

JUDGMENT OF THE COURT (Fifth Chamber)  
29 April 2004 \*

In Case C-111/02 P,

**European Parliament**, represented by H. von Herten and D. Moore, acting as Agents, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 23 January 2002 in Case T-237/00 *Reynolds v Parliament* [2002] ECR II-163, seeking to have that judgment set aside,

the other party to the proceedings being:

**Patrick Reynolds**, an official of the European Parliament, residing in Brussels (Belgium), represented by P. Legros and S. Rodrigues, avocats, with an address for service in Luxembourg,

defendant at first instance,

\* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Fifth Chamber, C.W.A. Timmermans, A. Rosas, A. La Pergola and S. von Bahr (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,  
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 September 2003,

gives the following

### Judgment

1 By application lodged at the Court Registry on 25 March 2002, the European Parliament brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 23 January 2002 in Case T-237/00 *Reynolds v Parliament* [2002] ECR II-163 ('the contested judgment'), by which the Court of First Instance, first, annulled the decision of

the Secretary-General of the Parliament terminating Mr Reynolds' secondment to the political group 'Europe of Democracies and Diversities' ('EDD') and reinstating him in the Directorate-General for Information and Public Relations from 15 July 2000 ('the decision at issue') and, second, ordered it to make good the pecuniary and non-pecuniary harm suffered by Mr Reynolds as a result of the adoption of that decision.

### **Factual background of the dispute**

- 2 The facts at the origin of the dispute, as they appear from the contested judgment, may be summarised as follows.
  
- 3 In September 1999, the Parliament published a vacancy notice concerning the post of Secretary-General of the political group EDD.
  
- 4 Mr Reynolds, who was an official in the Directorate-General for Information and Public Relations of the Parliament, at Grade LA 5, Step 3, applied for that position.
  
- 5 By letter of 12 November 1999, the President of the EDD Group informed the Secretary-General of the Parliament that the bureau of the group had decided to appoint Mr Reynolds to the post of Secretary-General, and requested him to authorise Mr Reynolds' secondment to the EDD Group.

- 6 By decision of 11 January 2000, the Secretary-General of the Parliament confirmed that on the basis of subparagraph (a) of the first paragraph of Article 37 of the Staff Regulations, Mr Reynolds was seconded, in the interests of the service, to the EDD Group, at Grade A 2, Step 1, for the period 22 November 1999 to 30 November 2000.
- 7 On 18 May 2000, the President of the EDD Group informed Mr Reynolds, for the first time, that at a meeting of the members of the bureau of the group, which had taken place a few hours earlier, a number of subgroups had indicated that they had lost confidence in Mr Reynolds and that, consequently, it had been decided that his secondment to the EDD Group would not be extended after 30 November 2000.
- 8 On 24 May 2000, at a second interview with Mr Reynolds, the President of the EDD Group confirmed that the political group no longer wished to work with him. On the same day, Mr Reynolds informed the President that he proposed to take four weeks' leave of absence in order to consider certain matters; the President of the group agreed. Mr Reynolds also consulted his own doctor, who concluded that he was unfit for work owing to his poor state of health.
- 9 After 24 May 2000, Mr Reynolds did not attend work owing to his poor state of health.
- 10 On 23 June 2000, Mr Reynolds submitted a complaint pursuant to Article 90 of the Staff Regulations to the Secretary-General of the Parliament in respect of the acts adversely affecting him in the course of his duties with the EDD Group. He requested that a decision be adopted in order to put an end to those acts and that their negative effects be remedied. However, he stated that he had no intention of resigning from his post as Secretary-General of the EDD Group.

- 11 On the same day, Mr Reynolds sent a formal request to the President of the Court of Auditors for an examination of the accounts of the EDD Group, stating, first, that such an examination was in the interests of the group and in the public interest, and, second, that his access to those accounts had been impeded.
  
