Reports of Cases

ORDER OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

(Third Chamber)

10 November 2015*

(Civil service — Applicant not represented by a lawyer — Application signed by the applicant in her capacity as a lawyer — Non-rectifiable defect — Manifest inadmissibility — Article 81 of the Rules of Procedure)

In Case F-114/15,

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

Małgorzata Kozak, residing in Warsaw (Poland),

applicant,

v

European Commission,

defendant,

THE CIVIL SERVICE TRIBUNAL

(Third Chamber),

composed of S. Van Raepenbusch, President, H. Kreppel and J. Svenningsen (Rapporteur), Judges,

Registrar: W. Hakenberg,

makes the following

Order

1 By application received at the Tribunal Registry on 11 August 2015, Ms Kozak brought the present action for, in essence, the annulment of the decision of 15 April 2015 by which the European Personnel Selection Office (EPSO) informed her that she had not passed the 'Talent Screen Test' organised in Competition EPSO/AD/293/14, meaning that she was not eligible to participate in the tests at the Assessment Centre in that competition, and the annulment of the decision of 11 June 2015 by which EPSO informed her that the competition selection board had, after reviewing its initial decision, confirmed that decision.

* Language of the case: English.

2 Pursuant to Article 4 of Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing [EPSO] (OJ 2002 L 197, p. 53), the present action, although formally brought against EPSO as the defendant, must be deemed to be brought against the European Commission since it concerns requests and complaints relating to the exercise of the powers conferred on EPSO under Article 2(1) and (2) of Decision 2002/620/EC (see, to that effect, judgment of 16 October 2013 in *Italy* v *Commission*, T-248/10, EU:T:2013:534, paragraphs 25 to 27).

Admissibility

3 Under Article 81 of the Rules of Procedure, where the action is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Tribunal may give a decision by reasoned order without taking further steps in the proceedings.

4 It is apparent from case-law in this connection that there is no requirement to have legal representation in order to submit a complaint under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') or a request for review, such as that which gave rise in the present case to the decision of the selection board in Competition EPSO/AD/293/14 of 11 June 2015 not to invite the applicant to the Assessment Centre, although the parties concerned may nevertheless take legal advice even at the pre-litigation stage (see judgment of 9 March 1978 in *Herpels* v *Commission*, 54/77, EU:C:1978:45, paragraphs 46 to 48).

5 However, pursuant to the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, applicable to proceedings before the Tribunal by virtue of Article 7 of Annex I thereto, in order to subsequently bring an action before the Tribunal, a party, within the meaning of those provisions, must be represented by a third person, in the present case a lawyer authorised to practise before a court of a Member State or of a State which is a party to the Agreement on the European Economic Area (orders of 5 December 1996 in *Lopes* v *Court of Justice*, C-174/96 P, EU:C:1996:473, paragraph 8; of 13 January 2005 in *Sulvida* v *Commission*, T-184/04 EU:T:2005:7, paragraph 8, and of 13 February 2012 in *Ayres de Abreu* v *EESC*, F-123/11, EU:F:2012:17, paragraph 11). The requirement imposed by Article 19 of the Statute of the Court is based on a view of the lawyer's role as collaborating in the administration of justice and as being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as his client needs (judgment of 12 June 2014 in *Peftiev*, C-314/13, EU:C:2014:1645, paragraph 28 and the case-law cited therein).

6 Thus, pursuant to the first subparagraph of Article 45(2) of the Rules of Procedure, the original of the application must bear the handwritten signature of the applicant's lawyer and not of the applicant himself. That signature requirement is intended, in particular, first, to ensure that responsibility for the execution and content of that procedural document is assumed by the authorised person who must be selected by the applicant for the purposes of satisfying the obligation to be represented and, secondly, to eliminate the risk that that document is, in fact, written by someone other than the author authorised for that purpose (see, to that effect, order of 17 January 2007 in *Diy-Mar Insaat Sanayi ve Ticaret and Akar* v *Commission*, T-129/06, EU:T:2007:11, paragraph 29, and judgment of 23 May 2007 in *Parliament* v *Eistrup*, T-223/06 P, EU:T:2007:153, paragraphs 50 and 51).

