragraphs 43 and 44).
- 7 As regards the third plea, alleging failure to state reasons, the Court of First Instance held that the objective in retiring the applicant in the interests of the service could be readily identified from the reasons on which the decision at issue was based, namely the Bureau's firm intention of restructuring the entire Secretariat General and, in particular, the translation services, and should therefore be regarded as adequate (paragraphs 50 and 51).
- 8 As regards the fourth plea, alleging failure to take the interests of the service into account, the Court of First Instance, having first verified whether the Parliament had indeed undertaken a scrupulous examination of the various interests involved, concluded that the Parliament had not failed to take the interests of the service into account (paragraphs 57 to 59).
- 9 As regards the fifth plea, alleging misuse of powers, the Court of First Instance considered that since the decision at issue had not been judged to be contrary to the interests of the service there could be no question of any misuse of powers (paragraph 62).

- 10 Lastly, as regards the sixth plea, alleging failure to observe the reasonable time requirement, the Court of First Instance held that although the decision at issue was notified after an unfortunate delay, that delay had not adversely affected the applicant's rights since she had duly been able to lodge a complaint and an action for annulment (paragraph 69).

The appeal

- 11 In her appeal Mrs Gómez de Enterría y Sanchez claims that the Court of Justice should set aside the judgment under appeal and, adjudicating on the substance of the case, annul the decision at issue.
- 12 She puts forward five pleas in support of her appeal, alleging infringement of Article 176 of the Treaty and the general legal principle of *res judicata*, failure to state reasons, breach of the rights of the defence, infringement of Article 50 of the Staff Regulations of officials of the European Communities ('the Staff Regulations') and failure to comply with the time requirement laid down in the second paragraph of Article 25 of the Staff Regulations.
- 13 The Parliament claims that the appeal should be dismissed as unfounded and that the appellant should be ordered to pay the costs.

Findings of the Court

Plea alleging infringement of Article 176 of the Treaty and the general legal principle of res judicata

- 14 In her first plea the appellant alleges that the Court of First Instance infringed Article 176 of the Treaty and the general legal principle of *res judicata*.
- 15 The appellant contends that the Court of First Instance was wrong in stating in paragraph 38 of the judgment under appeal that the annulment of a decision retiring an official in the interests of the service does not necessarily entail reinstatement of the official concerned. There is no way in which an official can be compensated for being retired other than by reinstatement in the post from which that official has been improperly retired.
- 16 She also contends that, contrary to what the Court of First Instance stated, her position was not regularised. She was not assigned any of the administrative statuses provided for in Article 35 of the Staff Regulations.
- 17 Lastly, she submits that the decision at issue, which was the second decision retiring her from her post, merely confirmed the decision annulled by the judgment of 14 May 1996 and that that confirmation necessarily constituted a breach of Article 176 of the Treaty.

- 18 In paragraph 38 of the judgment under appeal the Court of First Instance observed that even if reinstatement of an official cannot be precluded a priori from the range of measures available to give full effect to a judgment which annuls a decision retiring an official in the interests of the service, reinstatement of the applicant in her previous post was not the only measure available in order to give full effect to the judgment of 14 May 1996. In the view of the Court of First Instance, a solution which required the institution to reinstate the official concerned would be excessive in the present case, since the decision retiring the applicant had been annulled on the ground that it infringed the applicant's right to assert her interests and the decision at issue had been adopted following proceedings which had been brought specifically in order to remedy that situation. The Court of First Instance held, however, that the solution chosen by the defendant of regularising the applicant's administrative and financial position with retroactive effect made it possible to reconcile the applicant's interests with those of the service and of the new Director-General appointed to her former post in September 1995, and met the requirements of proper administration.
- 19 Article 176 of the Treaty provides that it is for the institution that issued the act annulled to determine what measures are required to comply with a judgment annulling a decision.
- 20 It is clear from the case-law of the Court of Justice that in order to comply with the judgment granting annulment and to give it full effect the institution is required to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure (Joined Cases 97/86, 193/86, 99/86 and 215/86 *Asteris and Others v Commission* [1988] ECR 2181, paragraph 27). The procedure for replacing such a measure may thus be resumed at the very point at which the illegality occurred (see Case 34/86 *Council v Parliament* [1986] ECR 2155, paragraph 47 and Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31).

