



## Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL  
(Third Chamber)  
26 March 2014

Case F-8/13

**CP**  
**v**  
**European Parliament**

(Civil service — Official — Head of Unit — Trial period — Non-confirmation in the post of Head of Unit — Reassignment to a post other than management — Internal rules of the Parliament)

**Application:** brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which CP brought the present action seeking, first, annulment of the decision of 23 March 2012 by which the European Parliament did not confirm him in his post of Head of Unit, and, second, compensation for the harm suffered as a result of the unlawfulness of that decision.

**Held:** The decision of 23 March 2012 by which the European Parliament did not confirm CP in his post as Head of Unit and transferred him with his post to the Directorate General for Internal Policies is annulled. The remainder of the action is dismissed. The European Parliament is to bear its own costs and is ordered to pay the costs incurred by CP.

### Summary

- 1. Actions brought by officials — Action against a decision rejecting a complaint — Effect — Referral of contested act to the Court — Condition — Grounds for the rejection decision required to be the same as for the contested act  
(Staff Regulations, Arts 90 and 91)*
- 2. Officials — Organisation of departments — Assignment of staff — Reassignment — Administration's discretion — Limits — Interests of the service — Reassignment to a non-management post of a head of unit who has proved unsatisfactory — Lawfulness  
(Staff Regulations, Arts 7(1) and 51)*
- 3. Officials — Vacancy — Filled by transfer — Trial period — Drawing up of an action plan where the official experiences difficulties — Obligation to involve the official concerned in drawing up the action plan — Obligation for the administration to act promptly as soon as problems arise  
(Staff Regulations, Arts 21 and 21a; Internal rules of the European Parliament on the confirmation of the position of head of unit, director and director-general)*

4. *Officials — Vacancy — Filled by transfer — Trial period — Setting of objectives to be achieved at the start of an appraisal period — Failure to comply — Consequence — Appraisal declared unlawful (Staff Regulations, Art. 43; Internal rules of the European Parliament on the confirmation of the position of head of unit, director and director-general)*

5. *Officials — Principles — Rights of defence — Obligation to hear the person concerned before adopting an act adversely affecting him — Scope — Application to reassignment measures (Charter of Fundamental Rights of the European Union, Art. 41(2))*

6. *Officials — Organisation of departments — Assignment of staff — Reassignment — Administration's discretion — Administration's duty to have regard for the interests of officials — Taking into consideration of the interests of the staff member concerned — Judicial review — Limits (Staff Regulations, Art. 7(1))*

1. A claim for annulment formally directed against the rejection of a complaint has the effect of bringing before the Civil Service Tribunal the act against which the complaint was submitted, where that claim, as such, lacks any independent content.

However, given its very purpose, which is to enable the administration to review its decision, the pre-litigation procedure is of an evolving nature, so that, in the scheme of legal remedies provided for in Articles 90 and 91 of the Staff Regulations, the administration may decide, when it rejects a complaint, to vary the grounds on which it had adopted the contested act. None the less, where the statement of reasons in the decision rejecting the complaint merely responds to the complaint, it is certainly the legality of the original act adversely affecting an official that is being examined, in the light of the reasons contained in the decision rejecting the complaint.

(see paras 18, 21)

See:

17 January 1989, 293/87 *Vainker v Parliament*, para. 8

6 April 2006, T-309/03 *Camós Grau v Commission*, para. 43

9 December 2009, T-377/08 P *Commission v Birkhoff*, paras 55 to 60

15 December 2010, F-67/09 *Angulo Sánchez v Council*, para. 70; 28 March 2012, F-36/11 *BD v Commission*, para. 47

2. Article 7(1) of the Staff Regulations directly confers on the appointing authority the power to reassign officials in the interests of the service, without that power being subject to the adoption of implementing rules, and it would be contrary to those interests to retain in a management post an official who, for example, has not demonstrated adequate ability to fill it.

Consequently, the appointing authority may directly rely on Article 7(1) in order to reassign to a non-management post a head of unit who has proved unsatisfactory.

Moreover, Article 51 of the Staff Regulations is not capable of calling the foregoing into question. That article refers to the particular situation of an official who, on the basis of consecutive periodical reports, shows professional incompetence and therefore risks dismissal, demotion or classification in a lower function group with or without maintenance of grade. It therefore relates to a different situation from that of a head of unit who, if incompetent, does not incur any of those measures.

(see paras 31-33)

3. An institution's internal rules requiring assessors and an official undergoing a trial period to draw up an action plan during an interview must be read in the light of the hierarchical principle, the scope of which is defined by Articles 21 and 21a of the Staff Regulations, and under which a superior usually has the power to assert his intentions over those of his subordinates. Consequently, in the event of disagreement, the decision on the content of the action plan falls to the final assessor. However, the involvement of the official concerned in drawing up the action plan is justified by the need for the plan to take adequate account of his difficulties and to respond to his needs. The action plan cannot therefore fulfil its role if the official has not been given the opportunity to take part in its adoption. If the internal rules do not provide for the official concerned to be merely consulted, but require him to work with the assessors in drawing up the action plan, the plan must be classified as substantial. That procedural requirement is not met if the action plan is drawn up by the assessors and then merely communicated to the official after they have adopted it.