- 12 After learning from, in particular, the press that such a request had been sent to the Court of Auditors, the President of the EDD Group wrote to the President of the Court of Auditors on 30 June 2000 stating that the Court of Auditors could have free access to the accounts of his group.
  
- 13 On 1 July 2000, Mr Reynolds drew up a memorandum setting out in detail his experience while on secondment to the EDD Group.
  
- 14 On 4 July 2000, following a decision of the bureau of the EDD Group, the President of the group requested the Secretary-General of the Parliament to terminate Mr Reynolds' secondment as soon as possible.
  
- 15 On 18 July 2000, the Secretary-General of the Parliament in his capacity as appointing authority decided to terminate Mr Reynolds' secondment to the EDD Group, in the interests of the service, with effect from the evening of 14 July (Article 1 of the decision at issue) and to reinstate him in a post as principal translator in the Directorate-General for Information and Public Relations of the Parliament in Grade LA 5, Step 3, with effect from 15 July 2000.
  
- 16 Having lodged a complaint against the decision at issue, Mr Reynolds brought an action before the Court of First Instance on 8 September 2000 for the annulment of that decision and a claim for compensation against the Parliament.

## The contested judgment

- 17 In support of his action for annulment, Mr Reynolds put forward seven pleas alleging infringement of Article 38 of the Staff Regulations, of the principle of respect for the rights of the defence, of the obligation to state reasons, of the agreement of November 1974 on the transfer of political group staff, of the principle of legitimate expectations and of the duty to have regard for the welfare of officials and misuse of powers.
- 18 After finding, in paragraph 42 of the contested judgment, that at the time when he brought the present action, Mr Reynolds had a personal interest in seeking annulment of the decision at issue, which constitutes an act adversely affecting him, the Court of First Instance, in paragraph 43, rejected a plea of inadmissibility put forward by the Parliament alleging that Mr Reynolds had no personal interest in pursuing such an annulment.
- 19 As regards the substance of the case, the Court of First Instance first examined the plea alleging the infringement of Article 38 of the Staff Regulations.
- 20 Mr Reynolds claimed that Article 38 makes no provision for the appointing authority to terminate secondment in the interests of the service before expiry of the period initially envisaged for that secondment.
- 21 The Court of First Instance observed, in paragraph 49 of the contested judgment, that according to Article 38(b) of the Staff Regulations, the duration of secondment in the interests of the service is to be determined by the appointing authority.

- 22 In paragraph 50 of the contested judgment, the Court of First Instance held that that provision must be interpreted as meaning that, where it proves necessary in order to ensure that secondment continues to be in the interests of the service, the appointing authority has at all times the power to alter the duration initially envisaged for the secondment and, accordingly, to terminate the secondment before the end of that period.
- 23 In that regard, the Court of First Instance held, in paragraph 52 of the contested judgment, that in this case, the appointing authority was correct to take the view that it could make use of that power to terminate Mr Reynolds' secondment to the EDD Group, since it had been formally requested by the President of that group to terminate his secondment as quickly as possible. Such a request could of itself give rise to the conclusion that the secondment was no longer in the interests of the service. That conclusion was all the more necessary because the appointing authority was already aware, even before receiving the formal request of the President of the group, of the tension associated with Mr Reynolds' secondment.
- 24 Consequently, in paragraph 53 of the contested judgment, the Court of First Instance rejected the first plea as unfounded.
- 25 The Court of First Instance then examined the plea alleging infringement of the principle of respect for the rights of the defence.
- 26 In paragraph 77 of the contested judgment, the Court of First Instance held that it was necessary first to ascertain to what extent the case-law to the effect that an official has no legitimate interest in the annulment on the ground of a procedural defect of a decision where the administration has no discretion and is required to act as it did was applicable in this case.

