Reports of Cases

# JUDGMENT OF THE GENERAL COURT (Second Chamber)

13 December 2017 *

(Civil service — EIB staff — Period allowed for commencing proceedings — Reasonable time — Pensions — 2008 reform — Contractual nature of the employment relationship — Proportionality — Obligation to state reasons — Legal certainty — Liability — Non-material harm)

In Case T-482/16 RENV,

**Oscar Orlando Arango Jaramillo**, a member of staff of the European Investment Bank, residing in Luxembourg (Luxembourg), and the other members of staff of the European Investment Bank whose names appear in the annex,[1] represented by C. Cortese and B. Cortese, lawyers,

applicants,

v

**European Investment Bank (EIB)**, represented initially by C. Gómez de la Cruz and T. Gilliams, subsequently by T. Gilliams and G. Nuvoli and most recently by T. Gilliams and G. Faedo, acting as Agents, assisted by P.-E. Partsch, lawyer,

defendant,

ACTION brought under Article 270 TFEU, seeking, first, annulment of the decisions of the EIB, contained in the applicants' salary statements for February 2010, to increase their contributions to the pension scheme and, secondly, an order that the EIB pay a symbolic EUR 1, by way of compensation for the non-material harm suffered.

THE GENERAL COURT (Second Chamber),

composed of M. Prek (Rapporteur), President, E. Buttigieg and M.J. Costeira, Judges,

Registrar: G. Predonanzi, Administrator,

having regard to the written part of the procedure and further to the hearing on 5 May 2017,

gives the following

* Language of the case: French.

1 The list of the other members of staff of the European Investment Bank is annexed to the version served on the parties only.

# Judgment[2]

1 These proceedings follow on from the judgment of 9 July 2013, *Arango Jaramillo and Others* v *EIB* (T-234/11 P RENV-RX, 'the judgment on appeal after review', EU:T:2013:348) by which the General Court (Appeal Chamber) set aside the order of 4 February 2011, *Arango Jaramillo and Others* v *EIB* (F-34/10, 'the order set aside', EU:F:2011:7), and referred the case back to the European Union Civil Service Tribunal.

2 The judgment on appeal after review followed on from the judgment of 28 February 2013, *Arango Jaramillo and Others* v *EIB* (C-334/12 RX-II, 'the review judgment' EU:C:2013:134), by which the Court of Justice, having declared that the judgment of 19 June 2012, *Arango Jaramillo and Others* v *EIB* (T-234/11 P, 'the judgment reviewed', EU:T:2012:311), delivered on an appeal against the order set aside, affected the consistency of EU law, set aside that judgment and referred the case back to the General Court.

…

## II. Procedure at first instance and order set aside

18 By application received at the Registry of the Civil Service Tribunal on 26 May 2010, the appellants brought an action, registered under case number F-34/10, seeking, first, annulment of their February 2010 salary statements, in so far as they disclosed the EIB's decisions to increase their contributions to the pension scheme, and, secondly, an order that the EIB pay a symbolic EUR 1 by way of compensation for the non-material harm which they had suffered.

19 By separate document lodged at the Registry of the Civil Service on 20 July 2010, the EIB raised an objection of inadmissibility pursuant to Article 78 of the Rules of Procedure of that Tribunal, and requested that the Civil Service Tribunal rule on the inadmissibility of the action without going to the substance of the case.

20 In their observations on the objection of inadmissibility, the appellants submitted, inter alia, that, in the light of the particular circumstances of the case, in particular the absence of any written provision relating to the time limits within which members of staff of the EIB must bring proceedings, the strict application of the time limit under general law of 3 months and 10 days would undermine their right to an effective remedy (order set aside, paragraph 18).

21 By the order set aside, adopted pursuant to Article 78 of the Rules of Procedure of the Civil Service Tribunal, that Tribunal, without initiating the oral procedure and without reserving its decision on the objection of inadmissibility for the final judgment, dismissed the action as being inadmissible on the ground that it had been brought out of time.

