Reports of Cases

ORDER OF THE GENERAL COURT (Appeal Chamber)

11 December 2014*

(Appeals — Civil service — Officials — Appeal lodged in a different language to that in which the Civil Service Tribunal judgment under appeal was drafted — Appeal manifestly inadmissible)

In Case T-330/14 P,

APPEAL against the judgment of the European Union Civil Service Tribunal (First Chamber) of 21 January 2014, *Jelenkowska-Luca* v *Commission* (F-114/12, ECR-SC, EU:F:2014:3), asking for that judgment to be set aside,

Ewelina Jelenkowska-Luca, an official of the European Commission, residing in Rome (Italy), represented by: D. de Abreu Caldas, J.-N. Louis and M. de Abreu Caldas, lawyers,

appellant,

the other party to the proceedings being

European Commission, represented initially by K. Herrmann and V. Joris, and subsequently by K. Herrmann and J. Currall, acting as Agents,

defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, M. Prek and G. Berardis (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

Order

1 By her appeal lodged pursuant to Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant, Ms Ewelina Jelenkowska-Luca, asks the Court to set aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 21 January 2014, *Jelenkowska-Luca* v *Commission* (F-114/12, ECR-SC, EU:F:2014:3; 'the judgment under appeal'), by which the Tribunal dismissed her action seeking the annulment of the decision of the European Commission of 11 July 2012 which rejected her complaint against the decision of the Office for the Administration and Payment of Individual Entitlements (PMO) of 25 August 2010 refusing to grant her the expatriation allowance provided for in Article 4(1) of Annex VII to the Staff Regulations of Officials of the European Union.

* Language of the case: Polish.

Facts, procedure and form of order sought by the appellant

2 On 21 January 2014 the Civil Service Tribunal delivered the judgment under appeal in Polish – which was chosen to be the language of the case by the appellant when lodging her application for annulment before the Civil Service Tribunal, in accordance with Article 35(2) of the Rules of Procedure of the General Court which applies to the Civil Service Tribunal pursuant to Article 29 of its Rules of Procedure. The judgment was notified to the appellant on 22 January 2014.

3 The appellant has brought the present appeal by an application drafted in French and lodged at the Registry of the General Court on 31 March 2014.

4 By letter of 15 April 2014, the Registrar of the General Court informed the appellant that, pursuant to the first subparagraph of Article 7(5) of the Instructions to the Registrar of the General Court, the appeal could not be registered, since it was not drafted in the language provided for under Article 136a of the Rules of Procedure, in this case, Polish.

5 By letter of 2 May 2014, one of the appellant's lawyers requested the President of the General Court to review the decision not to register the appeal and to allow it to be registered on an *ex gratia* basis at the date the application was lodged, that is 31 March 2014. In that regard, he stated that Ms Jelenkowska-Luca had contacted his office only a few days before the deadline for bringing an appeal and had provided all relevant documentation, including the judgment under appeal, in French, without specifying that the language of the case at first instance had been Polish.

6 The General Court considered the letter to be a request for a derogation from the language rules laid down in Article 35(2)(c) of the Rules of Procedure and therefore decided to register the appeal. It forwarded that letter to the Commission on 18 June 2014, inviting it to submit observations on that request in accordance with the article in question.

7 On 1 July 2014, the Commission submitted its observations on the request for a derogation from the language rules. Its opposition was based on the ground, inter alia, that the request was out of time since, as a matter of public policy, the General Court's authorisation to use a language other than the language of the case (as determined in accordance with Article 136a of the Rules of Procedure) should have been granted before the expiry of the deadline for bringing an appeal.

8 On 18 August 2014, the appellant was notified of the Commission's observations.

9 The appellant claims that the Court should:

— set aside the judgment under appeal;

— order the Commission to pay the costs both at first instance and on appeal.

Law

10 Under Article 145 of the Rules of Procedure, where the appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur, decide by reasoned order to dismiss that appeal in whole or in part.

11 In the present case, the Court considers that the documents before the Court provide sufficient information and has decided, in accordance with that article, to give a decision on the action without taking further steps in the proceedings.

12 Under the first paragraph of Article 9 of Annex I to the Statute of the Court of Justice, an appeal may be brought before the General Court, within two months of notification of the decision appealed against, against final decisions of the Civil Service Tribunal and decisions of that Tribunal disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility.

13 That procedural deadline is to be extended on account of distance by a single period of 10 days under Article 102(2) of the Rules of Procedure. Pursuant to established case-law, the procedural deadline and the extension on account of distance are not to be regarded as separate, so that, when the procedural deadline ends, it must be extended on account of distance by a single period of ten days (see order of 7 July 2014 *Gomes Moreira* v *ECDC*, T-39/14 P, ECR-SC, EU:T:2014:684, paragraph 5 and the case-law cited).

