Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(First Chamber)
19 May 2015

Case F-59/14

Markus Brune
v
European Commission

(Civil service — Open competition EPSO/AD/26/05 — Non–inclusion on the reserve list — Annulment by the Civil Service Tribunal — Article 266 TFEU — Organisation of another oral test — Refusal by the candidate to participate — New decision not to include the candidate on the reserve list — Action for annulment — Dismissal — Judgment of the Civil Service Tribunal upheld on appeal — Later application for compensation — Observance of reasonable time–limit)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which Mr Brune essentially seeks compensation from the European Commission for the material and non-material harm resulting, in his view, from the loss of an opportunity to be recruited and employed as an official of the European Union because of the unlawful decision of the European Personnel Selection Office (EPSO), acting on behalf of the Commission, not to include him on the reserve list for competition EPSO/AD/26/05, as found by the Civil Service Tribunal in the judgment of 29 September 2010 in *Brune v Commission* (F-5/08, EU:F:2010:111, 'Brune I').

Held: The European Commission is ordered to pay Mr Brune, on account of the non-pecuniary loss incurred between 6 March 2007 and 4 February 2011, the sum of EUR 4 000, plus default interest from 17 April 2013 at the rate applied by the European Central Bank for its main refinancing operations over the period concerned increased by two points. The remainder of the action is dismissed. The European Commission is to bear its own costs and is ordered to pay half of the costs incurred by Mr Brune. Mr Brune is to bear half of his own costs.

Summary

1. Actions brought by officials — Time-limits — Request for compensation addressed to an institution — Duty to act within a reasonable time — Criteria for assessment
(Art. 270 TFEU; Statute of the Court of Justice, Art. 46; Staff Regulations, Art. 91)

2. Actions brought by officials — Action for damages — Annulment of the contested measure not providing adequate compensation for material harm — Compensation for loss of an opportunity to be recruited — Criteria
(Art. 340 TFEU)

3. Actions brought by officials — Action for damages — Annulment of the illegal act in dispute — Non-material damage separable from the illegality incapable of being entirely remedied by annulment (Art. 340 TFEU)

1. In disputes on the basis of Article 91 of the Staff Regulations and Article 270 TFEU, it is for officials and other staff, but also candidates in competitions, to submit any request for compensation from the Union for damage allegedly attributable to the Union to the institution concerned within a reasonable period from the time they became aware of the situation they complain of.

The reasonableness of the period in which a request for compensation is submitted is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties.

In that regard, even though it is not directly applicable and it cannot constitute a hard and fast limit below which any request would be admissible no matter how long the person concerned had taken to address his request to the administration and regardless of the circumstances of the case, account must also, however, be taken of the point of reference provided by the limitation period of five years laid down for actions in non-contractual liability by Article 46 of the Statute of the Court of Justice.

(see paras 43-45)

See:

Judgment of 28 February 2013 in Review of *Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, para. 28

Judgment of 5 October 2004 in *Eagle and Others* v *Commission*, T-144/02, EU:T:2004:290, paras 65 and 66

Order of 18 July 2011 in *Marcuccio* v *Commission*, T-450/10 P, EU:T:2011:399, para. 29

Judgment of 1 February 2007 in *Tsarnavas* v *Commission*, F-125/05, EU:F:2007:18, paras 69, 70 and 71 and the case-law cited therein, and order of 9 July 2010 in *Marcuccio* v *Commission*, F-91/09, EU:F:2010:87, para. 35

2. Concerning the non-contractual liability of the Union, where the alleged harm is material, the annulment of the contested decision is not, in itself, appropriate or sufficient compensation for the harm suffered. However, for the applicant to be able to claim material harm, he must prove that that harm was actual and certain.

Where the alleged harm relates to the loss of an opportunity to be a successful candidate in a competition and, subsequently, to be appointed as an EU official on the basis of that competition, the lost opportunity must be certain and irremediable.

Moreover, the fact that a person is included in a reserve list or in a special merit group in that list does not confer on him a vested right to be appointed as an official. The selection board's decision adopting the reserve list does not confer on successful candidates a right to be appointed, but only eligibility to

be appointed. Furthermore, eligibility to be recruited becomes an opportunity to be recruited only from the date when a post is to be filled for which the successful candidate might reasonably be expected to be recruited.

(see paras 76-78)

See:

Judgment of 21 February 2008 in *Commission* v *Girardot*, C-348/06 P, EU:C:2008:107, para. 54

Judgments of 5 December 2000 in *Gooch* v *Commission*, T-197/99, EU:T:2000:282, para. 71, and 11 July 2007 in *Centeno Mediavilla and Others* v *Commission*, T-58/05, EU:T:2007:218, para. 52

Judgments of 13 September 2011 in *AA* v *Commission*, F-101/09, EU:F:2011:133, paras 44 and 85; 11 July 2013 in *CC* v *Parliament*, F-9/12, EU:F:2013:116, paras 114 to 116 and the case-law cited therein, and 15 October 2014 in *De Bruin* v *Parliament*, F-15/14, EU:F:2014:236, para. 53

3. Regarding non-contractual liability, while the annulment of an unlawful act may constitute, in itself, appropriate and, in principle, sufficient compensation for any non-material harm which that measure may have caused, that would not be the case where the applicant shows that he has sustained non-material harm that can be separated from the illegality on which the annulment is based and that cannot be compensated in full by that annulment.

In that regard, unless it annuls all the results of an open competition, the administration cannot possibly recreate the conditions in which the competition should have been organised in order to guarantee equal treatment between all candidates and objective marking. Consequently, the organisation of a new individual oral test is not necessarily capable, in itself, of compensating for the certain non-material harm suffered by the applicant as a result of not having had the opportunity to sit the original oral test in proper conditions as laid down in the Staff Regulations.

(see paras 80-82)

See:

Judgments of 6 June 2006 in *Girardot* v *Commission*, T-10/02, EU:T:2006:148, para. 131, and 19 November 2009 in *Michail* v *Commission*, T-49/08 P, EU:T:2009:456, para. 88