Reports of Cases

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

26 October 2010*

(Staff cases — Contract staff — Non-renewal of a fixed-term contract — Complaint out of time — Manifest inadmissibility)

In Case F-3/10,

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

AB, a former member of the contract staff of the European Commission, residing in Brussels (Belgium), represented by S.A. Pappas, lawyer,

applicant,

v

European Commission, represented by J. Currall and D. Martin, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber),

composed of S. Gervasoni, President, H. Kreppel (Rapporteur) and M.I. Rofes i Pujol, Judges,

Registrar: W. Hakenberg,

makes the following

Order

1 By application received at the Tribunal Registry by fax on 15 January 2010 (the original being lodged on 20 January 2010), the applicant claims that the Tribunal should, principally, annul the decision of the European Commission not to renew his contract as a member of the contract staff.

Factual background to the dispute

2 From 2001 to 2006, the applicant worked for the Commission under administrative and technical local staff contracts and as a member of the auxiliary staff in the Commission's delegations in Malta and Laos.

* Language of the case: English.

3 From 1 May 2006, the applicant was employed as a member of the contract staff in function group IV in order to perform administrative, advisory, linguistic and equivalent technical tasks, again at the Commission's delegation in Vientiane (Laos) ('the delegation').

4 The contract of employment as a member of the contract staff stated at Article 4 thereof that it was concluded 'for a fixed period until 30 [April] 2009'.

5 By memorandum of 4 February 2009, the delegation's acting Chargé d'Affaires informed the applicant that the administration 'ha[d] not requested a prolongation of [his] contract when it expire[d] at the end of April' ('the memorandum of 4 February 2009').

6 By letter of 12 February 2009, sent on the same day by fax to the Head of Unit of 'Career of Officials and Contract Agents' of the Directorate-General (DG) External Relations, the applicant challenged the substance of the memorandum of 4 February 2009.

7 By memorandum of 30 March 2009 notified on the same day to the applicant, the Director of the External Service Directorate of DG External Relations informed him that his contract would end on 30 April 2009, and suggested that he might contact the relevant departments in order to obtain the necessary information concerning the formalities of his departure ('the decision of 30 March 2009').

8 By letter of 3 April 2009 to the Director of the External Service Directorate, the applicant expressed his surprise that the decision of 30 March 2009 failed to state the reasons on which it was based, and he explained that he had fulfilled all the conditions set out in his contract of employment in order for it to be renewed. He added that his last staff report was very positive, that he had never been informed of any concerns about the performance of his professional duties and that the decision was contrary to personnel policy and to the practice of transparency and dialogue.

9 In his reply of 30 April 2009, notified on the same day to the applicant ('the decision of 30 April 2009'), the Director of the External Service Directorate pointed out, first of all, that, in accordance with Article 119 of the Conditions of Employment of Other Servants of the European Union ('the CEOS'), the employment of a member of the contract staff whose contract was for a fixed period ceased on the date stated in it. He then noted that, in the present case, the applicant's contract had been concluded for a fixed period until 30 April 2009.

10 By memorandum of 13 July 2009, headed 'COMPLAINT [under] Article 90(2) [of the Staff Regulations of Officials of the European Union …]', the applicant challenged, in particular, the decision of 30 March 2009.

11 By decision of 16 October 2009, the authority responsible for concluding contracts of employment ('the ARCC') rejected the complaint brought by the applicant in the memorandum of 13 July 2009 ('the decision of 16 October 2009').

Forms of order sought

12 The applicant claims that the Tribunal should:

— annul the memorandum of 4 February 2009;

— annul the decision of 16 October 2009;

— order the Commission to pay the costs.

13 The Commission contends that the Tribunal should:

— declare that the application is manifestly inadmissible or, in any event, unfounded;

— order the applicant to pay the costs.

Law

14 Article 76 of the Rules of Procedure provides that where an action is, in whole or in part, manifestly inadmissible, the Tribunal may, without taking further steps in the proceedings, give a decision by way of reasoned order.

15 In the present case, the Tribunal considers that the information in the file is sufficient to enable it to rule on the admissibility of the action, and decides, pursuant to Article 76 of the Rules of Procedure, to give a decision without taking further steps in the proceedings.

The claim for the annulment of the memorandum of 4 February 2009

16 Under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), applicable to members of the contract staff pursuant to Article 117 of the CEOS, any person may submit to the appointing authority or, by analogy, the ARCC, a complaint against an act adversely affecting him. The authority is to notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this is to be deemed to constitute an implied decision rejecting it against which an appeal may be lodged under Article 91 of the Staff Regulations.

