

JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 14 JUNE 1979¹

Mrs V.
v Commission of the European Communities

Case 18/78

*Officials — Administration's duty to provide assistance — Scope
(Staff Regulations of Officials, Art. 24)*

Although Article 24 of the Staff Regulations is devised primarily to protect the officials of the Communities against attacks and maltreatment by third parties, the duty to provide assistance

which it lays down also exists in a case in which the perpetrator of the acts referred to therein is another official of the Communities.

In Case 18/78

Mrs V., an official of the Commission of the European Communities, residing at Avenue Hof ten Berg, 1200 Brussels, represented and assisted by Philippe Du Jardin, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 34 B IV, Rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Plateau de Kirchberg,

defendant,

APPLICATION for:

— The annulment of the implied decision of the defendant rejecting the applicant's complaint;

¹ — Language of the Case: French.

- The annulment of the measure assigning the applicant to a new post;
- An order to the defendant to pay damages to the applicant;
- An order to the defendant to pay the costs,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, P. Pescatore and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

On 7 July 1976 an altercation arose at the Commission's offices in the Avenue de Cortenbergh between the applicant and Mr T., both of whom are officials of the Commission placed at the disposal of the local Staff Committee, Brussels Section. The applicant claims that she

was struck several times by Mr T., her superior officer.

The incident gave rise to two written statements of the facts. The first was sent by Mr T. to Mr Pratley, Head of the Individual Rights and Privileges Division, on 8 July 1976 and the second was sent by the applicant to Mr Baichère, Director-General for Personnel and Administration, on 12 July 1976.

In a registered letter sent to the President of the Commission on 10 March 1977 the applicant's lawyer:

- (a) Asked to be informed of the action to be taken following the inquiry which he assumed had been carried out by the administration, as well as of the outcome;
- (b) Recalled that under the terms of Article 24 of the Staff Regulations of Officials the Commission was obliged to assist the applicant against the perpetrator of the attack;
- (c) Stated that, in the circumstances, any transfer measure would have to be regarded as a reprimand, even if, in order to disguise its offensive nature, the administration were to apply it to three other persons assigned to the same service;
- (d) Reserved all rights on behalf of the applicant, in particular, the right to have recourse to the procedure in Article 90 of the Staff Regulations of Officials if she were not to receive satisfaction.
- On 20 July 1977 the applicant submitted to the appointing authority a complaint under Article 90 (2) of the Staff Regulations which sought:
- The assistance of the Commission as provided for in Article 24 of the Staff Regulations, so as to enable the applicant to succeed in her complaint submitted through official channels against Mr T. on 12 July 1976;
 - Accordingly, the pursuit of the inquiry with due regard in particular to the observations made by the applicant and her lawyer in both the aforementioned letters and the submissions made in support of the complaint;
 - The revocation of any measure adopted by the Commission transferring the applicant to a new post.

By letter of 21 April 1977 Mr Baichère informed the applicant's lawyer that an "appropriate inquiry" had been carried out, but had not made it possible "to draw any conclusion as to the exact responsibility for the events which took place ..." and, moreover, that "the transfer to which you refer are part of a measure providing for changes of assignment for all the staff assigned to that sector, which has been planned for a long time".

Following a further letter from the applicant's lawyer dated 5 May 1977 asking for information in confidence about the "appropriate inquiry", giving the administration particulars which might be of interest in relation to that inquiry and, in particular, referring to a statement made by a witness, Mr Baichère replied by letter of 27 May 1977 to the effect that he adhered to the terms of his letter of 21 April 1977.

The applicant was assigned within the context of the transfer of all of the staff placed at the disposal of the secretariat of the Staff Committee to Directorate IX.D, Translation, Documentation, Reproduction and Library, with effect from 1 October 1977.

The administrative authority did not reply to the applicant's complaint within the period of four months laid down by the Staff Regulations. However, by letter of 23 January 1978 Mr Tugendhat, a Member of the Commission, informed the applicant that the results of the inquiry carried out by the administration "were ... not conclusive" and that, having regard to "conflicting evidence" the "best forum for determining any possible culpability is ... a court of law".