22 As is clear from paragraphs 15 and 16 of the order set aside, the Civil Service Tribunal considered that, taking into account, first, that the members of staff concerned first became aware of the contents of their salary statements relating to February 2010 only on Monday 15 February 2010 and, secondly, the 10-day extension to the time limit on account of distance, the members of staff had a period of time expiring on Tuesday 25 May 2010 within which to bring an action.

23 The Civil Service Tribunal observed, at paragraph 17 of the order set aside, that the action brought by the members of staff concerned had only reached the Registry of that Tribunal, by email, during the night of Tuesday 25 to Wednesday 26 May 2010, more precisely on 26 May 2010 at 0.00.

2 Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

24 By the order set aside, the Civil Service Tribunal dismissed the action as inadmissible. It held, in essence, that since the time limit for bringing an action had expired on 25 May 2010, the application by the Members of Staff concerned, received electronically by the Registry on 26 May at 0.00, was out of time and, therefore, inadmissible. It rejected the arguments of those members of staff as to the infringement of their right to an effective legal remedy and the existence of unforeseeable circumstances or *force majeure*.

## III. Appeal before the General Court

25 By document lodged at the Registry of the General Court on 28 April 2011, the appellants brought an appeal, pursuant to Article 9 of Annex I to the Statute of the Court of Justice of the European Union, against the order set aside, which appeal was registered under case number T-234/11 P.

26 In that appeal, the appellants requested the Court to set aside that order, to dismiss the objection of inadmissibility raised by the EIB in Case F-34/10 and to refer the case back to the Civil Service Tribunal to enable it to rule on the substance.

27 After establishing that no application for a hearing had been submitted by the parties within the period of one month from notification of closure of the written part of the procedure, the Court gave judgment in the case without any oral procedure.

28 In support of their appeal, the appellants raised three grounds, the first as the principal ground of appeal and the two others as alternative grounds. The first ground alleged an error of law in the interpretation of the concept of a 'reasonable period' for the bringing of the action at first instance and, in particular, breach of the principle of proportionality and infringement of the right to effective judicial protection. The second ground alleged an error of law in the interpretation of the applicable procedural rules, in particular of those relating to the existence of unforeseeable circumstances. The third ground alleged distortion of the evidence submitted to the Civil Service Tribunal to substantiate the existence of unforeseeable circumstances, and infringement of the rules relating to measures of inquiry and to organisation of the procedure at first instance.

29 In the judgment reviewed, the General Court dismissed the appeal on the ground that the grounds of appeal thus raised by the appellants were, in part, inadmissible and, as to the remainder, unfounded.

30 In dismissing the first ground of appeal, put forward as the principal ground, the Court held that the Civil Service Tribunal had correctly applied to the appellants' situation, in the order set aside, a rule that, by analogy with the time limit for bringing proceedings laid down in Article 91(3) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), a period of three months had, as a general rule, to be considered a reasonable period for a member of staff of the EIB to bring an action for annulment of a measure adopted by the EIB which adversely affected him (judgment reviewed, paragraph 27).

31 In that same paragraph (paragraph 27) of the judgment reviewed, the Court deduced from this 'by converse implication … that any action brought by an EIB staff member after the expiry of a 3-month time limit, extended on account of distance by a period of 10 days, must, in principle, be considered not to have been brought within a reasonable period'. It added that such an *a contrario* interpretation is justified 'because only the strict application of procedural rules laying down time limits serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice'.

32 In paragraph 30 of the judgment, the Court dismissed the arguments of the members of staff concerned that, instead of applying the principle that an action must be brought within a reasonable period, which is inherently flexible and allows the weighing up of the specific interests at stake, the

Civil Service Tribunal had required strict and general compliance with a precise time limit of three months. The Court took the view, in particular, that the Civil Service Tribunal had simply applied ‘a rule of law … which follows clearly and precisely from an *a contrario* reading of the case-law [of the General Court cited in paragraph 27 of the judgment]’, a rule which applies the principle that an action must be brought within a reasonable period specifically to disputes between the EIB and its members of staff, which are broadly similar to disputes between the European Union and its officials and members of staff. The General Court added that ‘that rule, which is based on a general presumption that a three-month time limit is, as a general rule, sufficient to enable EIB staff to assess the legality of EIB measures adversely affecting them and, if appropriate, to prepare their case, and the Courts of the European Union responsible for applying that rule are not required either to take account of the particular circumstances of each individual case or, in particular, to weigh up the specific interests at stake’.

