

ORDER OF THE CIVIL SERVICE TRIBUNAL
(First Chamber)
15 December 2009*

(Civil service — Officials — Action inadmissible — Delay)

In Case F-8/09,

ACTION under Articles 236 EC and 152 EA,

Svetoslav Apostolov, residing in Saarwelligen (Germany), represented by
D. Schneider-Addae-Mensah, lawyer,

applicant,

v

European Commission, represented by J. Currall and B. Eggers, acting as
Agents,

defendant,

* Language of the case: English.

THE TRIBUNAL (First Chamber),

composed of S. Gervasoni (Rapporteur), President, H. Kreppel and H. Tagaras,
Judges,

Registrar: W. Hakenberg,

makes the following

Order

- 1 By application lodged at the Registry of the Tribunal on 9 July 2009 by fax (the original being lodged on 15 July 2009), Mr Apostolov seeks, in particular, annulment of the decision contained in a letter of 21 October 2008 ('the contested decision'), by which the European Personnel Selection Office (EPSO) dismissed his complaint against the decision of 25 April 2008 informing him that the marks he had been given in the selection tests held in connection with the call for expressions of interest EPSO/CAST27/4/07 were not sufficient for him to be included in the database of eligible candidates.

- 2 By a separate document lodged at the Registry of the Tribunal on 1 September 2009, the Commission of the European Communities raised two pleas of inadmissibility against the action, under Article 78 of the Rules of Procedure. The Commission, which argues that the action is out of time and that the applicant has no legal interest in bringing proceedings, contends that the action should be dismissed as inadmissible and that the applicant should be ordered to pay the costs.

- 3 By letter of 6 October 2009 lodged at the Registry of the Tribunal the same day by fax (the original being lodged on 9 October 2009), the applicant submitted inter alia his observations on the two pleas of inadmissibility raised by the Commission, requesting the Tribunal to reject them.

Legal context

- 4 Article 97(4) of the Rules of Procedure reads:

‘The introduction of an application for legal aid shall suspend the period prescribed for the bringing of the action until the date of notification of the order making a decision on that application ...’

Law

- 5 It is common ground that the applicant was informed of the contested decision on 29 October 2008.
- 6 Consequently, under both Article 91(3) of the Staff Regulations of Officials of the European Union, which provides that appeals against an act adversely affecting an official are to be filed within three months of the date of notification of that act, and Article 100(3) of the Rules of Procedure, which provides that that time is to be extended ‘on account of distance by a single period of 10 days’, the time available to the applicant for bringing an action against the contested decision expired on 9 February 2009.

- 7 By application lodged at the Registry of the Tribunal on 3 February 2009 by fax (the original being lodged on 6 February 2009), the applicant applied for legal aid.
- 8 Thus, contrary to what the Commission contends, that legal aid application was in fact made within ‘the period prescribed for the bringing of the action’, within the meaning of Article 97(4) of the Rules of Procedure, so that under that provision the time-limit was suspended until the date of notification of the order making a decision on that application.
- 9 However, the Tribunal gave a ruling on the legal aid application by order of 12 May 2009 in Case F-8/09 AJ *Apostolov v Commission* (not published in the ECR), by which the applicant was granted legal aid, and it is apparent from the documents before the Tribunal, in particular the observations submitted by the applicant on 6 October 2009, that the applicant was notified of that order on 19 May 2009.
- 10 The time-limit for bringing an action therefore recommenced from that date and expired six days later, on 25 May 2009 (see, to that effect, the order in Case F-133/06 *Marcuccio v Commission* [2008] ECR-SC I-A-1-233 and II-A-1-663, paragraph 50, the subject of an appeal before the General Court, Case T-9/09 P).
- 11 However, the action was not brought until 9 July 2009, as was stated above, and is therefore out of time, as the Commission correctly contends.
- 12 None of the arguments put forward by the applicant in his observations of 6 October 2009 is capable of invalidating that conclusion.