The applicant lodged this application on 17 February 1978. It was received at the Court Registry on 20 February 1978.

The written procedure followed the normal course.

After the submission of the application the Agent representing the Commission before the Court pressed the Director General for Personnel and Administration to obtain from the officials summoned as witnesses by the two officials involved in the incident of 7 July 1976 a detailed written statement concerning the circumstances surrounding the dispute.

Mrs B. was heard on 10 March 1978. On the other hand Mrs T., who left the service of the Commission on 1 April 1977, sent a letter dated 31 March 1978 to Mr Pratley, Head of Division, setting out her version of the facts.

On 4 October 1978 the Court (Second Chamber) asked the Commission to provide additional information relating to the inquiry which it had carried out following the incident on 7 July 1976.

The Commission replied to that request on 19 October 1978.

On 30 November 1978 the applicant submitted her observations on the reply given by the Commission.

Upon hearing the views of the Advocate General the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

In her application initiating the proceedings the *applicant* claims that the Court should:

- (1) Declare null and void the Commission's rejection — at first implied and then given expressly on 23 January 1978 — of the complaint

submitted by the applicant on 20 January 1977;

- (2) Declare null and void the measure adopted by the Commission assigning the applicant to a new post;
- (3) Order the Commission to pay to the applicant by way of damages a sum to be fixed *ex aequo et bono* in compensation for the material and non-material damage which she has suffered and continues to suffer as a result, first, of the Commission's refusal to provide her with assistance and, secondly, of the unjust measure adopted in her regard, as mentioned in paragraphs (1) and (2) above;

In addition, take formal note that the applicant reserves the right to claim subsequently from the Commission all compensation to which she is entitled under the second paragraph of Article 24 of the Staff Regulations;

- (4) Order the Commission to pay the costs;

Take note that the applicant offers, in the alternative, to prove by all legal means, including the evidence of witnesses, the facts which form the basis of the present dispute.

In its defence the *Commission* contends that the Court should:

- Dismiss the application as unfounded;

- Order the applicant to pay the costs.

In her reply the *applicant* adheres to the principal conclusions set out in her application and, in addition, asks the Court to take note that she offers, in the alternative, to prove by all legal means, including the evidence of witnesses, that

Mrs B. and Mrs T. were not called upon until 10 March 1978 to testify concerning the events of 7 July 1976.

In its rejoinder the *Commission* adheres to its conclusions that the application should be dismissed as unfounded and that the applicant be ordered to pay the costs.

III — Submissions and arguments of the parties

The applicant states that the Commission failed in its duty to provide protection and assistance, as set out in Article 24 of the Staff Regulations. The Commission's inquiry into the serious events reported by her was altogether perfunctory and inadequate, since:

- (a) The applicant and Mr T. were not brought face to face;
- (b) The administration did not take account of the information given by the applicant's lawyer in the letter to Mr Baichère of 5 May 1977 in which he referred to the evidence of Mrs B., who witnessed at least part of Mr T's brutal assault against the applicant;
- (c) The administration did not take account of the localization and nature of the injuries ascertained on the day of the incident by Dr M. Romains, Director of the Medical Department of the Commission.

As regards the contested transfer measure, its adoption was urged by

certain members of the local and central Staff Committees, including Mr T. It was not adopted in the interests of the service and was "disguised" by a general transfer of the staff of the secretariat.

The material and non-material damage suffered by the applicant as a result, first, of the Commission's refusal to assist her and, secondly, of the unjust measure adopted in her regard justify an application for an order for the payment of damages by the Commission, the amount of which she leaves to the discretion of the Court.

The *Commission* states, first of all, that following the incident of 7 July 1976 an "appropriate" discreet inquiry was carried out by the Head of Division IX-A-4, Mr Pratley. On the basis of that inquiry Mr Baichère, Director-General for Personnel and Administration, did not take disciplinary action in that instance, having regard to the somewhat conflicting statements made, which did not enable precise responsibility to be allotted for the events which had taken place.