14 Furthermore, according to established case-law, that time-limit for bringing an action for annulment is a matter of public policy since it was established in order to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice, and the Court must ascertain of its own motion whether that time-limit has been observed (see *Gomes Moreira* v *ECDC*, cited in paragraph 13 above, EU:T:2014:684, paragraph 6 and the case-law cited).

15 In the present case, it is apparent from the documents before the Court that the judgment under appeal was notified to the appellant on 22 January 2014. It follows that the time-limit for lodging the appeal (as extended on account of distance by a single period of 10 days) expired on 1 April 2014. The appellant lodged her notice of appeal on 31 March 2014, that is, one day before the expiry of the deadline.

16 Under Article 136a of the Rules of Procedure, in appeals against decisions of the Civil Service Tribunal, the language of the case is to be the language in which the judgment under appeal was drafted, without prejudice to Article 35(2)(b) and (c) and subparagraph 4 of Article 35(3) of the Rules of Procedure.

17 Parties bringing an appeal before the General Court are therefore obliged to comply with the language of the case chosen by the appellant for the proceedings before the Civil Service Tribunal (see, to that effect and by analogy, order of 20 May 2010, *Petrides* v *Commission*, C-64/98 P-REV, EU:C:2010:279, paragraph 15).

18 Nevertheless, Article 35(2)(c), set out in Chapter 5 (entitled 'Languages') of Title 1 of the Rules of Procedure, permits the General Court, at the request of one of the parties, and after the opposite party has been heard, to authorise the use of another of the languages mentioned in paragraph 1 of that Article as the language of the case for all or part of the proceedings. In that respect, the Court has already held that a request for a derogation from the rule on the use of the language of the case must be accompanied by a detailed and specific statement of reasons (order of 13 May 1993 *Ladbroke Racing* v *Commission*, T-74/92, ECR, EU:T:1993:41, paragraph 14). This applies even more so when the request is made by the appellant herself (order of 24 January 1997 *EFMA* v *Council*, T-121/95, ECR, EU:T:1997:6, paragraph 10).

19 Furthermore, Article 35(3) of the Rules of Procedure provides that '[t]he language of the case shall be used in the written and oral pleadings of the parties and in supporting documents, and also in the minutes and decisions of the General Court' and that '[a]ny supporting documents expressed in another language must be accompanied by a translation into the language of the case'.

20 In the present case, as already pointed out in paragraph 2 above, the language in which the judgment under appeal was drafted, and therefore the language of the appeal proceedings, is Polish.

21 However, the notice of appeal lodged by the appellant at the Registry of the General Court was drafted in French and was accompanied by neither a Polish translation nor a request for a derogation from the rule on the use of the language of the case.

22 It was not until one month after the expiry of the deadline for bringing an appeal, as extended on account of distance by a single period of 10 days, and 15 days after being informed by the Court Registry that the appeal could not be registered since it was not drafted in the language required under Article 136a of the Rules of Procedure (see paragraph 4 above), that the appellant's lawyer sent the Court Registry the letter comprising a request for a derogation from the language rules (see paragraph 5 above).

23 Irrespective of whether the grounds invoked by the appellant in that letter meet the requirements of being a sufficiently detailed and specific statement of reasons in order to justify a derogation from the initial language choice she made before the Civil Service Tribunal, a request for a derogation from the language rules submitted after expiry of the deadline for bringing an appeal and relating to an appeal drafted in a language other than the language of the case – such as the appellant's request in this case – cannot give rise to retroactive authorisation for the use of that other language in the appeal and, as a consequence, cannot give rise to a posteriori compliance of the appeal with the language rules laid down in the Rules of Procedure.

24 Moreover, since a derogation from the language rules is subject to the authorisation of the General Court, following a request accompanied by a detailed and specific statement of reasons, the onus is on the applicant to be diligent in submitting such a request in good time having regard to the deadline for bringing an appeal.

25 It must therefore be held that since the present appeal was not lodged in the language of the case of the judgment under appeal, namely Polish, it has not been filed in accordance with the language rules and is not admissible (see, to that effect and by analogy, *Petrides* v *Commission*, cited in paragraph 17 above, EU:C:2010:279, paragraph 16), and that ground for inadmissibility cannot be circumvented by a request for a derogation from the language rules submitted after the expiry of the deadline for bringing the appeal.

26 It follows from all of the foregoing considerations that the appeal must be dismissed as manifestly inadmissible, without there being any need to serve it on the Commission or rule on the merits of the request for a derogation from the language rules.

Costs

27 As the present order has been adopted prior to the Commission being notified of the appeal, it is sufficient to decide that the appellant must bear her own costs, pursuant to Article 87(1) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 144 of those Rules.

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. **Ms Ewelina Jelenkowska-Luca shall bear her own costs.**

Luxembourg, 11 December 2014.

E. Coulon
Registrar

M. Jaeger
President