- 27 In that regard, the Court of First Instance held, in paragraph 80 of the contested judgment, that as a general principle, the fact that a request that the appointing authority uses its power to terminate the secondment before the end of the duration initially envisaged has been made by the service to which or the person to whom the official has been seconded constitutes a decisive factor for the exercise by the appointing authority of the power.
- 28 In paragraph 81 of the contested judgment, the Court of First Instance held that the decisive nature of the request that the secondment of an official be terminated in the interests of the service does not mean that the appointing authority has no discretion in the matter and is required to comply with the request. The Court observed that when it receives such a request, the appointing authority is required at the very least to ascertain, neutrally and objectively, whether the request is beyond all doubt the valid expression of the service to which or the person to whom the official was seconded and also that it is not based on manifestly illegal grounds.
- 29 In the light of the foregoing considerations, the Court of First Instance held, in paragraph 83 of the contested judgment, that the established judicial principle that the applicant has no legitimate interest in seeking annulment on the ground of a procedural defect where the administration has no discretion and is required to act as it does does not apply in this case.
- 30 In paragraph 84 of the contested judgment, the Court of First Instance stated that it was in the light of that finding that the other arguments put forward by the parties in the context of the plea alleging an infringement of the principle of respect for the rights of the defence should be examined.
- 31 The Court of First Instance recalled, in paragraph 86 of the contested judgment, that it has consistently been held that respect for the rights of the defence in any procedure initiated against a person which may culminate in an act adversely

affecting him is a fundamental principle of Community law and must be observed even in the absence of an express provision to that effect in the rules governing the procedure in question (see, to that effect, Case T-169/95 *Quijano v Commission* [1997] ECR-SC I-A-91 and II-273, paragraph 44, and Case T-211/98 *F v Commission* [2000] ECR-SC I-A-107 and II-471, paragraph 28).

- 32 The Court of First Instance observed, in paragraph 87 of the contested judgment that, as stated in paragraph 42 thereof, the decision at issue constitutes an act adversely affecting the applicant. Accordingly, it held that the appointing authority was under an obligation to give Mr Reynolds a proper hearing before adopting that decision.
- 33 Moreover, the Court of First Instance held, in paragraph 94 of the contested judgment, that the fact that a preliminary complaint procedure is provided for in Article 90 of the Staff Regulations does not as such suffice to preclude the existence of an obligation on the appointing authority to hear the official concerned before adopting a decision adversely affecting him.
- 34 The Court of First Instance went on to point out, in paragraph 98 of the contested judgment, that the principle of parallelism of forms requires that the obligation for the appointing authority to hear the official before deciding to second him in the interests of the service, provided for in Article 38(a) of the Staff Regulations, also applies when the appointing authority decides to determine or to amend the duration of secondment in the interests of the service on the basis of Article 38(b).
- 35 The Court of First Instance held, in paragraph 109 of the contested judgment, that the appointing authority had not satisfied the obligation to give the applicant a proper hearing before adopting the decision at issue.

- 36 The Court of First Instance pointed out, in paragraph 112 of the contested judgment, that the principle of respect for the rights of the defence is infringed where it is established that the person concerned was not given a proper hearing before the act adversely affecting him was adopted and where it cannot be reasonably precluded that that irregularity could have had a particular impact on the content of that act.
- 37 In paragraph 113 of the contested judgment, the Court of First Instance observed that the possibility that a preliminary consultation might have a particular impact on the content of an act adversely affecting the person concerned could not be reasonably precluded unless it was established that the person adopting the act had no discretion and was required to act as he did.
- 38 The Court of First Instance held, in paragraph 114 of the contested judgment, referring to paragraph 81, that it was clear that in this case the appointing authority had a margin of discretion, limited, admittedly, but not non-existent, as regards the exercise of the power to terminate the applicant's secondment before expiry of the period initially envisaged. According to the Court, it could not therefore be entirely precluded that in this case a preliminary consultation of Mr Reynolds could have had a particular impact on the content of the decision at issue.
- 39 The Court of First Instance added, in paragraph 115 of the contested judgment, that it was not for the Court to take the place of the administrative authority and ascertain whether there were in this case any factors capable of having a particular impact on the content of the decision at issue.
- 40 In the light of the foregoing, the Court of First Instance held, in paragraph 117 of the contested judgment, that the plea alleging infringement of the principle of respect for the rights of the defence was well founded and, accordingly, that the decision at issue had to be annulled without there being any need to consider the other pleas in law put forward by Mr Reynolds.