17 In addition, under Article 91(3) of the Staff Regulations, an appeal is to be filed within three months, with that period beginning, where a complaint is rejected by express decision, on the date of notification of the decision, and, where a complaint is rejected by implied decision, on the date of expiry of the period prescribed for the reply. Article 91(3) of the Staff Regulations also 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 is to start to run afresh.

18 Lastly, under Article 100(3) of the Rules of Procedure, the prescribed time-limits are to be extended on account of distance by a single period of 10 days.

19 In the present case, it is apparent from the documents before the Tribunal that the applicant sent the Head of the Unit 'Career of Officials and Contract Agents' of DG External Relations a letter, dated 12 February 2009, in which he challenged the substance of the memorandum of 4 February 2009. That letter, which must be regarded as a complaint within the meaning of Article 90(2) of the Staff Regulations, and which was received by the administration by fax on 12 February 2009, was rejected by implied decision four months later, that is to say, on 12 June 2009.

20 Thus, since the complaint, which had been rejected by implied decision, was not then expressly rejected before the period for lodging an appeal had expired, the applicant had three months and 10 days as from the implied decision rejecting the complaint within which to lodge an appeal, that is to say, until 22 September 2009, in accordance with Article 91(3) of the Staff Regulations in conjunction with Article 100(3) of the Rules of Procedure.

21 It is common ground that the present action was not brought until 15 January 2010, that is to say, after that period had expired.

22 In those circumstances, even if the memorandum of 4 February 2009 may be regarded as constituting an act adversely affecting the applicant, the claim for annulment of that measure is out of time and, therefore, manifestly inadmissible.

The claim for the annulment of the decision of 16 October 2009

23 It is settled case-law that a claim seeking annulment of a decision rejecting a complaint has the effect of bringing before the Courts of the European Union the act adversely affecting the applicant against which the complaint was submitted (Case 293/87 *Vainker* v *Parliament* [1989] ECR 23, paragraph 8; Case T-310/02 *Theodorakis* v *Council* [2004] ECR-SC I-A-95 and II-427, paragraph 19; and Case T-80/04 *Castets* v *Commission* [2005] ECR-SC I-A-161 and II-729, paragraph 15). Accordingly, the claim referred to, formally directed against the decision of 16 October 2009 rejecting the memorandum of 13 July 2009 by which the applicant sought to lodge a complaint against the decision of 30 March 2009, must in fact be regarded as directed against the latter decision.

24 Articles 90 and 91 of the Staff Regulations, applicable by analogy to members of the contract staff pursuant to Article 117 of the CEOS, make the admissibility of an action brought by an official against the institution to which he belongs conditional on the proper observance of the preliminary administrative procedure laid down thereunder (see, inter alia, order of the Court of Justice in Case 16/86 *P.* v *Economic and Social Committee* [1987] ECR 2409, paragraph 6; order in Case T-34/91 *Whitehead* v *Commission* [1992] ECR II-1723, paragraph 18).

25 It is therefore necessary to consider whether a complaint has been lodged against the decision of 30 March 2009 within the period of three months laid down in Article 90(2) of the Staff Regulations.

26 In that connection, since the decision of 30 March 2009 was communicated to the applicant on the day on which it was adopted, that is to say, on 30 March 2009, he had three months in order to lodge his complaint, that is to say, until 30 June 2009 in the present case.

27 It is common ground that the memorandum by which the applicant expressly intended to lodge a complaint against the decision of 30 March 2009 was not drawn up until 13 July 2009, that is to say, after the period referred to in the previous paragraph had expired.

28 In those circumstances, the claim for the annulment of the decision of 30 March 2009 must be dismissed as manifestly inadmissible since the complaint was lodged out of time.

29 For the sake of completeness, if the applicant's letter of 3 April 2009 should be regarded as containing a complaint against the decision of 30 March 2009, this claim for annulment would still be manifestly inadmissible on the basis that the action was out of time. In that case, since the decision of 30 April 2009 rejecting the complaint was notified to the applicant on the same day, in accordance with Article 91(3) of the Staff Regulations the applicant should have brought his action within a period of three months, extended on account of distance by a single period of 10 days, and thus on or before Monday 10 August 2009. As has been stated, the present action was not received at the Tribunal Registry until 15 January 2010.

30 It follows from all the foregoing that the action must be dismissed in its entirety as manifestly inadmissible.

Costs

31 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of 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 is not to be ordered to pay any.

32 It follows from the grounds set out above that the applicant is the unsuccessful party. Furthermore, the Commission expressly claimed in its pleadings that the applicant should be ordered to pay the costs. Since the circumstances of the present case do not warrant the application of Article 87(2) of the Rules of Procedure, the applicant must therefore be ordered to pay the costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.

2. The applicant shall pay the costs.

Luxembourg, 26 October 2010.

W. Hakenberg
Registrar

S. Gervasoni
President