7 In the present case, it is clear from the application that it was signed by the applicant herself, and therefore that the obligation, required in order to bring an action on the basis of Article 270 TFEU, to be represented by a third person was not observed.

8 In this connection, the fact that the applicant is a member, as a lawyer, of the Bar in Gdańsk (Poland) is irrelevant since, as the Court has held on several occasions, given that no derogation from or exception to the obligation to be represented is provided for by the Statute of the Court or Rules of Procedure of the Tribunal, the submission of an application signed by the applicant himself, even if he is, as in this case, a lawyer authorised to plead before a court of one of the Member States of the European Union, cannot be sufficient for the purpose of bringing an action (see order of 5 December 1996 in *Lopes* v *Court of Justice*, C-174/96 P, EU:C:1996:473, paragraph 10).

9 Moreover, the absence of a handwritten signature on the application by the lawyer instructed by the applicant to represent him constitutes, as such, an infringement of the first subparagraph of Article 45(2) of the Rules of Procedure and is therefore not among the formal irregularities that are capable of being rectified, after the expiry of the period within which proceedings may be brought, under Article 50(6) of the Rules of Procedure. The requirement of a hand-written signature on the part of the lawyer representing the applicant, in the same way as infringement of the obligation to be represented *per se*, must therefore be regarded as an essential procedural rule and be applied strictly, so that failure to comply with it leads to the inadmissibility of the action on the expiry of the period within which proceedings may be brought (see, to that effect, judgments of 22 September 2011 in *Bell & Ross* v *OHIM*, C-426/10 P, EU:C:2011:612, paragraph 42, and of 23 May 2007 in *Parliament* v *Eistrup*, T-223/06, EU:T:2007:153, paragraphs 48 and 51), which in the present case occurred on 21 September 2015, in accordance with Article 91(3) of the Staff Regulations.

10 Admittedly, on 11 August 2015, when the application bringing proceedings was lodged, the period within which the applicant could bring proceedings had not yet elapsed, so that, until 21 September 2015, she could have submitted an application, that time signed by a lawyer whom she had instructed to represent her. However, it must be pointed out that it was not for the Tribunal, in the period between those two dates, to draw that matter to the applicant's notice in order to make good her lack of diligence in observing requirements such as those provided for in the third and fourth paragraphs of Article 19 of the Statute of the Court and the first subparagraph of Article 45(2) of the Rules of Procedure of the Tribunal (see orders of 8 November 2007 in *Belgium* v *Commission*, C-242/07 P, EU:C:2007:672, paragraph 23, and of 13 December 2013 in *Marcuccio* v *Commission*, F-2/13, EU:F:2013:214, paragraph 33). In any event, the Registry does not have the power to take a decision relating to the admissibility or inadmissibility of an action and therefore it cannot provide any indication to the parties in this respect which pre-judges the position to be adopted by the Tribunal (order of 15 March 1984 in *Vaupel* v *Court of Justice*, 131/83, EU:C:1984:114, paragraph 10).

11 It follows from all the foregoing considerations that the present action must be dismissed as manifestly inadmissible, without there being any need to serve the application, submitted by the applicant herself, on the defendant, bearing in mind in this connection that the right to be heard, as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, is not infringed by a decision not to serve the application on the defendant institution where, as in the present case, an action is dismissed as manifestly inadmissible on the basis of Article 81 of the Rules of Procedure (see orders of 5 July 1999 in *Gluiber* v *Council and Commission*, C-57/99 P, EU:C:1999:352, paragraphs 14 and 15, and of 13 February 2012 in *Ayres de Abreu* v *EESC*, F-123/11, EU:F:2012:17, paragraph 9).

Costs

12 Under Article 100 of the Rules of Procedure, the Tribunal is to give a decision as to costs in the judgment or order which closes the proceedings.

13 In the present case, since the Tribunal has ruled in the present action without serving the application on the defendant and has therefore prevented the defendant from incurring any costs, the applicant is required to bear solely her own costs, provided that she has incurred any, given that she has not used the services of a lawyer other than herself.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Third Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.

2. Ms Kozak shall bear her own costs.

Luxembourg, 10 November 2015.

W. Hakenberg
Registrar

S. Van Raepenbusch
President