- 21 By the judgment of 14 May 1996, the Court of First Instance annulled the Bureau's first decision, of 30 November 1994, to retire the applicant from her post in Grade A 1 in the interests of the service, pursuant to Article 50 of the Staff Regulations, on the ground that the applicant had not been given the opportunity to assert her interests effectively.
- 22 It is clear from paragraph 10 of the judgment under appeal that, by letter of 23 May 1996, the President of the Parliament informed the appellant that the Bureau, in its role as appointing authority, considered at its meeting on 20 May 1996 the conclusions to be drawn from the judgment of 14 May 1996 and decided to resume the procedure for retiring her in the interests of the service in such a way as to provide her with the opportunity to assert her interests effectively.
- 23 It is also clear from paragraph 11 of the judgment under appeal that on 25 June 1996 the appellant had an interview with the Secretary-General. The interview covered in particular the grounds which had led the Bureau to contemplate adopting the measure to retire the appellant from her post in the interests of the service.
- 24 According to the findings of the Court of First Instance in paragraph 14 of the judgment under appeal, the minutes of that meeting, prepared on 26 June 1996, and the appellant's comments on those minutes dated 11 July 1996, were brought to the knowledge of the members of the Bureau at its meeting on 15 and 16 July 1996.
- 25 Since the Parliament had therefore heard the appellant's views on the application of Article 50 of the Staff Regulations and had resumed the procedure at the point at which the illegality established in the judgment of 14 May 1996 had occurred, the measures the Parliament adopted in order to put that judgment into effect remedied the procedural defect established in that judgment. On that point the decision at issue is not therefore incompatible with Article 176 of the Treaty.

- 26 As regards the question whether it was wrong not to reinstate the appellant in a post in the Parliament between 14 May 1996, the date of the annulment of the first decision of 30 November 1994 to retire the appellant in the interests of the service, and 1 November 1996, the date on which her retirement under the decision at issue took effect, the Court of First Instance did not examine whether that question was the subject of the decision at issue. At any event, there is no error of law vitiating the finding of the Court of First Instance that, in the light of the interests at stake, the measures adopted by the Parliament, namely the regularisation of the appellant's administrative and budgetary position for the limited period during which she claims she should have been reinstated, were appropriate. The plea is therefore clearly unfounded on this point.
- 27 Lastly, since the decision at issue confirms the annulled decision of 30 November 1994 to retire the appellant in the interests of the service, it should be noted that, although the use of the term 'confirm' in the decision at issue may seem ambiguous it is clear from paragraphs 19 to 25 of this Order that the substance of that decision does not infringe Article 176 of the Treaty. The plea is therefore clearly unfounded on this point also.
- 28 The same applies with regard to the principle of *res judicata* in respect of the judgment of 14 May 1996. That principle by no means precludes the Parliament from drawing conclusions from that judgment, in pursuance of Article 176 of the Treaty, in remedying the procedural defect which had previously been established.
- 29 The first plea must therefore be rejected in its entirety as being clearly unfounded.

Plea alleging failure to state reasons

- 30 In her second plea the appellant alleges that the Court of First Instance infringed Article 190 of the EC Treaty (now Article 253 EC), the second paragraph of Article 25 of and Article 50 of the Staff Regulations, and the general principle that a decision must be based on relevant grounds. The appellant contends that the Court of First Instance merely considered whether the appellant was formally in a position to ascertain the reasons for her retirement, without explaining how those reasons justified the decision to retire her in the interests of the service.
- 31 The Court of Justice has consistently held that the purpose of the statement of the reasons on which a decision adversely affecting an official is based, required by the second paragraph of Article 25 of the Staff Regulations, is to enable the Community judicature to review the legality of the decision and to provide the person concerned with details sufficient to allow him to ascertain whether or not the decision is well founded. The requirement of a statement of reasons must be assessed in the light of the circumstances of the case, in particular the measure at issue and the nature of the reasons relied on (Case C-316/97 P *Parliament v Gaspari* [1998] ECR I-7597, paragraph 26).
- 32 In that regard, it should be observed that, according to paragraph 50 of the judgment under appeal, the objective in retiring the applicant in the interests of the service, namely 'the Bureau's firm resolve to restructure the entire Secretariat General and, in particular, the translation services', can be readily identified from the reasons on which the decision at issue is based.
- 33 Furthermore, following her interview with the Secretary-General on 25 June 1996 the appellant was fully informed of the reasons for the decision at issue. As mentioned in paragraph 24 of this Order, those reasons are summarised in the minutes of 26 June 1996, to which the appellant's observations were attached.

34 The second plea must therefore be rejected as being clearly unfounded.

Plea alleging breach of the rights of the defence

35 The appellant's third plea alleges that the Bureau, which adopted the decision at issue, did not mention among the various documents expressly quoted in the minutes of its meeting, and of which it claims to have been aware, the applicant's important letter of 4 July 1996 containing her observations. That document was, however, essential as regards exercising the rights of the defence.

