



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Third Chamber)
11 December 2013

Case F-125/12

Alvaro Sesma Merino

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Civil service — Officials — Staff report — Objectives for 2011/2012 — Act not having an adverse effect — Action inadmissible)

Application: under Article 270 TFEU, in which Mr Sesma Merino seeks annulment of the objectives set for him by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) for the period from 1 October 2011 to 30 September 2012, and an order for OHIM to pay him compensation of an appropriate amount, at the discretion of the Tribunal, for the material and non-material damage he suffered.

Held: The action is dismissed. Mr Sesma Merino is to bear his own costs and is ordered to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs).

Summary

Actions brought by officials — Act adversely affecting an official — Definition — Preparatory act — Formal setting of objectives for the coming year at the time a staff report is drawn up — Not included (Staff Regulations, Art. 90(2))

The decision establishing a staff report in its final version constitutes an act having an adverse effect where the official or staff member being appraised considers that his report is unlawful as a result of unjustified unfavourable assessments. Such a decision may affect the administrative status and career of the official or staff member concerned in so far as it is capable of exerting a negative influence on his future career prospects. Consequently, the person concerned must be placed in a position in which he may effectively make known his views on the evidence against him which is taken as the basis for the decision in question.

However, the setting of objectives for the coming year constitutes a vital element in the assessment of the official's or staff member's performance the following year and in the drawing up of his staff report in relation to those objectives. Accordingly, in the context of an assessment of merits, it is not until his staff report for the period in respect of which the objectives were set is drawn up that the decision setting those objectives is capable of producing legal effects such as to affect the interests of the official or staff member concerned, by bringing about a distinct change in his legal position, since it is

only at that time that the administration can adopt its final position on whether the objectives assigned for that period have been achieved and draw any inferences from that as regards making an assessment of the applicant's performance in his staff report.

It follows that objective-setting is only a preparatory measure prior to, and necessary for, the final decision adopted during the following appraisal exercise.

(see paras 24-26, 31)

See:

12 July 2005, T-157/04 *De Bry v Commission*, para. 81

10 November 2009, F-71/08 *N v Parliament*, para. 51