



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)
13 December 2012

Cases T-197/11 P and T-198/11 P

European Commission and Guido Strack

v

Guido Strack and European Commission

(Appeal — Civil service — Officials — Access to documents — Articles 26 and 26a of the Staff Regulations — Regulation (EC) No 1049/2001 — Jurisdiction of the Civil Service Tribunal — Inadmissibility of the action at first instance — No act adversely affecting an official — Article 90(a) of the Rules of Procedure)

Appeals: against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 20 January 2011 in Case F-121/07 *Strack v Commission* [2011] ECR-SC seeking to have that judgment set aside.

Held: Cases T-197/11 P and T-198/11 P are joined for the purposes of the present judgment. The judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 20 January 2011 in Case F-121/07 *Strack v Commission* [2011] ECR is set aside in so far as the Tribunal considered itself to have jurisdiction to hear and determine an action for annulment against a decision adopted under Regulation No 1049/2001. The appeal in Case T-198/11 P is dismissed. Mr Guido Strack is to bear his own costs in Cases T-197/11 P and T-198/11 P and pay the costs incurred by the European Commission in Case T-198/11 P. The Commission is to bear its own costs in Case T-197/11 P. Mr Strack is ordered to pay the General Court EUR 2 000 in order to reimburse part of the costs which that Court had to incur.

Summary

1. Appeals — Subject-matter — Application for annulment of a judgment of the Civil Service Tribunal in so far as it rejected a plea of inadmissibility against an action ultimately dismissed as unfounded — Admissibility

(Statute of the Court of Justice, Annex I, Art. 9)

2. Actions brought by officials — Jurisdiction of the Civil Service Tribunal — Action for annulment relating to decisions adopted on the basis of Regulation No 1049/2001 — Not included — Requests for access to personal and medical files on the basis of Articles 26 and 26a of the Staff Regulations — Included

(Arts 230 EC and 236 EC; Statute of the Court of Justice, Annex I, Art. 1; Staff Regulations, Arts 90(2) and 91(1); European Parliament and Council Regulation No 1049/2001, Art. 8(1))

3. *Judicial proceedings — Reassignment of a case as a result of internal restructuring in the Civil Service Tribunal — Violation of the principle of the lawful judge — None*
(*Rules of Procedure of the Civil Service Tribunal, Arts 12 to 14*)

4. *Judicial proceedings — Res judicata — Scope*

5. *Union law — Principles — Fundamental rights — Respect guaranteed by the European Union Courts — Taking into consideration the European Convention on Human Rights — Right to fair legal process — Scope*
(*Art. 6(3) TEU*)

6. *Appeals — Pleas in law — Incorrect assessment of the facts — Inadmissibility — Review by the General Court of the assessment of the evidence — Possible only where the clear sense of the evidence has been distorted*
(*Art. 257 TFEU; Statute of the Court of Justice, Annex I, Art. 11*)

7. *Officials — Appeal — Pleas in law — Error of law relied on not identified — Inadmissibility*
(*Art. 257 TFEU; Statute of the Court of Justice, Annex I, Art. 11; Rules of Procedure of the General Court, Art. 138(1), first para., (c)*)

8. *Actions for annulment — Pleas in law — Plea adopted by the court of its own motion — Plea alleging excusable error — Not included*

9. *Officials — Actions brought by officials — Act adversely affecting an official — Definition — Measures producing binding legal effects*
(*Staff Regulations, Arts 90 and 91*)

10. *Judicial proceedings — Duration of the procedure before the Civil Service Tribunal — Reasonable time — Criteria for assessment*

11. *Judicial proceedings — Legal costs — Costs unreasonably or vexatiously caused to the General Court in an appeal — Order that the official reimburse those costs*
(*Rules of Procedure of the General Court, Art. 90(a)*)

1. See the text of the decision.

(see paras 27, 33)

See:

C-234/02 P *Ombudsman v Lamberts* [2004] ECR I-2803, paras 32 and 33 and the case-law cited therein; C-141/02 P *Commission v max.mobil* [2005] ECR I-1283, para. 50; C-362/05 P *Wunenburger v Commission* [2007] ECR I-4333, para. 37 and the case-law cited therein

2. Decisions based on Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents may not be treated in the same way as acts adversely affecting officials within the meaning of Article 90(2) of the Staff Regulations because of differences in their respective adoption procedures and the conditions to be met in order to be able to challenge their legality. A single decision cannot therefore be regarded both as an act adversely affecting an official within the meaning of Article 90(2) of the Staff Regulations and as a decision open to challenge under Regulation No 1049/2001.

Given that its jurisdiction is confined to disputes relating to the legality of an act adversely affecting an official within the meaning of Article 90(2) of the Staff Regulations, the Civil Service Tribunal does not have jurisdiction to hear and determine an action for annulment in so far as it concerns decisions adopted on the basis of Regulation No 1049/2001. The Civil Service Tribunal does, however, have jurisdiction to hear and determine applications for access to personal and medical files based on Articles 26 and 26a of the Staff Regulations.

(see paras 49, 53-54)

3. See the text of the decision.

(see paras 70-74)

See:

C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I-8375, paras 33 to 39; C-182/99 P *Salzgitter v Commission* [2003] ECR I-10761, paras 28 to 37

4. See the text of the decision.

(see para. 87)

See:

C-224/01 *Köbler* [2003] ECR I-10239, para. 38; C-526/08 *Commission v Luxembourg* [2010] ECR I-6151, para. 27 and the case-law cited therein

5. See the text of the decision.

(see paras 111-113)

See:

Judgment of 15 December 2011 in C-411/11 P *Altner v Commission*, not published in the ECR, paras 13 to 15 and the case-law cited therein

6. See the text of the decision.

(see para. 125)

See:

T-52/10 P *Lebedef v Commission* [2010] ECR-SC, para. 73

7. See the text of the decision.

(see para. 157)

See:

Lebedef v Commission, para. 35

8. The Civil Service Tribunal will consider of its own motion grounds involving questions of public policy relating to the admissibility of an action for annulment. However, it is not required to consider of its own motion whether there has been an excusable error, since such an error must be raised by the party relying on it.

(see para. 166)

9. See the text of the decision.

(see paras 179, 184-186)

See:

Judgment of 10 January 2006 in C-373/04 P *Commission v Alvarez Moreno*, not published in the ECR, para. 42 and the case-law cited therein

T-135/89 *Pfloeschner v Commission* [1990] ECR II-153, para. 11; T-391/94 *Baiwir v Commission* [1996] ECR-SC I-A-269 and II-787, para. 34; T-293/94 *Vela Palacios v ESC* [1996] ECR-SC I-A-305 and II-893, para. 22; T-188/03 *Hivonnet v Council* [2004] ECR-SC I-A-199 and II-889, para. 16; T-144/08 *Marcuccio v Commission* [2008] ECR-SC I-A-2-51 and II-A-2-341, para. 25

10. See the text of the decision.

(see paras 267-268)

See:

C-185/17 P *Baustahlgewebe v Commission* [1998] ECR I-8417, para. 29; judgment of 26 March 2009 in C-146/08 P *Efkon v Parliament and Council*, not published in the ECR, para. 52 and the case-law cited therein

11. See the text of the decision.

(see paras 282-285)