

Court of Justice or the Rules of Procedure. It is not for the Court of First Instance to substitute its own assessment for that of the applicant and to attempt to seek and identify in the annexes, which have a purely evidential and instrumental function, the grounds

on which it may consider the action to be based.

Pleas which have not been stated, even in summary form, in the application cannot lawfully be developed in the reply.

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
28 April 1993 *

In Case T-85/92,

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

applicant,

v

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

defendant,

APPLICATION for the annulment of the Commission's decision of 15 January 1992 reorganizing its departments and for the award of damages,

* Language of the case: French.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Biancarelli, President, B. Vesterdorf and R. García-Valdecasas,
Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

- 1 The applicant, Paul de Hoe, is an official of the Commission at the Joint Research Centre, Ispra (Italy) (hereinafter 'the JRC, Ispra'), where, until January 1992, he was Head of the Publications Service of the Documentation and Publications Unit.
- 2 In the course of a departmental reorganization on 15 January 1992, this service was attached to the Public Relations Unit and the applicant was removed from the post which he had occupied hitherto. On 25 February 1992 he lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'), in which he sought 'retention of his duties and responsibilities or a post which is equivalent in every respect, enabling him to practise his profession and use his skills to the full' and 'compensation for the damage caused'.
- 3 Following that complaint, an exchange of letters ensued between the administration — Mr H., coordinator of resources at the JRC, Ispra — and the applicant, relating to the latter's administrative status and the possibility of assigning him to a new post.

- 4 In a letter dated 23 June 1992, the applicant asked, on the basis of Articles 24 and 25 of the Staff Regulations, for the assistance of the Commission against the decision of Mr H., adopted in March 1992, to instruct the security unit of the JRC, Ispra, to conduct an external and internal inquiry in relation to the applicant and his family in order to determine whether contracts had been awarded to companies employing the applicant's children.
- 5 In a letter dated 23 June 1992, Mr H. offered the applicant a post in the library department. In a letter dated 14 August 1992 the applicant turned down this offer on the grounds that, on the one hand, he had 'no professional skills and little interest in this type of activity' and, on the other, that the head of the library unit had stated, in a memorandum addressed to Mr H. on 14 May 1992, that the applicant would need to follow a full-time university course in 'library and information science' for a minimum period of two years to enable him to occupy the post concerned. In the same letter, the applicant claimed compensation for damage to his and his family's reputations.
- 6 The applicant's complaint, to which the Commission did not reply, was, by implication, rejected.
- 7 Those were the circumstances in which, by application lodged at the Registry of the Court of First Instance on 2 October 1992, the applicant brought the present action.
- 8 The first part of the application entitled 'Facts — procedure', reproduces verbatim the applicant's complaint of 25 February 1992; the second part, entitled 'Additional facts — procedure', reproduces the substance of talks and correspondence between the applicant and Mr H., from 21 February 1992 onwards, and of other documents concerning the facts of the case, with references to the fourth part of the application entitled 'Schedule listing the annexed documents', which contains a total of 36 documents.

9 The third part, entitled 'Arguments in law', reads as follows:

'(a) The applicant refers to the points set out in Annexes 4.1 to 4.21, p. 10.

In respect of these and all other pleas to be inferred, advanced or developed, even of the Court's own motion,

the applicant, which designates the Commission of the European Communities as the defendant,

claims that the Court of First Instance of the European Communities should:

- (b) annul the defendant's decision to reject the applicant's complaint under Article 90 of the Staff Regulations, and not to acknowledge the applicant's right to continue to exercise his duties and his responsibilities and/or to an equivalent post in which he can practise his profession and use his skills to the full (see complaint, pp. 2 and 3);
- (c) hold that the defendant, in refusing to allow the applicant to continue to carry out his duties, instituted disciplinary proceedings under Annex IX to the Staff Regulations without applying the administrative provisions;
- (d) order the defendant to pay the applicant compensation for material and non-material damage amounting to BFR 500 000 (see point (b) above);
- (e) order the defendant to pay the applicant compensation for material and non-material damage amounting to BFR 500 000 (cf. point (c) above);

