



Reports of Cases

Case T-278/10 RENV (publication by extracts)

H
v
Council of the European Union

(Common foreign and security policy — National staff member seconded to EUPM in Bosnia and Herzegovina — Redeployment decision — Power of the Head of the EUPM to decide on the redeployment of a seconded national staff member — Duty to state reasons — Misuse of powers — Manifest error of assessment — Psychological harassment)

Summary — Judgment of the General Court (Sixth Chamber), 11 April 2018

- Judicial proceedings — Introduction of new pleas during the proceedings — Conditions — Amplification of an existing plea — Lawfulness*
(Rules of Procedure of the General Court, Art. 84(1))
- Common foreign and security policy — Civilian missions of the European Union — Authorisation to deploy staff to each EU civilian mission — Remit of the Civilian Operation Commander — Authorisation to deploy and to redeploy staff within each civilian mission — Remit of the head of the civilian mission concerned — Redeployment of a seconded national staff member — No requirement to consult the Member State of origin*
(Council Decision 2009/906/CFSP, Art. 5 and 6)
- Action for annulment — Pleas in law — Lack of or inadequate statement of reasons — Separate ground from the one concerning substantive legality*
(Arts 263 TFEU and 296 TFEU)
- Acts of the institutions — Statement of reasons — Obligation — Scope — Common foreign and security policy civilian mission — Redeployment of a seconded national staff member — Minimum requirements*
(Art. 296 TFEU)
- Common foreign and security policy — Civilian missions of the European Union — Decision to redeploy a seconded national staff member — Redeployment against a background of psychological harassment — Action brought by the seconded national staff member concerned — Procedures*
(Staff Regulations, Art. 12a)

6. *Common foreign and security policy — Civilian missions of the European Union — Decision to redeploy a seconded national staff member — Action brought by the seconded national staff member concerned — Pleas in law — Misuse of powers — Meaning — Decision in the interest of the service — No misuse of powers)*
7. *European Union — Judicial review of the legality of the acts of the institutions — Decision to redeploy a seconded national staff member — Scope of the review — Limited review specifically of the assessment of the considerations of appropriateness on which that decision was based*

(Art. 275 TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

8. *Non-contractual liability — Conditions — Unlawfulness — Harm — Causal link — Cumulative conditions*

(Art. 340(2) TFEU)

1. See the text of the decision.

(see para. 37)

2. The Civilian Operation Commander, who exercises, under the political control and strategic direction of the Political and Security Committee and under the general authority of the High Representative, command and control at strategic level for the planning and conduct of all the civilian Common Security and Defence Policy missions and who is the General Commander of all the civilian Heads of Mission, has the power to deploy staff to each EU civilian mission, for the purposes of Article 6(2) of Decision 2009/906 on the European Union Police Mission in Bosnia and Herzegovina. On the other hand, within each mission, the power to deploy and redeploy staff comes within the remit of the head of the civilian mission alone.

It is clear from those provisions that the operational control exercised at theatre level by the Head of Mission necessarily implies that it is possible for the Head to take decisions, including the redeployment of staff, as soon as possible, and to make staff seconded by the Member States subject to those decisions for the purposes of fulfilling the mission.

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(see paras 69, 70, 78)

3. See the text of the decision.

(see para. 88)

4. The statement of reasons required by Article 296 TFEU must, however, be appropriate to the contested act and the context in which it was adopted. It must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirement to state reasons must be assessed according to the circumstances of the case.

In that regard, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. Thus, first, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the scope of the measure concerning him. Secondly, the degree of precision of the statement of the reasons for an act must be weighed against practical realities and the time and technical facilities available for making the act.

Therefore, it is sufficient that the statement of reasons in an act imposing a measure for the redeployment of staff within an EU civilian mission under the Common foreign and security policy identifies the actual and specific reasons why the author of that act considers, in the exercise of his discretion, that that measure must be adopted in respect of the person concerned.

