



## Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL  
(First Chamber)  
22 May 2014

Case F-42/13

CU  
v  
European Economic and Social Committee (EESC)

(Civil service — Temporary staff — Contract of indefinite duration — Decision terminating the contract)

**Application:** under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which CU seeks annulment of the decision of the European Economic and Social Committee (EESC) of 16 October 2012 terminating her contract of indefinite duration as a member of the temporary staff, and, in so far as is necessary, annulment of the decision of 31 January 2013 and the decision of 24 April 2013 rejecting her complaint, together with an order that the EESC compensate her for the material harm suffered and pay her the sum of EUR 15 000 for the non-material harm suffered.

**Held:** The decisions of the European Economic and Social Committee of 16 October 2012 and 31 January 2013 terminating CU's contract of indefinite duration as a member of the temporary staff are annulled. The European Economic and Social Committee is ordered to pay CU the sum of EUR 25 000. The remainder of the action is dismissed. The European Economic and Social Committee is to bear its own costs and is ordered to pay the costs incurred by CU.

### Summary

- 1. Actions brought by officials — Prior administrative complaint — New decision having the same subject-matter and legal basis as the contested decision — Complaint lodged against the first decision — Admissibility*  
(Staff Regulations, Arts 90 and 91; Conditions of Employment of Other Servants, Art. 117)
- 2. Officials — Principles — Rights of defence — Scope — Obligation to hear the person concerned before adopting a decision to dismiss him*  
(Charter of Fundamental Rights of the European Union, Art. 41(2)(a))
- 3. Officials — Members of the temporary staff — Termination of a contract of indefinite duration because of a breakdown in the relationship of trust — Obligation to state reasons — Scope*  
(Charter of Fundamental Rights of the European Union, Art. 41(2)(c))

1. To consider that a complaint lodged by a member of the temporary staff had become devoid of purpose because of a decision by the authority empowered to conclude contracts of employment to replace its first decision by a second having the same content, in that it terminated his temporary staff contract, would have the effect of allowing the administration the power to require the staff member concerned to lodge as many complaints as the administration takes decisions in order to rectify certain irregularities, even though the act adversely affecting him, its subject-matter and its legal basis remain exactly the same.

(see para. 23)

2. According to Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, every person has the right to be heard before any individual measure which would affect him or her adversely is taken. In order for a breach of the right to be heard to lead to annulment of a decision dismissing a staff member, it is necessary to examine whether, had it not been for that irregularity, the outcome of the procedure might have been different. Where the institution can choose between terminating the contract of the temporary staff member or retiring him, it has all the more reason to hear him before imposing either outcome on him. Consequently, the institution's argument that the temporary staff member was given the opportunity to express his opinion at an interview after the decision to dismiss him would be tantamount to rendering meaningless the fundamental right to be heard, in other words, the opportunity given to the temporary staff member to express his opinion on a measure affecting him adversely, and the institution's duty to acquaint itself with that opinion before adopting its decision, thereby ensuring that the decision to be adopted is not vitiated by material errors and is the outcome of the appropriate balancing of the interests of the service and those of the person concerned.

(see paras 33, 38-41)

See:

11 July 2013, F-46/11 *Tzirani v Commission*, para. 136; 12 December 2013, F-129/12 *CH v Parliament*, paras 33 and 38

3. The administration's obligation to state the reasons on which its decisions are based, which is affirmed in Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, is an essential principle of EU law which may be derogated from only for compelling reasons. The purpose of that obligation is to provide the person concerned with sufficient information to determine whether the decision is well founded or whether it is defective in such a way that its legality may be challenged, and to enable the Union judicature to exercise its review of the legality of the contested decision. While it is true that the simple finding that there has been a breakdown in the relationship of trust may be enough to justify the adoption of a dismissal decision, and that where a dismissal decision is based only on such a finding, the requirement that the grounds for the decision must describe in detail the factual circumstances demonstrating or justifying the breakdown in the relationship of trust cannot be too far-reaching, the fact remains that a simple reference to the breakdown in the relationship of trust, without any details of the factual circumstances demonstrating or justifying that breakdown, is not enough to indicate to the temporary staff member whether the decision is well founded and to enable the Union judicature to exercise its review of legality. Where the statement of reasons for the decision to terminate the contract of the temporary staff member on the basis of a breakdown in the relationship of trust is worded in general, stereotypical terms and does not contain any information specific to the staff member's case, it is, in reality, tantamount to a total absence of a statement of reasons.

(see paras 42, 44, 49)

See:

20 February 2002, T-117/01 *Roman Parra v Commission*, para. 31; 29 September 2005, T-218/02 *Napoli Buzzanca v Commission*, para. 74

24 February 2010, F-89/08 *P v Parliament*, para. 73; *Tzirani v Commission*, paras 137 and 139