ORDER OF THE GENERAL COURT (Fifth Chamber)

1 April 2011 *

In Case T-468/10,

Joseph Doherty, residing in Burtonport (Ireland), represented by A. Collins SC, N. Travers, Barrister, and D. Barry, Solicitor,

applicant,

v

European Commission,

defendant,

APPLICATION for annulment of Commission Decision C(2010) 4763 of 13 July 2010 rejecting an application for a capacity increase for safety reasons concerning a new fishing vessel, the *MFV Aine*,

* Language of the case: English.

THE GENERAL COURT (Fifth Chamber),

composed of S. Papasavvas, President, V. Vadapalas and K. O'Higgins (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

Order

Facts and procedure

1 On 16 July 2010, the applicant, Mr Joseph Doherty, was notified of Commission Decision C(2010) 4763 of 13 July 2010, addressed to Ireland, rejecting an application for a capacity increase for safety reasons concerning a new vessel, the *MFV Aine* ('the contested decision'). That decision replaces the one in Article 2 of and Annex II to Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 metres in length overall (OJ 2003 L 90, p. 48).

2 By application lodged by email at the Registry of the General Court on 28 September 2010, the applicant brought the present action. The original of the application was received at the Court Registry on 6 October 2010.

3 By letter from the Registrar of 5 November 2010, the applicant was informed that the present action had not been brought within the time-limit provided for in Article 263 TFEU and was invited to explain why the application had been lodged out of time.

4 By letter of 22 November 2010, the applicant replied that his application had been lodged before the expiry of the time-limit for bringing an action, since it had been sent by email on 27 September 2010, just before midnight, Irish time. Should the Court decide that it is appropriate to take account of the time when the application was received by the Registry in Luxembourg, the applicant claims that he was faced with circumstances that were exceptional in the sense of being unforeseeable or amounting to force majeure which, in his submission, justify the belated lodgement of his application.

5 By letter of 15 December 2010, the Court put two written questions to the applicant, asking him to provide additional explanations about the difficulties encountered with the fax machine at the Court Registry.

6 On 10 January 2011, the applicant replied to those questions.

Form of order sought by the applicant

7 The applicant claims that the Court should:

— annul the contested decision;

— order the European Commission to pay the costs.

Law

8 Under Article 111 of the Rules of Procedure of the General Court, where the action is manifestly inadmissible, the General Court may, by reasoned order and without taking further steps in the proceedings, give a decision on the action.

9 In this instance, the Court considers that it has sufficient information from the documents in the file and has decided, pursuant to that article, to give a decision without taking further steps in the proceedings.

10 Under the sixth paragraph of Article 263 TFEU, proceedings for annulment are to be instituted within two months of the publication of the contested measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

11 Moreover, under Article 102(2) of the Rules of Procedure, the time-limit for bringing an action must be extended on account of distance by a single period of 10 days.

12 It is settled case-law that that time-limit is a matter of public policy, since it was established in order to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice, and the Courts of the European Union must ascertain of their own motion whether that time-limit has been observed (Case C-246/95 *Coen* [1997] ECR I-403, paragraph 21, and Joined Cases T-121/96 and T-151/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1355, paragraphs 38 and 39).

13 In the present case, under Article 101(1)(a) and (b) and (2) of the Rules of Procedure, the time-limit for bringing an action began to run on 17 July 2010, the day following the date of notification of the contested decision, and expired at midnight on 27 September 2010, taking into account the extension on account of distance, given that 26 September 2010 fell on a Sunday, which is not disputed by the applicant.

14 Since the application was sent to the Registry by email at 00.59 (Luxembourg time) on 28 September and the original was lodged on 6 October 2010, the present action was brought after expiry of the time-limit for bringing an action and was therefore commenced out of time.

15 In his letter of 22 November 2010, however, the applicant argues that his application was sent to the Registry before the expiry of the time-limit for bringing an action, since he sent his email at 23.59 Irish time.

16 It must be observed that the time to be taken into account for the lodging of the application is the time recorded at the Court Registry. Since, under Article 43(3) of the Rules of Procedure, in the reckoning of time-limits for taking steps in proceedings only the date of lodgement at the Registry is to be taken into account, it must be held that only the time of lodgement at the Registry must be taken into account in the reckoning of time-limits. Since, in accordance with the Sole Article of Protocol No 6 to the FEU Treaty, on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union, the Court of Justice of the European Union has its seat in Luxembourg, it is therefore appropriate to take account of Luxembourg time.

17 The applicant submits a plea of force majeure, within the meaning of Article 45 of the Statute of the Court of Justice of the European Union. He states that he encountered difficulties with the Registry fax machine after 21.35 (according to the time on his own fax machine) and tried, without success, to send the application by fax after seven applications had been duly transmitted to the Registry. In that regard, he attached two message confirmation reports from his fax machine, showing that there was no answer from the Court's fax machine at 21.53 and 21.57 (according to the time on his fax machine), at the time of the attempt to send the application in Case T-471/10 *Gill* v *Commission*. He stated that he had sent, by email, the other applications, four of which were sent before 22.35, and had also had problems with the Court Registry's email system.

18 It is appropriate to recall that the Court of Justice has repeatedly held that no derogation from the application of the rules on procedural time-limits may be made save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to force majeure, in accordance with the second paragraph of Article 45 of the Statute of the Court of Justice, since the strict application of those rules serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary

treatment in the administration of justice (see order in Case C-242/07 P *Belgium* v *Commission* [2007] ECR I-9757, paragraph 16 and the case-law cited).

