



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber) 3 December 2015

Case T-127/14 P

Alvaro Sesma Merino

v

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

(Appeal — Civil service — Officials — Appraisal — Appraisal report — 2011-2012 objectives — Act adversely affecting an official — Admissibility)

Appeal: against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 11 December 2013 in *Sesma Merino v OHIM* (F-125/12, ECR-SC, EU:F:2013:192) seeking to have that judgment set aside.

Held: The appeal is dismissed. Mr Alvaro Sesma Merino is ordered to pay the costs.

Summary

1. *Actions brought by officials — Act adversely affecting an official — Concept — Decision setting objectives for an official, adopted prior to the final decision and not producing binding legal effects — Not included*

(Staff Regulations, Arts 90(2) and 91(1))

2. *Officials — Assignment — Reorganisation of departments — Administration's discretion — Limits — Interests of the service — Compliance with the principle of assignment to an equivalent post*

(Staff Regulations, Arts 5 and 7)

1. With regard to a measure or decision which is developed in several phases, intermediate measures, the purpose of which is merely to prepare for the final decision, do not in themselves produce binding legal effects. Such effects arise solely from the measure definitively establishing the position of the institution concerned and, as long as that measure has not yet been adopted, the legal position of those concerned is not directly or immediately changed.

Consequently, if a measure produces, in itself, binding legal effects directly and immediately affecting the position of those concerned, it constitutes an act adversely affecting them which is capable of being the subject of a complaint and then an action before the Courts of the Union, in accordance with Article 90(2) and Article 91(1) of the Staff Regulations respectively. The fact that that measure may be

taken into account in the subsequent adoption of a different measure and hence may be regarded as forming part of an internal procedure leading to the adoption of that other measure is not sufficient to prevent the first measure from constituting an act adversely affecting those concerned.

Thus, the fact that the adoption of a decision setting objectives for an official for a particular period is a necessary prerequisite for the adoption of a final decision in the subsequent appraisal procedure is not, in itself, sufficient to conclude that the decision setting objectives is not an act adversely affecting the official concerned. It must still be shown that the latter decision does not, in itself, produce binding legal effects directly and immediately affecting the situation of the official in question.

(see paras 26, 27, 29)

2. The institutions and bodies of the European Union have a wide discretion to organise their departments to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks on condition, however, that the staff are assigned in the interest of the service and in conformity with the principle of the equivalence of posts.

Consequently, although an official's responsibilities must not be below those corresponding to his grade and post, they must also not manifestly exceed what might reasonably be expected of an official in the grade concerned occupying the post in question, particularly where that requirement would also be clearly contrary to the interests of the service.

(see paras 31, 37, 38)

See:

Judgment of 23 March 1988 in *Hecq v Commission*, 19/87, ECR, EU:C:1988:165, para. 6 and the case-law cited therein