As regards the application for the annulment of the refusal to provide assistance, to which reference was principally made in the rejected complaint, the Commission maintains that it did indeed order an inquiry to be held, which included the hearing of the two witnesses referred to by the officials involved in the deplorable incident of 7 July 1976, and that as much in the general interest as in the interests of staff representation it considered it preferable for no further action to be taken in the matter. The written statements made by the aforementioned two witnesses, who were present during at least a part of the

dispute, are before the Court, which will determine whether the behaviour of Mr T., who displayed an irritation which was perhaps understandable although uncontrolled, was so serious as necessarily to justify recourse by the Commission to Article 24 of the Staff Regulations.

As regards the application for the annulment of the transfer measure, the Commission states that that measure concerned all the officials allocated to the local Staff Committee and was justified by the existence of a state of mind and, in particular, by an atmosphere of irritability, which made a general measure of that kind inevitable in the very interests of the proper functioning of the department concerned. Moreover, the replacement of the entire staff was necessary for reasons which had nothing to do with the dispute which arose on 7 July 1976 and, furthermore, was carried out a long time after that incident occurred.

The claim for compensation for the damage suffered is dependent upon whether the action taken by the administration was wrongful, which the Commission contests.

In reply the *applicant* maintains, in particular, that the administrative authority did not undertake any genuine inquiry, as the testimonies of Mrs B. and Mrs T. were only sought following steps taken by the Agent of the Commission after the application was lodged. She asks for those witnesses to be heard on that point by the Court. On the other hand, she refutes certain "malevolent" statements about her which Mrs T's letter is alleged to contain.

Contrary to the belief apparently held by the Commission, the application of

Article 24 of the Staff Regulations is not irreconcilable with the general interest. On the contrary, the general interest categorically requires that proceedings be taken against the perpetrators of "threats, insulting or defamatory acts or utterances, or any attack" without regard to any considerations based on bias or trade union interests even if it must thereupon be established that they are perpetrated by one official against another "during working hours".

As regards the annulment of the decision to transfer her, the applicant adheres to the arguments set out in her application.

In its rejoinder the *Commission* states that the written statements made by the witnesses had already been obtained orally in a discreet manner in July 1976 at the time the inquiry was carried out by Mr Pratley and his colleagues. The written statements were only sought in order to provide the Court with exact, signed statements which would establish the full significance of the facts constituting the incident which forms the basis for the present action.

It is for the appointing authority to decide in accordance with the terms of Title VI and Annex IX to the Staff Regulations whether there are grounds for initiating disciplinary proceedings for failure to perform duties imposed by the Staff Regulations. In that connexion the appointing authority has a wide discretion and cannot be compelled to initiate such proceedings on the sole ground of the duty to provide assistance laid down in the first paragraph of Article 24 of the Staff Regulations when it has carried out an inquiry which, although discreet, was comprehensive, of the incident which took place in its offices.

IV — Information provided at the request of the Court

On 4 October 1978 the Court requested the Commission to provide before 21 October 1978 certain precise information concerning the "appropriate discreet inquiry" which it carried out following the incident between Mr T. and the applicant on 7 July 1976 (including dates, names of officials taking part in the inquiry, names of officials heard and whether their statements were written or oral).

The Commission's reply dated 19 October 1978, received at the Court Registry on 23 October 1978, shows that Mr Pratley received written statements from Mr T. and the applicant which did not enable him to establish precisely the exact share of responsibility of each of those officials. Mr Pratley immediately informed Mr Baichère, Director General for Personnel and Administration, of the fact and, on his instructions, had an interview with the applicant at which he stated that it appeared preferable for her to work in another department, where the atmosphere would not only be less tense but even more favourable to her career. The applicant was, at that interview, disposed to accept a change of assignment but appears subsequently to have been given other advice.

Mr Baichère and his assistant, Mr Delauche, discussed all the details of the incident at great length with the principal representatives of the trade unions and various solutions were proposed to the problem posed by the situation in which the applicant was placed.

