



Reports of Cases

ORDER OF THE CIVIL SERVICE TRIBUNAL
(First Chamber)
5 July 2011

Case F-73/10

Angel Coedo Suárez
v
Council of the European Union

(Civil service — Officials — Action for damages — Implied decision rejecting a claim for compensation, followed by an express decision rejecting that claim — Lateness of prior complaint against the implied rejection decision — Not admissible)

Application: brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which Mr Coedo Suárez seeks, first, annulment of the Council's decision of 26 October 2009 rejecting his claim of 3 June 2009 for compensation for damage allegedly caused to him by that institution, second, annulment of the Council's decision of 26 May 2010 rejecting his complaint against the first decision, and third, an order for the Council to compensate for the material and non-material damage he considers he has suffered.

Held: The action is dismissed as inadmissible. The Council is ordered to pay all the costs.

Summary

1. Officials — Actions — Prior administrative complaint — Implied decision rejecting a request not challenged in good time — Subsequent express decision — Confirmatory measure (Staff Regulations, Arts 90 and 91)

2. Officials — Actions — Prior administrative complaint — Time-limits — Mandatory — Claim barred by lapse of time — Excusable error — Concept (Charter of Fundamental Rights of the European Union, Art. 47; Staff Regulations, Arts 90 and 91)

3. Procedure — Costs — To whom chargeable — Taking into account of requirements of fairness — Order for the successful party to pay the costs (Rules of Procedure of the Civil Service Tribunal, Arts 87(2) and 88; Staff Regulations, Art. 90(1))

1. The express rejection of a request after an implied decision rejecting that same request cannot enable the official concerned to continue the pre-litigation procedure by opening for him a new period for lodging a complaint, as that decision is in the nature of a purely confirmatory measure. Furthermore, although Article 91(3), second indent, of the Staff Regulations provides that where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal starts to run afresh, that

rule relates only to the period for lodging an appeal against a decision rejecting a complaint, and does not apply to the time-limit for lodging a complaint against a decision rejecting a request. Article 91(3), second indent, of the Staff Regulations is a specific provision relating to the rules for calculating periods for filing appeals, and must be interpreted literally and strictly.

(see paras 37, 38)

See:

17 November 2000, T-200/99 *Martinelli v Commission*, para. 11 and the case-law cited therein

8 July 2010, T-368/09 P *Sevenier v Commission*, paras 28 to 30

8 July 2009, F-62/08 *Sevenier v Commission*, paras 33 to 40; 10 May 2011, F-59/10 *Barthel and Others v Court of Justice*, paras 25 to 27

2. The time-limits referred to in Article 90 of the Staff Regulations, which were introduced in order to ensure clarity and certainty in legal relations and to avoid any discrimination or arbitrary treatment in the administration of justice, are a matter of public policy and are not at the discretion of the parties or the court, whose task it is to ascertain, even of its own motion, whether they have been observed.

Although it is accepted that failure to comply with the rules on the time-limits for complaints and appeals cannot lead to the dismissal of an application as inadmissible in cases where that failure is due to an excusable error on the part of the official, the concept of excusable error may, however, relate only to exceptional circumstances, in particular where the conduct of the 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 experienced person.

The notification indicating that a request submitted under Article 90(1) of the Staff Regulations is under consideration and that the departments of the institution in question have not yet reached a final conclusion does not produce any legal effect and is not, in particular, capable of extending the time-limits laid down in Articles 90 and 91 of the Staff Regulations. It is not for the parties to a dispute to extend the time-limits laid down in the Staff Regulations at their own convenience, since those time-limits are a matter of public policy and strict compliance with them ensures that legal situations are clear and certain.

Furthermore, the right to effective judicial protection is not in any way affected by the strict application of Union rules on procedural time-limits, which meet the requirement of legal certainty and the need to avoid any discrimination or any arbitrary treatment in the administration of justice. The right to a fair trial, recognised in the Union's legal system by Article 47 of the Charter of Fundamental Rights of the European Union, does not preclude the fixing of a time-limit for bringing legal proceedings.

(see paras 34, 40, 41, 43)

See:

17 June 1965, 43/64 *Müller v Councils*; 17 February 1972, 40/71 *Richez-Parise v Commission*, paras 8 and 9; 1 April 1987, 257/85 *Dufay v Parliament*, para. 10; 29 June 2000, C-154/99 P *Politi v European Training Foundation*, para. 15; 17 May 2002, C-406/01 *Germany v Parliament and Council*, para. 20 and the case-law cited therein; 18 January 2007, C-229/05 P *PKK and KNK v Council*, para. 101

10 April 2003, T-186/01 *Robert v Parliament*, para. 54; 2 March 2004, T-14/03 *Di Marzio v Commission*, para. 40; 15 January 2009, T-306/08 P *Braun-Neumann v Parliament*, para. 36

11 June 2009, F-72/08 *Ketselidis v Commission*, para. 52; 12 May 2010, F-13/09 *Peláez Jimeno v Parliament*, para. 18

3. Under Article 87(2) of its Rules of Procedure, the Civil Service Tribunal may, if equity so requires, 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. Furthermore, under Article 88 of those Rules of Procedure, a party, even if successful, may be ordered to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought.

In particular, ordering the institution to pay the costs, even though it is the successful party, may be justified by lack of due diligence in the pre-litigation procedure where, first, it allowed the period of four months laid down in Article 90(1) of the Staff Regulations to elapse before adopting an express decision rejecting the request made by the official concerned, and second, it did not draw the official's attention, in the decision at issue, to the fact that an implied rejection decision had already been taken and that the time-limit of three months for lodging a complaint had started running from that decision.

(see paras 45, 47, 48)

See:

28 June 2006, F-27/05 *Le Maire v Commission*, para. 53; *Barthel and Others v Court of Justice*, paras 33 and 34