- 41 As far as concerns the claim for compensation, the Parliament was ordered, in paragraphs 149 and 150 of the contested judgment, to pay to Mr Reynolds a sum representing the difference between the remuneration which he should have received as an official on secondment to Grade A 2, Step 1, and that which he received after being reinstated in Grade LA 5, Step 3, for the period between 15 July 2000 and 30 November 2000, that sum being increased by default interest at a rate of 5.25% per annum from the date on which the amounts constituting that sum became payable until such date as payment was actually made.
- 42 As regards the claim for non-pecuniary harm, the Court of First Instance held, in paragraph 153 of the contested judgment that, because Mr Reynolds did not observe the prescribed pre-litigation procedure, his claim for compensation for the non-pecuniary harm which he suffered as a result of the ‘conduct not entailing a decision’ of the EDD Group or of certain of its members was inadmissible. However, the Court observed, in paragraph 154 of the contested judgment, the adoption of the decision at issue aggravated the non-pecuniary harm which Mr Reynolds was already suffering. In order to make good that harm, the Court of First Instance held that the Parliament be ordered to pay him the nominal amount of EUR 1.

### The appeal

- 43 In its appeal the Parliament asks the Court of Justice to set aside the contested judgment and to give final judgment in the case, dismissing the action as unfounded, or to refer the case back to the Court of First Instance for a fresh decision. It also claims that the cross appeal brought by Mr Reynolds should be dismissed as clearly unfounded.
- 44 In support of its appeal, the Parliament puts forward four pleas alleging infringement of Community law by the Court of First Instance, in particular with regard to the obligation to state the grounds of judgments and to the principle of respect for the rights of the defence.

45 Mr Reynolds contends that the Parliament's appeal should be dismissed. He asks the Court, by way of cross appeal, to set aside paragraph 4 of the operative part of the contested judgment and to give final judgment in the case by upholding his claim for compensation, as far as concerns reparation for the non-pecuniary harm that he suffered, or to refer the case back to the Court of First Instance for a fresh decision on that head of his claim for compensation.

### The merits of the appeal

46 By its third ground of appeal, which is appropriate to examine first, the Parliament claims that the Court of First Instance's determination, that any official must be heard before a measure likely to adversely affect him is adopted, is contrary to the settled case-law of the Community courts relating to rights of the defence.

47 Mr Reynolds disputes that the Court of First Instance misconstrued that case-law.

48 As a preliminary point, it must be recalled that, under the second indent of the first paragraph (a) of Article 37, an official may, in the interests of the service, be seconded temporarily to a post in one of the political groups in the Parliament.

49 It must be made clear that although it is for the appointing authority to take the decision to second an official to a political group and to terminate that secondment, it is bound to respect the decision made by the political group which requests such a measure.

- 50 The political group concerned has discretion to choose the staff it wishes to engage to serve temporarily in posts in that group as well as to terminate the latter's engagement.
- 51 That discretion is justified, in particular, by the specific nature of the functions carried out by a political group and by the need to maintain, in such a political environment, relations of mutual confidence between the officials on secondment and the group.
- 52 By agreeing to carry out such temporary functions in a political group, the officials concerned must be aware of the fact that the group may wish to terminate their engagement before the end of the period initially envisaged for the secondment.
- 53 As regards an official like Mr Reynolds, who was seconded in order to act as Secretary-General in a political group of the Parliament, it is not disputed that he was engaged for a particular purpose of an essentially political nature (see Case 25/68 *Schertzer v Parliament* [1977] ECR 1729, paragraph 42).
- 54 In order for him to be in a position to carry out that task, it is essential that the relationship of mutual confidence between him and the political group on his appointment be maintained throughout the period of the secondment.