In addition, compliance with the duty to state reasons must, in principle, be determined in accordance with the information available to the applicant, at the latest, when the action was brought.

(see paras 89-92)

5. The existence of a context of psychological harassment may be relied on to support a claim for annulment which is not directed against the decision to refuse to grant a request for assistance made by a member of staff on the ground that the latter considers him/herself to be the victim of harassment, but which is directed against other decisions taken by the administration.

In particular, the existence of a context of psychological harassment may also be taken into account where the author of the harassment is also the signatory of the contested decision in order to establish that that decision was adopted with the aim of harming the staff member, and that it is therefore vitiated by a misuse of power. Thus, with regard to an allegation of psychological harassment made in support of a claim directed against a redeployment decision, that decision may be vitiated by a misuse of power if it was adopted in order to undermine the personality, dignity or physical or psychological integrity of the staff member.

In that regard, staff members seconded by the EU institutions whose status is governed by the Staff Regulations of Officials of the European Union and those seconded by the Member States are subject to the same rules as regards the performance of their duties at theatre level. Thus, nothing precludes a staff member seconded by a Member State from relying on the existence of psychological harassment to support a claim for annulment which is directed against a redeployment decision.

Furthermore, it is possible that the facts relied on to prove the existence of psychological harassment, even though they may not be characterised as such for the purposes of the case-law developed in relation to the provisions of Article 12a of the Staff Regulations of Officials of the European Union, nevertheless show that the redeployment decision is vitiated by a misuse of power and that it should, consequently, be annulled for that reason.

(see paras 105-108)

6. In an action for annulment brought by a national staff member seconded to a civilian mission of the European Union against a redeployment decision concerning him, the concept of misuse of powers has a very precise meaning and encompasses the use made by an administrative authority of its powers for a purpose other than that for which they were conferred upon it.

In that regard, the EU institutions have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks, provided such assignment is made in the interest of the service and conforms with the principle of assignment to an equivalent post.

In those circumstances, review by the Court is confined to determining whether the institution involved has remained within reasonable bounds and has not used its power in a manifestly incorrect way.

In addition, there is no misuse of powers unless there is objective, relevant and consistent evidence which makes it possible to establish that the contested act pursued an aim other than that ascribed to it by the applicable provisions and that, provided that a decision has not been judged to be contrary to the interests of the service, there can be no question of any misuse of power.

In that regard, it is not sufficient to refer to certain facts in support of those claims; evidence of a sufficiently specific, objective and consistent nature must also be adduced to support their truth or, at the very least, their probability, failing which the material accuracy of the statements of the institution concerned cannot be challenged.

Thus, the overall assessment of evidence of misuse of powers cannot be based on mere assertions or on evidence that is insufficiently clear or is neither objective nor relevant.

(see paras 110-115)

7. The jurisdiction of the EU Courts is excluded under Article 275 TFEU for the operational aspect of a decision to redeploy a seconded national staff member. On the other hand, review is permitted in relation to checking that the rules governing procedure and statement of reasons have been complied with, that the facts are materially accurate and that there has been no manifest error of the facts or measure of power in connection with the redeployment measure. Since the EU Courts may not substitute their assessment of the facts and circumstances justifying the adoption of such measures with that of the head of a mission, the review carried out by those Courts is limited, and it applies, especially, to the assessment of the considerations of appropriateness on which such measures were based.

In that regard, the head of the mission who adopted that decision, has a broad discretion with regard to the factors to be taken into consideration for the purposes of adopting measures for the redeployment of staff at theatre level. That broad discretion does not, however, preclude the EU Courts from determining, as part of the review of lawfulness, the accuracy of the evidence relied upon by that head of mission.

The effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires in particular that the Courts of the European Union are to ensure that a decision affecting the person concerned individually is taken on a sufficiently solid factual basis. That entails a verification of the facts underlying that decision with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons are substantiated.

(see paras 155-157)

8. See the text of the decision.

(see paras 170, 171)