The Commission's reply makes no mention of any request to Mrs B. or Mrs T. to provide either written or oral evidence.

On 5 December 1978 the applicant lodged at the Court Registry her observations, dated 30 November 1978, on the reply given by the Commission. She regards that reply as confirmation of her argument that no appropriate inquiry, such as would have constituted assistance within the meaning of Article 24 of the Staff Regulations, was actually carried out.

V — Oral procedure

The applicant, represented by Philippe Du Jardin, of the Brussels Bar, and the Commission, represented by its Principal Legal Adviser, Raymond Baeyens, presented oral argument at the hearing on 8 March 1979.

The Advocate General delivered his opinion at the hearing on 29 March 1979.

Decision

- 1 This application, which was lodged on 20 February 1978, seeks the annulment, first, of the implied decision of the Commission rejecting the applicant's complaint, through which she sought to obtain the assistance of the Commission in accordance with Article 24 of the Staff Regulations, and, secondly, of the measure transferring the applicant to a new post. It also seeks an order for the Commission to pay compensation to the applicant for the material and non-material damage caused to her by both the decision and the measure transferring her.

- 2 On 7 July 1976 an altercation arose at the central offices of the Commission in Brussels between the applicant and Mr T., both of whom were officials in Grade C 2 at the Commission and had been placed at the disposal of the local Staff Committee, Brussels Section.

- 3 The applicant claims that during that incident she was struck by Mr T., secretary general to that committee. For his part Mr T. claims that, without any provocation on his part, he was subjected to a diatribe by the applicant concerning his personal conduct and his qualifications. On seeking to show the applicant out of his office he was kicked and received slight injuries to the face.

- 4 On the day on which the incident took place the Director of the Commission's Medical Department ascertained that the applicant had sustained minor injuries. It is also common ground that during the dispute Mr T. received blows to the face.

- 5 That incident gave rise *inter alia* to two written statements of the facts. The first was sent by Mr T. to the Head of the Individual Rights and Privileges Division on 8 July 1976 and the second was sent by the applicant to the Director General for Personnel and Administration on 12 July 1976.

- 6 The Commission states that the Security Office carried out an inquiry into the incident without, however drawing up its findings in writing. The incident was also the subject of a series of discussions between the representatives of the trade unions and the administration. Following those exchanges of views the Commission proposed a change of assignment to the applicant.
- 7 By letter of 10 March 1977 the applicant asked the Commission what action was to be taken following the inquiry which it was assumed had been carried out by the administration. In the same letter she stated that, in the circumstances, any measure transferring her would have to be regarded as a reprimand. In his reply dated 21 April 1977 the Director General for Personnel and Administration informed the applicant that an "appropriate inquiry" had been carried out, but had not made it possible "to draw any conclusion as to the exact responsibility for the events which took place . . ." and that the applicant's transfer was part of a measure providing for changes of assignment for all the staff attached to the Staff Committee, which had been planned a long time before.
- 8 On 20 July 1977 the applicant submitted a complaint to the appointing authority under Article 90 (2) of the Staff Regulations of Officials which sought, in particular, to obtain, first, the assistance of the Commission, as provided for in Article 24 of the Staff Regulations, so as to enable her to succeed in the complaint through official channels submitted against Mr T. on 12 July 1976, and, secondly, the revocation of any measure transferring her to a new post.
- 9 The applicant was subsequently assigned, within the context of the transfer of most of the staff placed at the disposal of the secretariat of the Staff Committee, to Directorate IX.D, Translation, Documentation, Reproduction and Library, with effect from 1 October 1977.
- 10 No reply was received to the applicant's complaint within the period prescribed by the Staff Regulations and she therefore lodged this application. She seeks, first, the annulment of the implied decision rejecting her complaint, secondly, the annulment of the measure assigning her to a new post and, thirdly, an order for the Commission to pay, by way of damages, a sum to

be fixed *ex aequo et bono* in compensation for material and non-material damage caused to her by the Commission's conduct.