33 In paragraphs 33 to 35 of the judgment reviewed, the Court referred to this reasoning in connection with the determination of the time limit for bringing an action in order to rule out the need to take account of the alleged electrical failure that had delayed the sending of the originating application, of the fact that the EIB had failed to meet its legal responsibility to set precise time limits for bringing actions, and of certain other circumstances specific to that case which had been put forward by the members of staff concerned.

34 In paragraphs 41 to 43 of that judgment, the Court also dismissed the argument of the members of staff concerned alleging breach of the principle of proportionality and of the right to effective judicial protection.

35 Lastly, in paragraphs 51 to 58 of the judgment reviewed, the Court rejected the plea in law put forward by the members of staff concerned regarding the Civil Service Tribunal’s refusal to treat the circumstances that led to their bringing their action out of time as unforeseeable circumstances or as *force majeure*. In paragraphs 59 to 66 of the same judgment, the Court likewise refused to uphold the plea by the members of staff alleging distortion of the evidence relating to the existence of unforeseeable circumstances or of *force majeure*.

## IV. Review by the Court of Justice

36 Following the proposal of the First Advocate General, the Court of Justice (Special Chamber, provided for in Article 123b of the Rules of Procedure of the Court of Justice, in the version applicable on the date of the proposal), held, by decision of 12 July 2012 in Case C-334/12 RX *Arango Jaramillo and Others* v *EIB*, that there should be a review. As set out in that decision, the review was to consider, first, whether the judgment under review affected the unity or consistency of EU law in that the General Court, as the appeal court, had interpreted the concept of a ‘reasonable period’, in the context of an action brought by members of staff of the EIB seeking annulment of a measure adopted by that bank which adversely affected those members, as a period which, if exceeded, had the result that the action was time-barred and, therefore, inadmissible, without the European Union Courts being required to take account of the particular circumstances of the case, and, secondly, whether that interpretation of the concept of a ‘reasonable period’ might not interfere with the right to an effective judicial remedy, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.

37 In the review judgment, the Court of Justice set aside the judgment under review, after finding that it did indeed affect the consistency of EU law in so far as the General Court, as the appeal court, had interpreted the concept of a ‘reasonable period’, in the context of an action brought by members of staff of the EIB seeking annulment of a measure adopted by that bank which adversely affected those members, as a period of three months, which, if exceeded, entailed automatically that the action was out of time and, therefore, inadmissible, without the European Union Courts being required to take into consideration the circumstances of the case (review judgment, paragraphs 26, 27 and 54).

38 The Court also held that that distortion of the concept of a reasonable period had meant that the members of staff concerned had been unable to defend their rights by means of an effective action before a tribunal in accordance with the conditions laid down by Article 47 of the Charter of Fundamental Rights of the European Union (review judgment, paragraph 45).

39 However, as it took the view that the definitive answer to the question of the admissibility of the appellants' action, in particular as to whether or not that action had been brought within a reasonable period, within the meaning of the case-law that is consistent with the principle of the right to an effective remedy, did not follow from the findings of fact on which the judgment under review was based, the Court of Justice held that it could not itself give final judgment in the proceedings, pursuant to Article 62b of the Statute of the Court of Justice of the European Union. Consequently, although it ruled on the costs relating to the review procedure, the Court of Justice referred the case back to the General Court, for the purposes of the appraisal, in the light of all the circumstances of the particular case, of the reasonableness of the period within which the appellants had brought their action before the Civil Service Tribunal (review judgment, paragraphs 56 to 59).

## V. Appeal before the General Court after review

40 In accordance with Article 121a of the Rules of Procedure of the General Court of 2 May 1991, the review judgment had the effect of bringing the appeal in these proceedings before the General Court once more.