- (f) the applicant refers to all the grounds for complaint dealt with in the documents compiled by him, particularly the circumstances described in paragraph 2.11 on pages 6 and 7;
 - (g) the applicant accordingly claims that the defendant should pay him the sum of BFR 1 000 000 for material and non-material damage (see point (f) above);
 - (h) order the defendant to pay interest at the rate of 8% on the sums due above;
 - (i) order the defendant to pay the costs.'
- 10 In a separate document, the Commission entered a plea of inadmissibility on 19 November 1992. It contends that the Court of First Instance should:
- declare the action inadmissible;
 - make an appropriate order as to costs.
- 11 On 18 January 1993 the applicant submitted his observations on the objection of inadmissibility, in which he claimed that the Court of First Instance should:
- declare void the objection of inadmissibility entered by the defendant;
 - in the event of its finding that it must nevertheless consider the objection of inadmissibility under Article 113 of its Rules of Procedure, declare the objection void and, in any event, reserve its decision for the final judgment, with new time-limits being prescribed for further steps in the proceedings;

- given the differences between the parties to the proceedings, prescribe, if necessary, measures of organization of procedure, as provided for by Article 64(1) and (2) of the Rules of Procedure;
- order the defendant to pay the costs.

Admissibility

- 12 In accordance with Article 114 of the Rules of Procedure of the Court of First Instance, a party applying to the Court of First Instance for a decision on admissibility not going to the substance of the case is to make the application by a separate document. The Court of First Instance may decide that it is not necessary to open the oral procedure and may give a decision on the application by reasoned order. In this case, the Court considers that it has sufficient information from the documents before it, and finds that there is no need to take any further steps in the proceedings.

Arguments of the parties

- 13 The Commission points out that, in accordance with Article 44(1) of the Rules of Procedure, the application must contain 'the subject matter of the proceedings and the summary of the pleas in law on which the application is based'. It argues that the application does not contain any pleas or arguments in law supporting the claims of the applicant, not even in summary form and, as a result, does not satisfy the requirements of Article 44(1) of the Rules of Procedure.
- 14 The Commission contends that the application sets out the arguments in law simply by referring to the documents annexed to the application, a method which does not satisfy the requirements of the Rules of Procedure. It considers that the function of the annexes is evidential and purely instrumental compared with the allegations, pleas and claims contained in the application. The Commission considers that the concept of a 'plea in law' has an exact definition in procedural law; in its view, since a plea in law questions the legality of an administrative measure, it must show that there has been a breach of either a general principle of law or a statutory provision or case-law so that, in the proceedings in question, both the defendant and the court which has jurisdiction can identify the scope of the dispute relating to the measure under challenge.

- 15 The Commission points out that it examined the annexes produced by the applicant in order to discern what pleas in law might be relied on by the applicant in support of his action. It claims that it was unable to discover any trace of a reference to a statutory provision or a general principle of public service law alleged to have been disregarded. It submits that failure to set out any pleas in law, even in summary form, affects the very substance of the application. The Commission takes the view that such failure not only deprives the defendant of the means to assess the scope and substance of the possible grounds for complaint in order to rebut these in its defence, but also prevents the Court of First Instance from exercising its full powers of judicial review. In this regard the Commission relies on the case-law of the Court of Justice, according to which provisions governing the form of applications affect not only the interests of the parties but also the right of the Community judicature to exercise its power of judicial review. The Court has ruled that a mere abstract statement of the grounds in the application does not satisfy the requirements of the Statute of the Court of Justice and the Rules of Procedure (judgment in Joined Cases 19/60, 21/60, 2/61 and 3/61 *Société Fives Lille Cail and Others v High Authority of the European Coal and Steel Community* [1961] ECR 281). Finally, the Commission considers that simply setting out the facts, however exhaustively, cannot in any circumstances make up for the applicant's failure to submit any pleas in law and that submission by the applicant of his pleas in his observations on the objection of inadmissibility must be considered to be out of time and therefore inadmissible.
- 16 In response to the objection of inadmissibility, the applicant points out that the expression 'plea in law' is defined as 'grounds of fact and law relied on before the Court in support of a claim' and that the Italian and Spanish versions of Article 44(1)(c) of the Rules of Procedure use the words 'motivi' and 'motivos' to render 'plea in law'. He emphasizes that the word 'reasons' is used very frequently in the procedure before the Court of Justice and the Court of First Instance (summary of the judgment of the Court in Case 195/80 *Michel v Parliament* [1981] ECR 2861) and is also paired with 'argument'. The applicant points out that, even if the expression 'plea in law' is taken in purely formal terms, he referred, in his application, to the pleas to be inferred, advanced or developed, even of the Court's own motion, and also put forward certain pleas by reference to the annexes to the application as well as in the complaint and in the account of additional facts.
- 17 The applicant maintains that the account of the facts constitutes a key element in the Court's consideration of the various aspects of the case. He takes the view that

recourse to the facts of the case — as elements enabling the Court to take account of the pleas, arguments and claims put forward as well as of the procedure — constitutes an inseparable whole.

- 18 As regards the annexes, the applicant points out that reference thereto constitutes a key element in the facts of the case and that those facts themselves constitute reasons. He takes the view that the annexes to the application contain details of all the arguments, circumstances and evidence required to identify the pleas in law, and that the Commission has failed to take into consideration the importance of the annexes' contents in conjunction with the facts and the arguments in law.
- 19 The applicant relies on the judgment of the Court of First Instance in Case T-21/90 *Generlich v Commission* [1991] ECR II-1323, paragraphs 32 and 33, in support of the view that he had the right to develop a plea, clarify the scope of the annexes and set out any further relevant explanation in his reply.

Findings of the Court

- 20 This Court notes that in accordance with the first paragraph of Article 19 of the Protocol on the Statute of the Court of Justice (hereinafter 'the Statute of the Court'), applicable to the Court of First Instance by virtue of Article 46(1) of the same Statute and Article 44(1)(c) of the Rules of Procedure, all applications must contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based. The Court considers that, irrespective of any question of terminology, that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to exercise its power of judicial review. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible under the aforementioned provisions, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be underpinned and supplemented on specific points by references to extracts from documents annexed thereto, an overall reference to

other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provisions, must feature in the application (see the judgments of the Court of Justice in Case C-347/88 *Commission v Greece* [1990] ECR I-4747, paragraph 28, and in Case C-52/90 *Commission v Denmark* [1992] ECR 2187, paragraph 17 et seq.).

- 21 More specifically, the Court of Justice has held that, whilst it should be acknowledged that the statement of the grounds in the application need not conform with the terminology and layout of the Rules of Procedure, and whilst the grounds may be expressed in terms of their substance rather than of their legal classification, the application must none the less set out the said grounds with sufficient clarity. Moreover, a mere abstract statement of the grounds in the application does not alone satisfy the requirements of the Statute or the Rules of Procedure and the expression 'brief statement of the grounds' or 'summary of the pleas in law' used therein means that the application must specify on what grounds the action is based (judgment in *Fives Lille Cail and Others v High Authority*, cited above).
- 22 In this case, the Court finds that the application does not contain a statement of the grounds or pleas in law, even in summary form, relied on in support of the action, either in the section on the facts or the section on the arguments in law. Furthermore, that reference in the application to all the annexes thereto in order to set out the arguments in law satisfies neither the requirements of Article 19(1) of the Statute of the Court nor those of Article 44(1)(c) of the Rules of Procedure. The Court cannot substitute its own assessment for that of the applicant and attempt to seek and identify in the annexes the grounds on which it may consider the action to be based (Order of the Court in Case T-72/92 *Benzler v Commission* [1993] ECR II-347), since the annexes have a purely evidential and instrumental function, as the Commission rightly maintains. In addition, and in any event, the Court notes that, in this case, the annexes do not contain, any more than the body of the application, any reference to a breach of a general principle of public service law, a statutory provision or case-law.
- 23 Furthermore, nor does the fact that entire text of the complaint is reproduced in the body of the application satisfy the aforesaid provisions of the Statute of the Court or the Rules of Procedure. In the circumstances of the case, there is no dif-

ference at all between that incorporation of the complaint and an annex since, even on the assumption that the grounds were set out in the complaint, the applicant does not in any event claim to include them in the application.

- 24 In those circumstances, the Court considers that the application, as submitted to it for appraisal, does not allow it to exercise its powers of judicial review, either with regard to the lawfulness of the decision under challenge or the substance of the applicant's claims for compensation, and that it prevents the defendant from putting forward a proper defence.
- 25 As regards the applicant's argument that he is entitled, according to the judgment of the Court of First Instance in the *Generlich v Commission* case, cited above, to develop his pleas in the reply, the Court observes that his right to do so is conditional on the plea in question having at least been stated in the application (see, in particular, paragraph 23 of the aforementioned judgment). In this case, however, the Court has found, as stated above, that the application contains no indication, even in summary form, of the pleas relied upon.
- 26 It follows from all the foregoing considerations that the application does not satisfy the minimum requirements laid down in the first paragraph of Article 19 of the Statute of the Court and Article 44(1)(c) of the Rules of Procedure for an action to be admissible. The objection of inadmissibility must therefore be upheld and the application dismissed as inadmissible.

Costs

- 27 Under Articles 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The application is dismissed as inadmissible;**
2. **The parties are ordered to bear their own costs.**

Luxembourg, 28 April 1993.

H. Jung

Registrar

J. Biancarelli

President