- 11 It was only after the application was lodged, following steps taken by the Commission's Agent, that the Commission asked for and obtained the written testimony of two officials who were present during at least a part of the dispute which took place on 7 July 1976.
- 12 In those circumstances the applicant complains that the Commission carried out an altogether perfunctory and inadequate inquiry into the events reported by her and thus failed in the duty to provide assistance which is imposed upon it by the first paragraph of Article 24 of the Staff Regulations of Officials.
- 13 It is necessary to consider whether those allegations are justified.
- 14 The first paragraph of Article 24 of the Staff Regulations states that the Communities "shall assist any official . . . , in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person . . . to which he . . . is subjected by reason of his position or duties".
- 15 Although that provision is devised primarily to protect the officials of the Communities against attacks and maltreatment by third parties the duty to provide assistance laid down in Article 24 also exists in a case in which the perpetrator of the acts referred to by that provision is another official of the Communities. In this case the duty to provide protection was particularly compelling, since the incident, which took place during working hours on the Commission's premises involved two officials placed at the disposal of the local Staff Committee, one of whom, the applicant, was in a subordinate position to the other within that administrative unit. In the light of that situation and faced with an incident which was incompatible with the good order and tranquillity of the service the Commission was required to intervene with all the necessary vigour so as to ascertain the facts and, having done so, to take the appropriate action in full knowledge of the matter.

- 16 It is clear from the above findings that the responsible officers of the Commission did not respond with the rapidity and concern desirable to the special situation in which the applicant found herself as regards her superior officer, so much so that it now appears to be impossible to reconstruct with the necessary certainty the circumstances surrounding the incident which gave rise to the application. It must therefore be stated that the Commission failed in the obligations imposed upon it, in the particular circumstances of the case, by the duty to provide assistance which is incumbent upon Community authorities by virtue of Article 24 of the Staff Regulations.
- 17 However, that finding does not affect the question of the assessment to be made of the action taken by the Commission as a result of the incident.
- 18 Contrary to the view expressed by the applicant her transfer cannot be regarded as a disguised disciplinary measure against her. It may even be felt that, following the incident described above and regardless of the responsibility of each of the protagonists, it was in the interests of the service to put an end to an administrative situation which had become intolerable for all concerned. The transfer decided upon by the Commission may therefore be regarded as a measure which was necessary in the general interest. Furthermore, the Commission was careful to make it part of a transfer which also concerned several other officials, so as to prevent it from being in any way individual in nature. It therefore appears that there is, in fact, no connexion between the negligence shown by the Commission in the performance of its duty to provide the applicant with protection and the transfer at issue. That head of the application must therefore be dismissed.
- 19 On the other hand, it must be acknowledged that the applicant is entitled to a gesture from the Commission in compensation for the non-material damage which she has suffered as a result of the defendant's clear lack of vigour in fulfilling its duty to provide protection. In that respect the award of symbolic damages appears to offer suitable satisfaction. The Commission should therefore be ordered to pay to the applicant a sum corresponding to one European monetary by way of compensation for the non-material damage which she has suffered.

Costs

- 20 Under the terms of Article 70 of the Rules of Procedure, in proceedings by servants of the Communities institutions shall bear their own costs. Article 69 (3) of the Rules of Procedure provides *inter alia* that where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part. As each of the parties has failed on at least one of the heads of claim, the Commission must be ordered to pay one half of the costs incurred by the applicant.

On those grounds,

THE COURT (Second Chamber)

hereby:

- (1) Annuls the implied decision of the Commission rejecting the applicant's complaint, through which she sought to obtain the assistance of the Commission in accordance with Article 24 of the Staff Regulations;
- (2) Orders the Commission to pay to the applicant a sum corresponding to one European monetary unit by way of compensation for the non-material damage which she has suffered;
- (3) Dismisses the remainder of the application;
- (4) Orders the Commission to pay its own costs and, in addition, one-half of the costs incurred by the applicant.

Mackenzie Stuart

Pescatore

Touffait

Delivered in open court in Luxembourg on 14 June 1979.

A. Van Houtte

Registrar

A. J. Mackenzie Stuart

President of the Second Chamber