- 13 In the first place, the applicant argues that he made an initial legal aid application on 23 January 2009, using the appropriate on-line application form, before he made the application which was registered by the Tribunal on 3 February 2009. He claimed that at the time that on-line form was sent, as there were points that were unclear in the documents published on the Tribunal's website (Legal Aid Application Form, Rules of Procedure, Check-list: Application), he sent the Tribunal an email asking whether it was necessary for the original of his legal aid application to be lodged within 10 days of sending the on-line form. However, he did not receive clear notice from the Tribunal that he was required to lodge the original of his legal aid application within that time until 2 February 2009. As a result of the Tribunal's delay in replying to his email he had a time-limit of only one day, expiring on 3 February 2009, for the original of his application to reach the Tribunal. Since it was impossible to comply with that time-limit, acting on the advice of the Registry of the Tribunal, he sent another on-line application form on 3 February 2009.
- 14 These assertions regarding the exchanges between the applicant and the Registry are corroborated by the documents before the Tribunal.
- 15 However, the applicant himself states that he did have access to the Rules of Procedure. It is clear from the provisions of Article 34 of those rules, which govern the lodging of pleadings with the Registry of the Tribunal, and in particular Article 34(6), that a pleading which is received at the Registry by any technical means of communication is taken into consideration for the purposes of compliance with the time-limits for taking steps in proceedings only where the signed original of the pleading is lodged no later than 10 days after the copy of the original was received. Moreover, the Guide for Legal Aid Applicants, which forms an integral part of the on-line legal aid application form, and which, like that form, is accessible on the Tribunal's website, mentions the existence of that rule. The applicant therefore has no grounds for complaining about a lack of information in that regard or the lack of clarity of the applicable texts.
- 16 Furthermore, although it is true that the Registry of the Tribunal did not reply to the applicant's email until 2 February 2009, this cannot be regarded as unreasonable in view of the large number of cases pending before the Tribunal. Moreover, in the circumstances described in the preceding paragraph, the Registry

did not fail in its task of assisting the parties and their representatives in all their exchanges with the Tribunal. In fact, the Registry's reply arrived at a time when it was still possible for the applicant to rectify the legal aid application. The applicant was able, at the Registry's request, to send another legal aid application on 3 February 2009 using the on-line form, and to transmit the original of his application to the Registry by 6 February 2009. Diligence on the part of the Registry thus finally enabled the applicant to obtain legal aid.

- 17 Lastly and most importantly, even if the Tribunal were to accept that the legal aid application was submitted in a valid manner on 23 January 2009, the time-limit laid down for bringing the action began to run again from 19 May 2009, expiring on 8 June 2009. The action was not, however, brought until 9 July 2009.
- 18 In the second place, the applicant asserts that he was not made aware by the Tribunal of any time-limit for filing the application initiating his action following the adoption of a decision on the legal aid application. On the contrary, so he claims, he was even informed, incorrectly, during a telephone conversation with an official from the Registry which took place on 27 April 2009, that in this case 'there [was] no time-limit running yet'.
- 19 However, the Tribunal has not been able to establish that an official from the Registry uttered the words reported by the applicant.
- 20 In any event, on this point too the relevant provisions of the Rules of Procedure are unambiguous. It is clear from Article 97(4) of the Rules of Procedure, a provision of which the applicant's lawyer must have been aware when he took on the applicant's case, that submitting a legal aid application merely suspends the period prescribed for the bringing of the action until the date of notification of the order ruling on that application. The fact that the remaining period following the order granting legal aid was too short to enable the applicant to prepare his case is merely the consequence of those provisions and of the fact that the applicant did not file his legal aid application in accordance with the requirements of the Rules of Procedure until 3 February 2009, shortly before the

time-limit expired. Furthermore, the applicant was assisted by a lawyer after his legal aid application was accepted. That lawyer could not consider himself to be bound by information allegedly given to his client, purely by word of mouth, on 27 April 2009, before he began to represent him. If the lawyer had done so, he could not be regarded as having shown all the diligence required of a normally well-informed professional.

- 21 It has not therefore been established that the late filing of the application initiating the action stems from an excusable error, a concept which must be interpreted in a restrictive manner and may concern only exceptional circumstances in which, in particular, the conduct of an institution has been, either alone or to a decisive extent, such as to give rise to pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally well-informed person (Case C-195/91 P *Bayer v Commission* [1994] ECR I-5619, paragraph 26, and Case C-193/01 P *Pitsiorlas v Council and ECB* [2003] ECR I-4837, paragraph 24).
- 22 It follows from the foregoing that the action must be dismissed as inadmissible.

Costs

- 23 Under the terms of Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Title 2, Chapter 8 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. By virtue of Article 87(2), if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any. Under Article 98(4) of the Rules of Procedure, where the recipient of the aid is unsuccessful, the Tribunal may, in ruling as to costs in the decision closing the proceedings, if equity so requires, order that one or more parties should bear their own costs or that those costs should be borne, in whole or in part, by the cashier of the Tribunal by way of legal aid.

²⁴ It is clear from the grounds set out above that the applicant is the unsuccessful party. Also, in its pleadings the Commission expressly applied for the applicant to be ordered to pay the costs. Since the circumstances of this case do not warrant application of the provisions of Article 87(2) or of Article 98(4) of the Rules of Procedure, the applicant must be ordered to pay the costs.

On those grounds,

THE TRIBUNAL (First Chamber)

hereby:

- 1. Dismisses the action as inadmissible;**
- 2. Orders Mr Apostolov to pay the costs.**

Luxembourg, 15 December 2009.

W. Hakenberg
Registrar

S. Gervasoni
President