

Order of the Civil Service Tribunal of 19 September 2006
— **Vienne and Others v Parliament**

(Case F-22/06) ⁽¹⁾

(Refusal of assistance under Article 24 of the Staff Regulations — Transfer of pension rights acquired in Belgium — Inadmissibility)

(2006/C 261/68)

Language of the case: French

Parties

Applicants: Philippe Vienne (Bascharage, Luxembourg) and Others (represented by: G. Bounéou and F. Frabetti, lawyers)

Defendant: European Parliament (represented by: F. De Wachter, M. Mustapha-Pacha and K. Zejdova, Agents)

Re:

First, annulment of the European Parliament's decision rejecting the requests for assistance brought by the applicants in connection with the transfer of their pension rights acquired in Belgium and, secondly, an application for damages.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*
2. *Each party is to bear its own costs.*

⁽¹⁾ OJ C 108, 6.5.2006.

Action brought on 21 July 2006 — Duyster v Commission

(Case F-80/06)

(2006/C 261/69)

Language of the case: Dutch

Parties

Applicant: Tineke Duyster (Oetrangle, Luxembourg) (represented by: W.H.A.M. van den Muijsenbergh, lawyer)

Defendant: Commission of the European Communities

Form of order sought by the applicant

The applicant claims that the Court should:

- declare the action admissible or, in the alternative, in part admissible;
- annul the Appointing Authority's decisions of 22 December 2005 and 11 May 2006 or, in the alternative, annul them in part;
- hold that no legal rule precludes the applicant from applying for her parental leave to be withdrawn in reliance on Article 2 of the General Provisions for Implementing Article 42a of the Staff Regulations relating to Parental Leave ('GPI');
- find that the defendant has advanced no valid argument or legal reason precluding the conclusion that the applicant is in active employment;
- find that the defendant has advanced no argument for depriving the applicant of the benefits connected with the administrative position of active employment;
- in the alternative, hold that no legal rule precludes the defendant from a balancing of interests, in which it applies Article 2(4) of the GPI and adopts a decision on that basis in respect of the withdrawal of parental leave;
- in the further alternative, uphold in part one or more of the above claims;
- order the defendant to pay the costs, including those of the legal assistance relating to the decision adopted following the applicant's request of 6 December 2005.

Pleas in law and main arguments

In Cases F-51/05 ⁽¹⁾ and F-18/06 ⁽²⁾, the applicant has already challenged the Commission's giving her parental leave for the period from 1 November 2004 to 30 April 2005 and, then, by letter of 17 November 2005, fixing 8 November 2004 as the date when the parental leave started.

On 6 December 2005, the applicant made a request based on, among others things, Article 90(1) of the Staff Regulations and on the GPI in respect of parental leave. She sought the annulment of the parental leave referred to in the Appointing Authority's letter. On 22 December 2005, the Appointing Authority's declared that request inadmissible. The applicant then lodged, on 14 February 2006, a complaint under Article 90(2) of the Staff Regulations against the decision of 22 December 2005. On 16 May 2006, the Appointing Authority also declared that complaint inadmissible in a decision of only a few lines.

In support of her action against the inadmissibility decisions, the applicant pleads, in particular: (i) mistakes of fact on which the decisions are based; (ii) infringement of the content and purpose of Article 90(1) and (2) of the Staff Regulations; (iii) contradictions; (iv) the decision's lack of clarity; (v) infringement of the content and purpose of Article 42a of the Staff Regulations; (vi) infringement of the content and purpose of Article 2 of the GPI; (vii) failure to follow the case-law; (viii) infringement of the content and purpose of Article 25 of the Staff Regulations; (ix) breach of the principles of proportionality, protection of legitimate expectations, equal treatment and legal certainty, as well as breach of the principle of balancing the relevant interests, non-compliance with the employer's duty to provide information and breach of the principle of sound administration; (x) lack of foundation for the Appointing Authority's statement that the contents of the applicant's request already forms part of Case F-51/05.

The applicant also puts forward the arguments by which she submits that it is possible to rule favourably on the substance of her request. She pleads, among other matters, new circumstances justifying the making of a further request (even with retrospective effect), the content and purpose of Article 42a of the Staff Regulations, the content of the GPI, in particular, Article 2(4) thereof, Articles 35, 36, 59 and 62 of the Staff Regulations and breach of the legal principles cited above under (x).

(¹) OJ C 217, 3.9.2005 (Case initially registered in the Court of First Instance of the European Communities under No T-249/05 and transferred to the European Union Civil Service Tribunal by order of 15.12.2005).

(²) OJ C 154, 1.7.2006.

Action brought on 21 July 2006 — Duyster v Commission

(Case F-81/06)

(2006/C 261/70)

Language of the case: Dutch

Parties

Applicant: Tineke Duyster (Oetrange, Luxembourg) (represented by: W.H.A.M. van den Muijsenbergh, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

- declare the appeal inadmissible in its entirety;
- annul the decisions of the Appointing Authority of 8 November 2005 and of 11 May 2006;
- grant the applicant damages for the loss suffered;
- in the alternative, grant wholly or in part the forms of order sought above or adopt a decision granting the applicant's requests of 5 and 13 July 2005;
- order the defendant to pay the costs.

Pleas in law and main arguments

In Cases F-51/06 (¹) and F-18/06 (²), the applicant has already challenged the fact that the Commission first granted her parental leave in respect of the period from 1 November 2004 to 30 April 2005 and then, by letter of 17 November 2005, fixed the starting date of her parental leave at 8 November 2004.

In this case, the applicant challenges the decisions by which the Commission rejected as inadmissible her requests submitted in order to obtain damages under Article 288 EC and Article 90(1) of the Staff Regulations of Officials, concerning approximately 50 objections relating to allegedly negligent acts committed by the Commission's departments.

In support of her action against the decisions of inadmissibility, the applicant alleges, inter alia: (i) that the decisions were based on incorrect facts (ii) infringement of the content and rationale of Article 90(1) and (2) of the Staff Regulations; (iii) that the decisions are contradictory; (iv) that the decisions lack clarity; (v) that the Appointing Authority is incorrectly interpreting and/or applying the case-law relating to Article 288 EC and Article 90 of the Staff Regulations; (vi) that the Appointing Authority uses misconceived arguments; (vii) infringement of the principles of proportionality, the protection of legitimate expectations, equal treatment and legal certainty, and infringement of the principle that different interests must be weighed against each other, failure to observe the employer's duty to provide information, and infringement of the principle of sound administration and the right to a legal remedy.

(¹) OJ C 217, 3.9.2005 (case initially registered before the Court of First Instance of the European Communities under number T-249/05 and transferred to the Civil Service Tribunal of the European Union by Order of 15.12.2005).

(²) OJ C 154, 1.7.2006