55 Where the political group concerned takes the view that the relationship of mutual confidence no longer exists, it may unilaterally terminate the seconded official's engagement before the expiry of the period initially envisaged for the secondment.

56 Where there is no longer any mutual confidence, for whatever reason, the official in question is no longer in a position to carry out his functions. In such circumstances sound administration therefore requires that the institution concerned take, with respect to that official, as soon as possible, a decision to terminate the secondment (see, by analogy, Case 124/78 *List v Commission* [1979] ECR 2499, paragraph 13, and Case C-294/95 P *Ojha v Commission* [1996] ECR I-5863, paragraphs 41 and 42).

57 Admittedly, as the Court of First Instance rightly held, in paragraph 42 of the contested judgment, where it ruled on the plea of inadmissibility, such a decision constitutes, from a procedural point of view, an act adversely affecting the official who, therefore, has a personal interest in seeking its annulment. It cannot be concluded automatically, however, without regard to the nature of the procedure brought against the official that, as the Court of First Instance wrongly held in paragraph 87 of that judgment, the appointing authority was consequently under an obligation to give Mr Reynolds a proper hearing before adopting the decision at issue.

58 As has already been stated in paragraphs 50 to 52 of the present judgment, an official who accepts a post of a very particular character, such as Secretary-General in a political group of the Parliament, must be aware that the group has discretion to terminate his engagement at any time, in particular where the relationship of mutual confidence between the group and the official no longer exists.

- 59 It follows that, where the appointing authority receives a formal request from a political group of the Parliament for the secondment of an official to that group to be terminated, it is generally obliged to take the appropriate steps as soon as possible after checking that the request has come from the person or department competent to submit it.
- 60 In view of the foregoing considerations, it must be held that the adoption of the decision at issue by the appointing authority without previously giving Mr Reynolds a hearing appears to be justified.
- 61 In those circumstances, it must be held that the Court of First Instance wrongly held, in paragraphs 99, 109 and 117 of the contested judgment, that the plea alleging an infringement of the principle of respect for the rights of the defence was founded in so far as the appointing authority had not given Mr Reynolds a proper hearing before adopting the decision at issue.
- 62 Without its being necessary to examine the other grounds of appeal relied on by the Parliament, the contested judgment must be set aside in so far as it annuls the decision at issue. Consequently, that judgment must also be set aside in so far as it orders the Parliament to make good the pecuniary and non-pecuniary harm allegedly suffered by Mr Reynolds as a result of that decision.
- 63 In those circumstances, Mr Reynolds' cross appeal, which concerns the assessment of the amount of non-pecuniary harm that he suffered as a result of the decision has become devoid of purpose and there is therefore no need to examine it.

## Referral of the case back to the Court of First Instance

- 64 Under the first paragraph of Article 61 of the Statute of the Court of Justice, the latter may, where a decision of the Court of First Instance has been quashed, give final judgment in the matter itself, where the state of proceedings so permits, or refer the case back to the Court of First Instance for judgment.
- 65 Given that the Court of First Instance examined only two of the seven pleas put forward by Mr Reynolds in support of his action, the Court considers that it is not in a position to give judgment and that the case must be referred back to the Court of First Instance for it to give judgment on the other pleas in the action.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Sets aside paragraphs 1, 2, 4 and 5 of the operative part of the judgment of the Court of First Instance of the European Communities of 23 January 2002 in Case T-237/00 *Reynolds v Parliament*;

2. Refers the case back to the Court of First Instance;
  
3. Reserves the costs.

Jann

Timmermans

Rosas

La Pergola

von Bahr

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass

Registrar

V. Skouris

President