Moreover, even if the internal rules provide that the procedure leading to the drawing up of an action plan may be initiated at any time, it follows from those rules that the plan must not be drawn up *in extremis*. They state that the procedure leading to the drawing up of an action plan during a trial period must be initiated immediately in the event of problems and must continue throughout the remaining months, and that the appointing authority must be regularly informed of developments in the situation, the aim clearly being to make sure that the plan is effective. Consequently, it follows from such a provision, particularly if read in the light of the duty to have regard for the interests of officials, that the assessors must act promptly as soon as problems arise.

(see paras 46, 48)

See:

7 May 1991, C-291/89 *Interhotel v Commission*, para. 17; 7 May 1991, C-304/89 *Oliveira v Commission*, para. 21

23 March 2000, T-95/98 *Gogos v Commission*, para. 53

4. The rationale for the trial period required of new heads of unit in an institution is fairly similar to that for the probationary period required of new officials. Likewise, the assessment at the end of the probationary period is fairly similar to the periodical appraisal referred to in Article 43 of the Staff Regulations. A probationary period, if it is to be meaningful, must have been conducted under normal conditions. Furthermore, where there are rules requiring the fixing of objectives for an official at the beginning of an appraisal period, infringement of those rules is substantial and warrants a declaration that the contested appraisal report is unlawful.

Consequently, if it is clear from an institution's internal rules that the decision whether or not to confirm a person as head of unit must be the result of an assessment of the whole trial period in the light of the specific objectives set for that period, the fact that the person concerned did not fulfil an action plan cannot under any circumstances serve as grounds for that decision if the plan was drawn up unlawfully and late.

Furthermore, a job description may not, as such, be regarded as a document fixing objectives for an official, since those two categories of documents have different aims and characteristics.

(see paras 57, 58, 65, 75)

See:

30 November 1994, T-568/93 *Correia v Commission*, para. 34; 28 November 2007, T-214/05 *Vounakis v Commission*, para. 43

13 December 2007, F-42/06 *Sundholm v Commission*, paras 39 to 41; 2 July 2009, F-49/08 *Giannini v Commission*, para. 65; 10 November 2009, F-71/08 *N v Parliament*, paras 56 to 60; 12 May 2011, F-66/10 *AQ v Commission*, paras 68 and 88

5. A reassignment measure is not part of a procedure initiated against the official concerned, and that being so, he cannot rely on the obligation for the institution to observe his rights of defence as such. However, the rights of the defence, while being more extensive, certainly cover the procedural right of every person to be heard before an individual measure which would affect him adversely is taken.

The right to be heard in all procedures of that nature constitutes a fundamental principle of EU law affirmed in Article 41 of the Charter of Fundamental Rights of the European Union, which guarantees the right to good administration. In that regard, according to the fourth recital of its preamble, the aim of the Charter is to strengthen the protection of fundamental rights by making them more visible. Like the Convention for the Protection of Human Rights and Fundamental Freedoms, the purpose of the Charter is to protect rights which are not theoretical or illusory, but real and effective.

(see paras 79-81)

See:

22 November 2012, C-277/11 *M.*, paras 81 to 83; 18 July 2013, C-584/10 P, C-593/10 P and C-595/10 P *Commission v Kadi*, paras 98 and 99

5 December 2012, F-88/09 and F-48/10 *Z v Court of Justice*, paras 144 to 147, on appeal before the General Court of the European Union, Case T-88/13 P

6. In the context of the reassignment of an official, the authority has a duty to have regard for the interests of officials which requires it to conduct an effective, full and detailed review of the situation in the light of the interests of the service and of the official concerned, whose interests may be reflected in any comments he makes about the information submitted to him.

In that regard, where the administration has a wide discretion, judicial review, albeit of limited scope, requires that the institutions must be able to show that in adopting the contested decision they actually exercised their discretion, which presupposes the taking into consideration of all the relevant factors and circumstances of the situation.

(see paras 82, 83)

See:

7 September 2006, C-310/04 *Spain v Council*, para. 122; 8 July 2010, C-343/09 *Afton Chemical*, para. 34

14 November 2013, T-456/11 *ICdA and Others v Commission*, para. 46

11 July 2007, F-105/05 *Wils v Parliament*, para. 75; 23 October 2013, F-93/12 *D'Agostino v Commission*, para. 57, on appeal before the General Court of the European Union, Case T-670/13 P