41 In their observations as to the conclusions to be drawn from the review judgment for the outcome of the proceedings, the applicants submitted, inter alia, that the Court should uphold the first ground of appeal and, on that basis, set aside the order set aside, on the ground that their action before the Civil Service Tribunal had been brought within a reasonable period in the light of all the circumstances of the particular case (judgment on appeal after review, paragraph 21). The EIB submitted, inter alia, that the Court should, primarily, refer the case back to the Civil Service Tribunal or, in the alternative, dismiss the appeal, after having confirmed the inadmissibility of the action brought by the applicants before the Civil Service Tribunal by reason of its being out of time, on the ground that that action had been brought within a period of time which did not appear to be reasonable in the light of all the circumstances of the particular case (judgment on appeal after review, paragraph 20).

42 By the judgment on appeal after review, the General Court upheld the first part of the first plea advanced by the applicants in support of their appeal, which alleged that the Civil Service Tribunal had erred in law in the order set aside, in its interpretation of the concept of a 'reasonable period' for bringing the action at first instance. Consequently, and without it even being necessary to rule on the second part of the first ground of appeal and on the second and third grounds of appeal, it allowed the appeal and set aside the order set aside. Furthermore, the Court, holding that the proceedings were not ready for judgment, referred the case back to the Civil Service Tribunal for a fresh decision on the action (judgment on appeal after review, paragraphs 22, 35 and 36).

## VI. Proceedings at first instance after referral

43 By letter of 8 August 2013, the Registry of the Civil Service Tribunal, in accordance with Article 114(1) of the Rules of Procedure of the Civil Service Tribunal, invited the applicants to lodge written observations on the judgment on appeal after review.

44 On 27 September 2013, the applicants lodged their observations and a request for a stay at the Registry of the Civil Service Tribunal.

45 By letter of 3 October 2013, the Registry of the Civil Service Tribunal acknowledged receipt of those observations and informed the applicants that the request for a stay would be addressed at a later time. On the same day, it forwarded the applicants' observations to the EIB, informing it of the time limit within which its own observations were to be lodged. The EIB lodged its observations on 12 November 2013.

46 By letters of 14 April 2014, the Registry of the Civil Service Tribunal informed the parties of its decision to join the objection of inadmissibility to the substance of the case and invited the EIB to lodge a defence.

47 On 21 May 2014 the EIB lodged its defence.

48 On 11 July 2014, the applicants lodged a reply.

49 On 22 August 2014, the EIB lodged a rejoinder.

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51 By order of 6 February 2015, *Arango Jaramillo and Others* v *EIB* (F-34/10 RENV–RX, not published, EU:F:2015:6), after hearing the parties, the proceedings before the Civil Service Tribunal were stayed pending the General Court's decisions disposing of Cases T-240/14 P, *Bodson and Others* v *EIB*, and T-241/14 P, *Bodson and Others* v *EIB*.

52 By letters of 4 March 2016, the Registry of the Civil Service Tribunal informed the parties that, following delivery of the judgments of 26 February 2016, *Bodson and Others* v *EIB* (T-241/14 P, EU:T:2016:103), and of 26 February 2016, *Bodson and Others* v *EIB* (T-240/14 P, EU:T:2016:104), the stay had been lifted, and invited them to lodge observations on the potential consequences of those judgments.

53 The applicants lodged their observations on 25 April 2016. On 1 June 2016, the Registry of the Civil Service Tribunal informed the EIB of its decision not to add observations which the EIB had lodged out of time to the file.

…

55 Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), Case F-34/10 RENV-RX was transferred to the General Court in the state in which it was found as at 31 August 2016. It was registered as Case T-482/16 RENV and assigned to the Second Chamber.

56 The parties presented oral argument and their answers to the questions put by the General Court at the hearing on 5 May 2017.

### VII. Forms of order sought

57 The applicants claim that the Court should:

– reject the EIB's plea of inadmissibility;

– in the alternative, reserve a decision on the plea of inadmissibility for final judgment;

– annul the EIB's decisions, contained in their February 2010 salary statements, increasing their contributions to the pension system by means of an increase in the base figure used in the calculation of those contributions, and in the multiplier, expressed as a percentage of the amount of salary subject to deduction;

– order the EIB to pay a symbolic EUR 1, by way of compensation for the non-material harm suffered by the applicants;

– order the EIB to pay the costs.

58 The EIB contends that the Court should:

– dismiss the action for annulment as inadmissible;

– in the alternative, dismiss the action for annulment as unfounded;

– accordingly, dismiss the claim for damages;

– order the applicants to pay the costs.

## VIII. Law

### *A. Admissibility of the action*

59 The applicants maintain that, taking all the circumstances of the case into account, the action was brought within a reasonable period. They submit that the present case is complex and that it is important to those concerned. They argue, furthermore, that the EIB did not set time limits through regulations, and that it did not properly communicate the wording of the pensions reform to members of staff. They also contend that their own conduct was not unreasonable and that it did not amount to default.

60 The EIB disputes those arguments. It submits that the complexity of the present case and its importance to those concerned are not reasons to rule that it is admissible. Furthermore, it maintains that the applicants have not shown the requisite diligence. It contends that the staff were informed in clear and precise terms about the reform before it entered into force.

61 It should be observed that nowhere in EU legislation is there any indication as to the time limit for bringing proceedings which is applicable to disputes between the EIB and its staff. Article 41 of the EIB staff regulations does not lay down a time limit for bringing proceedings, but goes no further than to provide that disputes between the EIB and members of its staff are to be brought before the European Union Courts.

62 However, the reconciliation of the right to effective judicial protection, which is a general principle of EU law and requires that an individual should have a sufficient period of time to assess the lawfulness of the measure adversely affecting him and, if necessary, to prepare his case, and the need for legal certainty, which requires that, after a certain time, measures taken by European Union bodies should become definitive, requires that those disputes be brought before the European Union Courts within a reasonable period (see Order of 6 December 2002, *D* v *EIB*, T-275/02 R, EU:T:2002:306, paragraphs 31 and 32 and the case-law cited).

63 Accordingly, it is necessary to consider whether the present action can be regarded as having been brought within a reasonable period.

64 In accordance with the case-law, the 'reasonableness' of a period is to be appraised in the light of all 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 (see the review judgment, paragraph 28 and the case-law cited). It follows that a time limit which has been laid down in advance cannot be presumed, in general, to constitute a reasonable period (see, to this effect and by analogy, judgment of 12 May 2010, *Bui Van* v *Commission*, T-491/08 P, EU:T:2010:191, paragraph 62).

65 In this regard, it should be observed that it is apparent from the case-law that, while the three-month time limit laid down by Article 91(3) of the Staff Regulations is only applicable to disputes between the institutions of the European Union and their officials or servants, and not to purely internal disputes between the EIB and its members of staff, including disputes in which members of staff seek annulment of acts of the EIB adversely affecting them, it does provide a relevant point of reference, in so far as disputes of the first kind are similar in nature to those of the second, and disputes of both kinds are subject to judicial review under Article 270 TFEU (judgment of 23 February 2001, *De Nicola* v *EIB* T-7/98, T-208/98 and T-109/99, EU:T:2001:69, paragraph 100).

66 However, having regard to the concept of a reasonable period, as referred to in paragraph 64 above, the period of three months laid down in Article 91(3) of the Staff Regulations cannot be applied by analogy as a limitation period to members of staff of the EIB when they bring an action for annulment of a measure adopted by that bank which adversely affects them (review judgment, paragraph 39).

67 In the present case, it is common ground between the parties that the period for bringing an action against the contested decisions contained in the February 2010 salary statements began to run on Monday 15 February 2010, the first working day after the day on which the salary statements became available on EIB's Peoplesoft IT system, which was Saturday 13 February 2010. According to the applicants, it was on 15 February 2010 that they had the opportunity to familiarise themselves with the contents of their February 2010 salary statements.

68 The action brought by the applicants in these proceedings reached the Registry of the Civil Service Tribunal electronically on 26 May 2010 at 0.00, which was 3 months and 11 days after the day on which the applicants had the opportunity to familiarise themselves with the salary statements.

69 As to the circumstances of this particular case which are to be taken into account in determining whether the action was brought within a reasonable period, it should first be observed that the applicants contest the decisions contained in their February 2010 salary statements and submit, by way of preliminary objection, that the transitional regulation and the protocol of agreement were unlawful. The legal issues raised in the present dispute therefore concern not only the rights and obligations of the applicants, but also, more broadly, the principle and the detailed provisions for the reform of the EIB pension scheme, which could have significant repercussions for the financing and operation of that pension scheme. Furthermore, given that the case concerns a number of aspects of the reform of the EIB pension plan, it is undoubtedly complex.

70 Secondly, as the Civil Service Tribunal observed in the order set aside (paragraphs 12, 17 and 21), it is apparent from the file that the action was sent electronically on 25 May 2010 at 23.59, reaching the email address of the Registry of the Civil Service Tribunal on 26 May 2010 at 0.00, and that the applicants were aware of the case-law referred to in paragraph 65 above when they brought the action. Furthermore, having received the communication from the Tribunal Registry concerning registration of the present case, the applicants, observing that it referred to the action having been lodged on 26 May 2010, asked the Registry of the Civil Service Tribunal to substitute 25 May 2010 for that date, showing that they intended to bring their action within the time limit which they considered to be 'presumed to be reasonable' under that case-law.

71 Taking into account, first, the particular circumstances of the case mentioned in the preceding paragraphs and, secondly, the case-law establishing, in favour of the applicants, a strong presumption that an action is brought within a reasonable period if it is brought within the indicative time limit of 3 months (see, to that effect, the View of Advocate General Mengozzi in *Oscar Orlando Arango Jaramillo and Others* v *EIB*, C-334/12 RX–II, EU:C:2012:733, paragraph 49, judgment of 23 February 2001, *De Nicola* v *EIB*, T-7/98, T-208/98 and T-109/99, EU:T:2001:69, paragraphs 101 and 107, and Order of 6 December 2002, *D* v *EIB*, T-275/02 R, EU:T:2002:306, paragraph 33; see also paragraph 65 above), to which must be added the 10-day extension on account of distance, the action brought by the applicants in the present proceedings within a period of 3 months and 11 days must be regarded as having been brought within a reasonable period.

72 In this regard, it should be observed that the 3-month period for bringing an action, as referred to in the case-law referred to in paragraph 65 above, plus the additional 10-day extension on account of distance, cannot apply as a limitation period in the present case, but can only serve as a relevant point of reference. It should also be observed that the EIB has not advanced any argument seeking to demonstrate that the period in question ceased to be reasonable by virtue of the three months being exceeded by one day (indeed, by a few seconds during the night of 25 to 26 May 2010), in the sense that this made a difference which could, on a practical level, undermine the need for legal certainty and the concomitant requirement that, after a certain period has elapsed, measures adopted by EU bodies become final.

73 On the other hand, the EIB maintains in this regard that wherever the 3-month period is exceeded, this must be justified, that the criteria of the importance of the case for those concerned and its complexity militate in favour of applying a ‘maximum’ period of 3 months and 10 days in this case, that the applicants have not justified the application of any longer period and that, in the present case, the application of the period of 3 months and 10 days would have been sufficient for the applicants to prepare their action properly, without infringing their right to effective judicial protection. Having regard to the considerations set out in the preceding paragraphs, those arguments must be rejected.

74 It follows from all of the foregoing that the action must be declared admissible.

…

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Oscar Orlando Arango Jaramillo and the other members of staff of the European Investment Bank (EIB) whose names appear in the annex to pay the costs relating to the present proceedings;**

3. **Orders the EIB to pay the costs incurred in Cases F-34/10, T-234/11 P and T-234/11 P RENV-RX.**

Prek Buttigieg Costeira

Delivered in open court in Luxembourg on 13 December 2017.

[Signatures]