36 According to the appellant, the Court of First Instance was wrong to rule in paragraph 44 of the judgment under appeal that it was for the applicant to show that her observations of 4 July 1996 had not been taken into consideration by the Bureau. It was impossible for her to adduce such evidence.

37 In that regard, suffice it to say that, according to the facts as found by the Court of First Instance in paragraphs 14 and 43 of the judgment under appeal, the Bureau, at its meeting on 15 and 16 July 1996, considered the question of the application of Article 50 of the Staff Regulations to the appellant. It therefore took formal note of a confidential note from the Secretary-General of 9 July 1996, to which the appellant's letter of 4 July 1996 containing her observations was attached.

38 As that letter was therefore part of the file which the Bureau examined at its meeting on 15 and 16 July 1996 when it adopted the decision at issue, the plea alleging breach of the rights of the defence cannot be accepted. In view of those

findings, the Court of First Instance was rightly able to conclude that the rights of the defence had not been breached. The third plea should therefore be rejected as being clearly unfounded.

Plea alleging infringement of Article 50 of the Staff Regulations

- 39 In support of her fourth plea, the appellant alleges infringement of Article 50 of the Staff Regulations.
- 40 First, by referring, in the presentation of the legal background to the dispute, in paragraphs 1 to 3 of the judgment under appeal, to an alleged necessary link between the provisions of Article 29 of the Staff Regulations and the provisions of Article 50 of the Staff Regulations, specifically the first three paragraphs thereof, the Court of First Instance adopted an incorrect legal basis. There was no such necessary link between the method of recruitment and the measure retiring the official in the interests of the service.
- 41 Second, the Court of First Instance was wrong to rule in paragraphs 55 to 59 of the judgment under appeal that the Parliament had not failed to take the interests of the service into account. Without disputing the appointing authority's discretion as regards the assessments required in the interests of the service, the appellant considers that in this case the interests of the service appear to be expressed in relation to the holder of the post and not the post itself. It has never been shown that the appellant's professional qualities were inadequate to meet the requirements of the service.
- 42 With regard to the first limb of that plea, suffice it to say that, in so far as it criticises merely the citation of regulations in the judgment under appeal and not the part of the judgment containing the legal reasons for the operative part, that limb of the plea is clearly inadmissible.

43 As regards the second limb of that plea, it must be observed that it partly overlaps with the plea alleging failure to state reasons. In that regard, reference is made to paragraphs 30 to 34 of this Order.

44 It is, moreover, clear from paragraphs 55 to 59 of the judgment under appeal that the Court of First Instance carefully examined the legality of the decision at issue as regards the interests of the service. Following its examination, it reached the conclusion that, by applying Article 50 of the Staff Regulations to the appellant, the Parliament had not failed to take into account the interests of the service. The appellant cannot challenge that assessment in the present appeal, as it is an assessment of fact. The second limb of the plea must therefore also be rejected as clearly inadmissible.

Plea alleging failure to observe the time requirement laid down in the second paragraph of Article 25 of the Staff Regulations

45 Lastly, in her fifth plea the appellant alleges that the Court of First Instance infringed the second paragraph of Article 25 of the Staff Regulations. She contends that the judgment under appeal contains conflicting reasons in that it states in paragraph 69 that ‘the decision [at issue] was notified after an unfortunate delay’, although the second paragraph of Article 25 of the Staff Regulations requires the official concerned to be notified ‘at once’.

46 However, according to the case-law of the Court of Justice cited in paragraph 69 of the judgment under appeal, a delay in the notification of an individual decision to the person concerned cannot entail the annulment of that decision, since its

notification is an act subsequent to the decision and therefore has no influence on its content.

- 47 That plea put forward by the appellant in order to challenge the legality of the decision at issue is therefore irrelevant and must be rejected as clearly unfounded.
- 48 Since none of the pleas put forward by the appellant has been successful the appeal must be dismissed, under Article 119 of the Rules of Procedure, as being clearly inadmissible in part and clearly unfounded in part.

Costs

- 49 Under Article 69(2) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 70 of those rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, by virtue of the second paragraph of Article 122, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. Since the Parliament has applied for costs and the appeal of Mrs Gómez de Enterría y Sanchez has been unsuccessful, she must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

1. The appeal is dismissed.
2. Mrs Gómez de Enterría y Sanchez shall pay the costs.

Luxembourg, 13 July 2000.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber