

Parties to the main proceedings

Applicant: Maria Cristina Elisabetta Ornano

Defendant: Ministero della Giustizia, Direzione Generale dei Magistrati del Ministero

Question referred

1. Do Article 11, first paragraph, subparagraphs 1, 2(b) and (3), and the last and penultimate recitals in the preamble to Council Directive 92/85/EEC ⁽¹⁾ of 19 October 1992 and Article 157(1), (2) and (4) TFEU (formerly Article 141(1), (2) and (4) EC), Article 158 TFEU (formerly Article 142 EC), where it requires that 'Member States shall endeavour to maintain the existing equivalence between paid holiday schemes', Articles 2(2)(c) and 14(1)(c) of Directive 2006/54/EC ⁽²⁾ of the European Parliament and of the Council of 5 July 2006, read together, and Article 15 and recitals 23 and 24 in the preamble to that directive, and, finally, Article 23 of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1), preclude national legislation which, by virtue of Article 3(1) of Law No 27 of 19 February 1981, in the version prior to the amendment made by Article 1(325) of Law No 311 of 30 December 2004, does not allow payment of the allowance provided for therein for periods of compulsory maternity leave prior to 1 January 2005?

⁽¹⁾ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, pp. 1-7).

⁽²⁾ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, pp. 23-36).

Appeal brought on 6 July 2015 by the European Ombudsman against the judgment of the General Court (Fourth Chamber) delivered on 29 April 2015 in Case T-217/11 Staelen v European Ombudsman

(Case C-337/15 P)

(2015/C 294/54)

Language of the case: French

Parties

Appellant: European Ombudsman (represented by: G. Grill, acting as Agent)

Other party to the proceedings: Claire Staelen

Form of order sought

Principally:

- set aside the judgment of the General Court in Case T-217/11 in so far as it concludes that the Ombudsman committed several unlawful acts which constitute sufficiently serious infringements of EU law, that non-material damage was established and that there is a causal link between the unlawful acts identified by the General Court and that non-material damage, and in so far as it orders the Ombudsman to pay compensation amounting to EUR 7 000;
- dismiss the application as unfounded in so far as the judgment of the General Court is set aside;

In the alternative,

- refer the case back to the General Court in so far as the judgment of the General Court is set aside; and
- make an order as to costs in a fair and just way.

Pleas in law and main arguments

In support of its appeal, the Ombudsman invokes grounds alleging several errors of law.

In the first place, it claims that the General Court erred in law by holding that a mere infringement of the principle of diligence sufficed for the purpose of establishing the existence of a sufficiently serious infringement. The Ombudsman considers that that reasoning of the General Court is not compatible with the case-law in the area of non-contractual liability, which requires a sufficiently serious breach of a rule of law intended to confer rights on individuals to be established and which states that the decisive test for finding that that requirement is fulfilled is whether the Community institution concerned manifestly and gravely disregarded the limits set on its discretion. The General Court omitted to take into account the specific nature of the function of the Ombudsman and in particular the fact that the latter has a very wide discretion with regard to the conduct of investigations.

In the second place, the Ombudsman contests also the General Court's interpretation relating to the fact that, when he conducts an investigation, and an institution gives him an explanation which appears to him to be credible, that does not exempt him from his duty to ascertain whether the facts on which that explanation is based are established, in particular where that explanation is the only basis for his finding that there is no maladministration. The Ombudsman considers that the institutions are required to provide it with correct information and that it is therefore reasonable that he base his findings on the information provided to him, as long as there is no evidence which could call into question the reliability of the information provided. From that point of view, the Ombudsman claims that there was no reason to fear that the information provided did not correspond with the facts.

In the third place, although the Ombudsman agrees with the General Court that certain of the Ombudsman's answers were made unreasonably late, the Ombudsman disputes that that infringement of European law which he is alleged to have committed may be classified as sufficiently serious. Consequently, the non-contractual liability of the EU cannot be triggered.

In the fourth place, the Ombudsman considers that the General Court erred in law by failing to provide an explanation with regard to the classification of the damage to Mrs Staelen's trust in the office of Ombudsman as non-material harm.

In the last place, the Ombudsman contests the existence of a causal link between the irregularities he is alleged to have committed and the loss of Mrs Staelen's confidence in the office of the Ombudsman.

Appeal brought on 7 July 2015 by Claire Staelen against the judgment of the General Court (Fourth Chamber) delivered on 29 April 2015 in Case T-217/11 Staelen v European Ombudsman

(Case C-338/15 P)

(2015/C 294/55)

Language of the case: French

Parties

Appellant: Claire Staelen (represented by: V. Olona, avocate)

Other party to the proceedings: European Ombudsman

Form of order sought

- set aside the judgment delivered on 29 April 2015 by the General Court in Case T-217/11 *Staelen v European Ombudsman*;
- therefore, uphold the appellant's application for compensation for non-material damage suffered on account of the conduct adversely affecting her, the amount of which the appellant calculates at EUR 50 000;