

Case 108/86

G. d. M.

v

Council and Economic and Social Committee
of the European Communities

(Admissibility)

Order of the Third Chamber of the Court, 7 October 1987 3933

Summary of the Order

1. *Officials — Administration's obligation to provide assistance — Scope*
(*Staff Regulations of Officials, Art. 24*)
2. *Officials — Applications to the Court — Interest in bringing proceedings — Applicant who has obtained satisfaction as a result of a complaint — Inadmissible*
(*Staff Regulations of Officials, Arts 90 and 91*)

ORDER OF THE COURT (Third Chamber)

7 October 1987 *

In Case 108/86

G. d. M., an official of the Economic and Social Committee, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmidt, 13 boulevard Royal,

applicant,

* Language of the Case: French.

V

Council of the European Communities, represented by Dominique Lagasse, of the Brussels Bar, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer,

and

Economic and Social Committee of the European Communities, represented by Detlef Brüggemann and by Roger O. Dalcq, of the Brussels Bar, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer,
defendants,

APPLICATION for the annulment of the implied decision refusing a request for assistance pursuant to Article 24 of the Staff Regulations of Officials and for damages,

THE COURT (Third Chamber)

composed of: J. C. Moitinho de Almeida, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: M. Darmon

Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

Order

- 1 By an application lodged at the Court Registry on 6 May 1986, G. d. M., an official of the Economic and Social Committee (hereinafter referred to as 'the Committee') brought an action against the Council and the Committee for the annulment of the implied decision rejecting a request for assistance pursuant to Article 24 of the Staff Regulations of Officials and for compensation for the non-material harm which he suffered by reason of the administration's refusal to grant the assistance requested.
- 2 As appears from the documents before the Court, Mr d. M. complains essentially that for many years he has been the object of defamation and threats on the part of another official of the Committee, Mr v. d. G., against which he sought the assistance of the administration under the aforementioned provision of the Staff Regulations.
- 3 In particular, on 23 April 1985 Mr v. d. G. distributed to the staff of the Committee an 'open letter' in which he criticizes Mr d. M. for being 'for nearly 20 years . . . not merely an official of the Committee but also a full-time lecturer, and thus the recipient of a normal salary, in a Belgian educational institution'.
- 4 Furthermore, in three memoranda dated 28 May, 24 June and 21 August 1985, Mr v. d. G. accused Mr d. M. of failing to repay a building loan granted to him by the Communities after selling the property in question, which is contrary to the rules governing such loans. Those memoranda were addressed personally to Mr d. M., and copies of those of 24 June and 21 August 1985 were sent to the Secretary-General of the Committee. A copy of the memorandum of 24 June 1985 was also sent to an official of the Union Syndicale.
- 5 After asking the administration several times to put a stop to and deny those accusations, on 2 December 1985 Mr d. M. submitted a complaint under Article 90 (2) of the Staff Regulations in which he claimed essentially that as soon 'as the open letter was distributed, the administration ought to have indicated that such conduct was unacceptable and denied the accusations made therein against the complainant, thereby publicly restoring his honour and dignity'. With regard to the

memoranda addressed to him personally concerning the building loan, Mr d. M. states in his complaint that the administration should 'after finding that the file was in order, have denied the accusations made against the complainant and taken the necessary steps against his accuser in order to put an end to the smear campaign'.

- 6 On 15 January 1986, the President of the Committee adopted a disciplinary measure in the form of a written warning to Mr v. d. G. on the ground that he had published 'information in a form which must be regarded as a failure to comply with his obligations'.
- 7 In a letter of 21 January 1986 addressed to the Secretary-General of the Committee, Mr d. M. stated that 'the purpose of the complaint... was not the disciplinary measures considered appropriate by the appointing authority but exclusively the public restoration of Mr d. M.'s honour and dignity'. He confirmed that position in a letter of 28 January 1986 addressed to the chairman of the Committee.
- 8 On 29 January 1986, the administration of the Economic and Social Committee informed Mr d. M. that 'the competent authority of this institution, namely the chairman, has adopted the measures appropriate to re-establish Mr d. M.'s probity'. That same day, the chairman of the Committee issued to the staff a 'staff notice' in which, after pointing out in general terms that it was unacceptable that personal differences should be the subject of a document distributed to the entire staff, he stated that 'in regard to the open letter couched in unfortunate terms which Mr v. d. G. sent to Mr d. M. on 23 April 1985, I should like to make it clear that on the basis of the investigations which have been carried out it may be concluded that Mr d. M.'s probity cannot be questioned'.
- 9 Notwithstanding the abovementioned measures taken by the administration, on 6 May 1986 Mr d. M. brought the present action.
- 10 Under Article 92 (2) of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case, and shall give its decision in accordance with Article 91 (3) and (4) of those rules. In view of the various aspects of this case, it is appropriate to apply that provision and give a decision in the form of an order on the admissibility of the

action alone, without opening the oral procedure. It is necessary to consider whether the applicant has shown that he has an interest in bringing the proceedings, since he will not have such an interest if he has already obtained satisfaction at the pre-litigation stage.

- 11 The applicant denies having obtained satisfaction during the pre-litigation stage. In particular, he stated, in reply to a question put by the Court, that the memorandum of the chairman of the Committee of 29 January 1986 was distributed to the Staff more than nine months after Mr v. d. G.'s 'open letter' of 23 April 1985. Moreover, that memorandum, which was not placed on the notice boards in the Committee's premises, is too general and does not mention that disciplinary measures were taken against Mr v. d. G.
- 12 That argument cannot be accepted.
- 13 It may be seen clearly from the statements made by the applicant in his letters of 21 and 28 January 1986 that his complaint of 2 December 1985 was concerned solely with the public restoration of his honour and dignity and not with the taking of disciplinary measures against Mr v. d. G.
- 14 Furthermore, only the 'open letter' of 23 April 1985 was capable of damaging the applicant's honour in the eyes of others since the later memoranda which were addressed to him personally, on the subject of the building loan, were not distributed to the rest of the staff. Consequently, only that 'open letter' could necessitate any intervention on the part of the administration in order to restore the applicant's reputation.
- 15 Moreover, the applicant did not indicate in any way during the pre-litigation stage what precise measures he wanted the administration to take, thus leaving the latter free to choose how to proceed. In the exercise of that choice the administration was required, precisely by virtue of its duty to grant assistance under Article 24 of the Staff Regulations, to avoid giving more publicity to the accusations in question than was strictly necessary, in order not to do even more damage to the interests of the official against whom they were directed (see the judgment of 11 July 1974 in Case 53/72 *Guillot v Commission* [1974] ECR 791).

- 16 Under those circumstances, it appears that the statements made in the staff notice of 29 January 1986 were sufficient to give the applicant satisfaction on all aspects of his complaint, and consequently he no longer has any interest in bringing the proceedings.
- 17 This action must therefore be dismissed as inadmissible in its entirety, including the claim for damages.

Costs

- 18 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules, institutions are to bear their own costs in proceedings commenced by officials.

On those grounds,

THE COURT (Third Chamber)

hereby:

- (1) Dismisses the action as inadmissible;**
- (2) Orders the parties to bear their own costs.**

Luxembourg, 7 October 1987.

P. Heim
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber