



Reports of Cases

ORDER OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber)

21 February 2013 *

(Civil service — Article 34(1) and (6) of the Rules of Procedure — Application lodged by fax within the time-limit for bringing proceedings — Lawyer's handwritten signature different from that on the original application received by post — Action lodged out of time — Manifestly inadmissible)

In Case F-113/11,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Luigi Marcuccio, former official of the European Commission, residing in Tricase (Italy), represented by G. Cipressa, lawyer,

applicant,

v

European Commission, represented by C. Berardis-Kayser and J. Baquero Cruz, acting as Agents, and A. Dal Ferro, lawyer,

defendant,

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber)

composed of H. Kreppel, President, E. Perillo (Rapporteur) and R. Barents, Judges,

Registrar: W. Hakenberg,

makes the following

Order

- 1 By application received by letter at the Tribunal Registry on 31 October 2011, Mr Marcuccio brought the present action seeking, inter alia, annulment of the implied decision by which the European Commission rejected his claim for payment of arrears of remuneration for the month of August 2010. Before the original application lodged by post was received, a document presented as a copy of the original application lodged by post was sent by fax to the Tribunal Registry on 25 October 2011 and received by the Registry on the same day.

* Language of the case: Italian.

Legal context

- 2 Article 91 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') provides as follows:

'...

2. An appeal to the Court of Justice of the European Communities shall lie only if:

- the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within the period prescribed therein, and
- the complaint has been rejected by express decision or by implied decision.

3. Appeals under paragraph 2 shall be filed within three months. The period shall begin:

- on the date of notification of the decision taken in response to the complaint;
- on the date of expiry of the period prescribed for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 90(2); nevertheless, 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 shall start to run afresh.

...'

- 3 Article 34 of the Rules of Procedure of the Tribunal, concerning the lodging of pleadings, provides as follows:

'1. The original of every pleading must be signed by the party's representative.

...

6. ... [T]he date on which a copy of the signed original of a pleading ... is received at the Registry by any technical means of communication available to the Tribunal shall be deemed to be the date of lodging for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the pleading ... is lodged at the Registry no later than 10 days after the copy of the original was received. ...'

- 4 Article 100 of the Rules of Procedure, concerning the reckoning of time-limits, is worded as follows:

'1. Any period of time prescribed by the Treaties, the Statute or these Rules for the taking of any procedural step shall be reckoned as follows:

...

(b) A period expressed in weeks, months or in years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

...

(d) Periods shall include official holidays, Sundays and Saturdays;

(e) Periods shall not be suspended during the judicial vacations.

2. If the period would otherwise end on a Saturday, Sunday or official holiday, it shall be extended until the end of the first following working day.

The list of official holidays drawn up by the Court of Justice and published in the *Official Journal of the European Union* shall apply to the Tribunal.

3. The prescribed time-limits shall be extended on account of distance by a single period of ten days.'

Facts of the dispute

- 5 The applicant was an official in Grade A 7 with the Commission's Directorate-General for Development.
- 6 By decision of 30 May 2005, the appointing authority retired the applicant, with effect from 31 May 2005, pursuant to Article 53 of the Staff Regulations and granted him an invalidity allowance, which was determined in accordance with the third paragraph of Article 78 of the Staff Regulations ('the decision of 30 May 2005').
- 7 By judgment of 4 November 2008 in Case F-41/06 *Marcuccio v Commission* ('the initial judgment'), the Tribunal annulled the decision of 30 May 2005 on the ground of inadequate reasoning, without examining the other pleas and complaints raised by the applicant in support of his action for annulment.
- 8 On 30 August 2010, the applicant submitted a request under Article 90(1) of the Staff Regulations ('the request of 30 August 2010') for payment of arrears of remuneration to which he claimed he was entitled for the month of August 2010 under the initial judgment.
- 9 By letter of 28 February 2011 ('the letter of 28 February 2011'), which the applicant claims he received on 6 April 2011, the Commission informed the applicant that, as the initial judgment had annulled the decision of 30 May 2005 solely on the ground of inadequate reasoning and did not express a view as to his ability to carry out his duties, any possibility of his being reinstated would be subject to his undergoing a medical examination, as provided for in Article 15 of Annex VIII to the Staff Regulations. In those circumstances, the Commission claimed that the applicant could not be regarded as having been in active employment since 30 May 2005.
- 10 The applicant lodged a complaint on 14 March 2011, which was received by the Commission the following day.
- 11 By judgment of 8 June 2011 in Case T-20/09 P *Commission v Marcuccio*, the General Court of the European Union, before which the Commission had lodged an appeal, set aside the initial judgment and referred the case back to the Tribunal, where it was registered as Case F-41/06 RENV.
- 12 By judgment of 6 November 2012 in Case F-41/06 RENV *Marcuccio v Commission*, which is the subject of an appeal pending before the General Court of the European Union, the Tribunal dismissed the applicant's action in the case which gave rise to the initial judgment.

Forms of order sought by the parties

- 13 The applicant claims that the Tribunal should:
- annul the implied decision rejecting the request of 30 August 2010;
 - declare the letter of 28 February 2011 non-existent or, in the alternative, annul that letter;
 - annul the implied decision rejecting the complaint of 14 March 2011;
 - order the Commission to pay the costs.
- 14 The Commission contends that the Court should:
- dismiss the actions as inadmissible or, in any event, unfounded;
 - order the applicant to pay the costs.

Law

The decision of the Tribunal to give a decision by way of reasoned order

- 15 Under Article 76 of the Rules of Procedure, where an action is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Tribunal may, without taking further steps in the proceedings, give a decision by way of reasoned order.
- 16 In this case, the Tribunal considers that it has sufficient information from the documents before it and has therefore decided, pursuant to Article 76 of the Rules of Procedure, to give a decision on the action by reasoned order without taking further steps in the proceedings.

Admissibility

- 17 It should be noted, first, that time-limits for bringing proceedings are a matter of public policy which were established in order to ensure that legal positions are clear and certain and to avoid discrimination or arbitrary treatment in the administration of justice. It is for the European Union judicature to verify of its own motion whether those time-limits have been duly observed (judgment of the Court of Justice of 8 May 1973 in Case 33/72 *Gunnella v Commission*, paragraph 4, and order of the General Court of the European Union of 29 November 2011 in Case T-345/11 *ENISA v CEPD*, paragraph 11 and the case-law cited).
- 18 Accordingly, without there being any need to rule on the plea of inadmissibility put forward by the Commission, it is appropriate to consider whether the present action was brought in compliance with the rules laying down in mandatory terms the requirements for lodging pleadings and in compliance with the corresponding time-limits for bringing proceedings.
- 19 It should be noted first of all that it is apparent from the third paragraph of Article 19 and the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union that all applicants must be represented by a person authorised for that purpose and that, as a consequence, proceedings may properly be brought before the European Union judicature only by means of an application signed by such a person. Pursuant to Article 7(1) of Annex I to the Statute of the Court of Justice, those provisions are also applicable to the procedure before the Tribunal. Neither the Statute of

the Court of Justice nor the Rules of Procedure of the Tribunal make provision for any derogation from or exception to that requirement (see, to that effect, the order of 5 December 1996 in Case C-174/96 P *Lopes v Court of Justice*, paragraph 8 and the case-law cited).

- 20 The requirement for the handwritten signature of the applicant's representative is designed, for reasons of legal certainty, to ensure the authenticity of the application and to eliminate the risk that that document may not in fact be the work of the lawyer or adviser authorised for that purpose. Accordingly, that person, in his capacity as servant of the law, fulfils the essential role entrusted to him by the Statute of the Court of Justice and the Rules of Procedure of enabling the applicant, by virtue of his status, to have access to the Tribunal (see, to that effect, the judgment of the General Court of 23 May 2007 in Case T-223/06 P *Parliament v Eistrup*, paragraph 50). That requirement must therefore be regarded as an essential procedural rule and be applied strictly, failure to comply with that rule leading to the action being dismissed as inadmissible (see, to that effect, *Parliament v Eistrup*, paragraphs 51 and 52).
- 21 It is, moreover, precisely on account of the fundamental importance of the role of the lawyer as servant of the law in judicial proceedings that Article 34(1) of the Rules of Procedure requires that the original of every pleading be signed by the party's representative.
- 22 It follows that, for the purpose of lodging the original of any pleading within the prescribed time-limits, Article 34 of the Rules of Procedure does not allow the representative of the party concerned to append two different handwritten signatures — even if they are authentic — namely, one on the document sent by fax to the Tribunal Registry and the other on the original sent by post or delivered by hand to the Tribunal Registry. Indeed, where a party's representative uses the facility afforded to him by Article 34(6) of the Rules of Procedure to send, within the applicable time-limits, 'a copy of the signed original of a pleading ... by any technical means of communication available to the Tribunal', that is subject to the prerequisite that the same 'signed original of the pleading ... is lodged at the Registry no later than 10 days after the copy of the original was received', it being possible for the masculine form of the adjective 'signé' (in French) to refer only to the original application, not the copy of the original application.
- 23 In those circumstances, if it is apparent that the original pleading physically lodged at the Registry within the 10-day period following the sending of a copy of the original by fax to the Tribunal does not bear the same signature as that on the faxed document, it must be concluded that the Tribunal Registry received two separate procedural documents, each bearing its own individual signature, even though each of the signatures was appended by the same person. As the pleading lodged by fax does not meet the requirements of legal certainty imposed by Article 34 of the Rules of Procedure, the date on which the document sent by fax was received cannot be deemed to be the date of lodgment for the purposes of compliance with the time-limits for bringing proceedings (see, to that effect, the judgment of 22 September 2011 in Case C-426/10 P *Bell & Ross BV v OHIM*, paragraphs 37 to 43).
- 24 It should be added that the period for lodging an appeal is set by Article 91(3) of the Staff Regulations, from which the Rules of Procedure of the Tribunal cannot derogate. As a consequence, it is essential that the original application is finalised, at the latest, by the end of that period. From that perspective, the sending of a pleading by fax is not merely a means of transmission but also a means of proving that the original application received at the Tribunal Registry outside the time-limit had already been finalised within the time-limit for lodging an appeal.
- 25 In the present case, it should be observed that the document presented as the copy of the original application sent by post was forwarded to the Tribunal Registry by fax on 25 October 2011. On 31 October 2011, the Tribunal Registry received by post the original application. However, the text of the original application was different from that of the document received by fax on 25 October 2011, at the very least in so far as concerns the lawyer's signature. It is apparent from the examination of the document sent by fax on 25 October 2011 that the signature of the applicant's lawyer — on the

assumption that it is handwritten — is clearly not the same as that on the original application received by post at the Tribunal Registry on 31 October 2011. In those circumstances, it must be concluded that the document received by fax at the Tribunal Registry on 25 October 2011 and presented by the applicant as the copy of the original application received by post on 31 October 2011 is not a reproduction of the original application. It follows that the date on which the Tribunal Registry received the document sent by fax cannot be deemed the date of lodgment for the purpose of determining whether the period for lodging an appeal laid down in Article 91(3) of the Staff Regulations was complied with.

26 Lastly, it should be noted that requirements referred to at paragraphs 22 and 23 above are also set out in the Practice Directions to Parties on Judicial Proceedings before the Tribunal of 25 January 2008, published in the *Official Journal of the European Union* (OJ 2008 L 69, p. 13), which were applicable at the time the action was brought. In particular, paragraph 35 of the Practice Directions states as follows:

‘The signed original of any procedural document must be sent without delay, immediately after the earlier electronic despatch, without any corrections or amendments, even of a minor nature, being made to it, except for the correction of clerical errors which must however be listed on a separate sheet and sent with the original. Subject to that exception, in the event of any discrepancy between the signed original and the copy previously lodged, only the date on which the signed original was lodged will be taken into consideration for the purposes of compliance with procedural time-limits’.

27 In the present case, notwithstanding those precise directions, the appellant’s representative did not at any time indicate to the Tribunal Registry that any amendment had been made or that unforeseeable circumstances had arisen which meant that he had been obliged to sign the original application again.

28 As a consequence, for the purpose of determining whether the present action is admissible, it is necessary to ascertain whether the signed original application was lodged at the Tribunal Registry within the time-limit for filing an appeal, which, in accordance with Article 91 of the Staff Regulations, must be calculated in the present case from the date of the implied rejection of the complaint.

29 The complaint made by the applicant and sent by fax to the Commission on 15 March 2011 was rejected by implication on Friday 15 July 2011.

30 The time-limit for lodging an appeal, which is 3 months, extended on account of distance by a single period of 10 days, from 15 July 2011 therefore expired on Tuesday 25 October 2011.

31 As the original application was lodged at the Tribunal Registry on 31 October 2011, that is, after the expiry of the time-limit for lodging an appeal, it follows that the present action must be regarded as out of time.

32 The action must therefore be dismissed as manifestly inadmissible.

Costs

33 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 in Title 2 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. Under Article 87(2), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that he or she is not to be ordered to pay any.

³⁴ It is apparent from the grounds set out above that the applicant's action has been unsuccessful. Furthermore, in its claims the Commission has expressly requested that the applicant should be ordered to pay the costs. Since the circumstances of the present case do not warrant application of Article 87(2) of the Rules of Procedure, the applicant must bear his own costs and be ordered to pay the costs incurred by the Commission.

On those grounds,

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

(First Chamber)

hereby orders that :

- 1. The action be dismissed as manifestly inadmissible.**
- 2. Mr Marcuccio is to bear his own costs and to pay the costs incurred by the European Commission.**

Luxembourg, 21 February 2013.

W. Hakenberg
Registrar

H. Kreppel
President