



## Reports of Cases

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL (First Chamber)  
14 September 2010

Case F-52/09

**Delfina Da Silva Pinto Branco**  
v  
**Court of Justice of the European Union**

(Civil service — Officials — Recruitment — Probationary official — Dismissal at the end of the probationary period — Rights of the defence — Evaluation of abilities — Judicial review)

**Application:** brought under Articles 236 EC and 152 EA, in which Ms Da Silva Pinto Branco seeks, principally, annulment of the decision of the Court of Justice of 24 October 2008 dismissing her at the end of her probationary period, as well as an order that the institution compensate her for the non-pecuniary losses suffered as a result of that dismissal.

**Held:** The action is dismissed. The applicant is ordered to pay all the costs.

### Summary

1. *Officials — Actions — Act adversely affecting an official — Definition — Preparatory act — Measures taken during an official's probationary period — Not included (Staff Regulations, Arts 34, 90 and 91)*

2. *Officials — Recruitment — Probationary period — Dismissal at the end of the probationary period — Request that the probationary official and the assessor be heard — Refusal — Infringement of the principle of observance of the rights of the defence, the duty to have due regard to the welfare of officials and the duty to provide assistance — None (Staff Regulations, Arts 24 and 34(3))*

3. *Officials — Recruitment — Probationary period — Assessment of outcome — Assessment of the suitability of a probationary official — Judicial review — Limits (Staff Regulations, Art. 34)*

1. Only measures which give rise to binding legal effects capable of directly and immediately affecting the applicant's interests by significantly altering his legal position constitute acts adversely affecting him. In the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, in principle, an act is open to review only if it is a measure definitively laying down the position of the institution at the conclusion of that procedure, and not a provisional measure intended to pave the way for that final decision. Thus in staff cases measures whose purpose is to prepare a decision are not acts adversely affecting officials

within the meaning of Article 90(2) of the Staff Regulations. That is true of the probationary reports and the opinion of the Reports Committee on which a decision to dismiss a probationary official are based.

(see paras 32-34)

See:

T-69/92 *Seghers v Council* [1993] ECR II-651, para. 28; T-324/02 *McAuley v Council* [2003] ECR-SC I-A-337 and II-1657, para. 28; T-394/03 *Angeletti v Commission* [2006] ECR-SC I-A-2-95 and II-A-2-441, para. 36; T-95/04 *Lavagnoli v Commission* [2006] ECR-SC I-A-2-121 and II-A-2-569, para. 33

F-27/06 and F-75/06 *Lofaro v Commission* [2007] ECR-SC I-A-1-155 and II-A-1-835, para. 58

2. As far as concerns the dismissal of a probationary official, the appointing authority's refusal to grant a request to hear the official and the assessor cannot be regarded as a breach of the principle of observance of the rights of the defence, the principle that the parties should be heard, the duty to have regard for the welfare of officials or Article 24 of the Staff Regulations.

The principle of observance of the rights of the defence, laid down by Article 34(3) of the Staff Regulations, does not involve a general obligation for the appointing authority to hear a probationary official before taking a decision to dismiss him, even if the Reports Committee states that this is desirable.

The duty of the administration to have regard for the interests of its officials, which reflects the balance of the rights and obligations established by the Staff Regulations in the relationship between the official authority and civil servants, implies that when the administration takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned. That applies where it has probationary reports on an official and the official's observations on those reports, in other words information relating, on the one hand, to the interests of the service and, on the other, to the interests of the probationary official concerned.

Lastly, the administration's duty to provide assistance laid down in Article 24 of the Staff Regulations is concerned with the defence of officials against acts of third parties and not against acts of the administration itself, the review of which falls under other provisions of the Staff Regulations.

(see paras 50-53)

See:

10/72 and 47/72 *di Pillo v Commission* [1973] ECR 763, para. 16; 417/85 *Maurissen v Court of Auditors* [1987] ECR 551, para. 12

T-96/95 *Rozand-Lambiotte v Commission* [1997] ECR-SC I-A-35 and II-97, para. 120

3. The purpose of the probationary period is to enable the administration to make a concrete assessment of the probationary official's suitability for a particular post, the manner in which he performs his duties and his efficiency in the service. At the end of the probationary period the administration must be in a position to determine, without being bound by the assessments made at the time of recruitment, whether the probationary official deserves to be established in the post to which he aspires. That decision involves a comprehensive assessment of the qualities and conduct of the probationary official, taking account of both the positive and negative factors revealed in the course of the probationary period.

The administration has a wide discretion when it comes to assessing the abilities and performance of probationary officials in accordance with the interest of the service. Accordingly, it is not for the Tribunal to substitute its own judgment for that of the institutions in so far as concerns the outcome of a probationary period and the suitability of a probationary official for permanent appointment in the European Union civil service, its review being confined to establishing that there has been no manifest error of assessment or misuse of powers.

(see paras 59, 61)

See:

*Rozand-Lambiotte v Commission*, para. 112

290/82 *Tréfois v Court of Justice* [1983] ECR 3751, para. 24