19 The Court of Justice has also had occasion to make clear that the concepts of force majeure and unforeseeable circumstances contain an objective element relating to abnormal circumstances unconnected with the trader in question and a subjective element involving the obligation, on his part, to guard against the consequences of the abnormal event by taking appropriate steps without making unreasonable sacrifices. Specifically, the trader must pay close attention to the course of the procedure set in motion and, in particular, demonstrate diligence in order to comply with the prescribed time-limits (see order in *Belgium* v *Commission*, paragraph 17 and the case-law cited).

20 In the present case, the applicant has established that the Registry's fax machine was not responding briefly at 21.53 and 21.57 (according to the time on his fax machine) when the application in another case was being sent (Case T-471/10). However, the clock on his fax machine, for reasons which have not been explained to the Court despite a specific written question on the point being put, was two hours behind the Court Registry's fax machine, as shown by the report from the Registry's fax machine.

21 Yet there is only one hour's difference between the time zone in which Ireland is located and the one in which Luxembourg is situated. The second hour of difference cannot be caused by delays in transmitting the faxes, since the message confirmation reports from the other applications lodged (Case T-461/10 *Boyle* v *Commission*, Case T-464/10 *Fitzpatrick* v *Commission*, Case T-459/10 *McBride* v *Commission*, Case T-463/10 *Ocean Trawlers* v *Commission*, Case T-467/10 *Murphy* v *Commission*, Case

T-466/10 *Hannigan* v *Commission*, and Case T-462/10 *Flaherty* v *Commission*) show that the average transmission time per application was only about six to seven minutes, as confirmed by the applicant.

22 It follows that the times referred to by the applicant to show that the Court's fax machine was not responding when the application was sent in Case T-471/10 must be understood as being 23.53 and 23.57 Luxembourg time. Accordingly, and taking into account the average transmission time for the seven applications (see paragraph 21 above), even if the Registry's fax machine had functioned normally, only the application in Case T-471/10 could still have been sent by midnight, when the time-limit for bringing an action expired.

23 The argument relating to difficulties encountered by the applicant with the Registry's email system must be rejected, as it is a mere allegation which is not corroborated by any evidence.

24 It must also be observed that there is no evidence showing that the applicant informed the Court Registry of the difficulties he had encountered with the latter's fax machine or email system.

25 It follows that the circumstances relied on by the applicant cannot be deemed to be exceptional circumstances amounting to a case of force majeure within the meaning of the second paragraph of Article 45 of the Statute of the Court of Justice.

26 The applicant also pleads excusable error. In his response of 10 January 2011 to the questions from the Court, the applicant added that, in the course of a telephone conversation on the afternoon of 27 September 2010, the Court Registry had assured his representative that the application in Case T-461/10 *Boyle* v *Commission* had indeed been transmitted to it by fax and that the time of receipt of that application would be the one taken into consideration for the receipt of all the other applications to be sent subsequently.

27 It is settled case-law that an excusable error may, in exceptional circumstances, allow an applicant not to be out of time (see order of 13 January 2009 in Case T-456/08 *SGAE* v *Commission*, not published in the ECR, paragraph 17 and the case-law cited).

28 The concept of excusable error must be strictly construed and can concern only exceptional circumstances in which, in particular, the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to a pardonable confusion in the mind of a party acting in good faith and displaying all the diligence required of a normally well-informed trader (see judgment of 15 March 2007 in Case T-5/07 *Belgium* v *Commission*, not published in the ECR, paragraph 17 and the case-law cited).

29 There is no excusable error in the present case, however. Even if the Registry did provide information by telephone on the procedure for lodging applications, which has not been established, the applicant was required to comply with the provisions of the Rules of Procedure concerning the procedure for lodging applications and the applicable time-limits, which do not pose any particular difficulties of interpretation (see, to that effect, Joined Cases T-142/01 and T-283/01 *OPTUC* v *Commission* [2004] ECR II-329, paragraph 44, and order of 30 November 2009 in Case T-2/09 *Internationale Fruchtimport Gesellschaft Weichert* v *Commission*, not published in the ECR, paragraph 21). In addition, it is not part of the duties and powers of the officials of the Registry to express an opinion on the reckoning of the time-limit for the commence-

ment of an action (order in *SGAE* v *Commission*, paragraph 21). Moreover, the applicant put forward this argument only after a number of exchanges of correspondence with the Registry, on 10 January 2011, in his response to questions put by the Court asking him to provide additional explanations on the difficulties encountered with the Court Registry's fax machine.

30 Nor can the Court accept the justification to the effect that the applicant's representative was able to send the Court Registry the application in the present case only during the afternoon and evening of 27 September 2010, because his client and the naval architect were difficult to reach in the preceding months, as they spend much of their time at sea in order to carry out their work. Questions relating to the functioning and organisation of the applicant's representative's office cannot excuse the lodgement of the application out of time (see, to that effect, order of 28 April 2008 in Case T-358/07 *Publicare Marketing Communications* v *OHIM (Publicare)*, not published in the ECR, paragraph 17).

31 It follows from all the foregoing considerations that the action must be dismissed as manifestly inadmissible, without its being necessary to serve it on the Commission.

Costs

32 Since this order has been made before the Commission has been served with the application and before it could have incurred any costs, it is sufficient to decide, pursuant to Article 87(1) of the Rules of Procedure, that the applicant must bear his own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby orders:

1. The action is dismissed.

2. Mr Joseph Doherty shall bear his own costs.

Luxembourg, 1 April 2011.

E. Coulon — Registrar

S. Papasavvas — President