Reports of Cases

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
10 November 2011

Case F-110/10

Denise Couyoufa
v
European Commission

(Civil service — Officials — European Commission representations in the Member States — 2011 rotation procedure — Application for exemption from rotation — Admissibility — Measure amounting to a decision — Delay)

Application: brought under Article 270 TFEU, applicable to the EAEC Treaty by virtue of Article 106a thereof, in which Ms Couyoufa essentially seeks annulment of the decision of 26 February 2010 rejecting her application for exemption from the rotation applicable for officials assigned to the Commission's representations in the Member States, and annulment of the appointing authority's decision of 27 July 2010 rejecting her complaint against the decision of 26 February 2010.

Held: The action is dismissed. The Commission is ordered to pay half of the costs incurred by the applicant in addition to its own costs. The applicant is ordered to pay half of her own costs.

Summary

1. Officials — Actions — Prior administrative complaint — Time limits — Mandatory — Point from which time starts to run
(Staff Regulations, Art. 90(2))

2. Officials — Actions — Prior administrative complaint — Time limits — Claim barred by lapse of time — Reopening — Condition — New and material fact
(Staff Regulations, Arts 90 and 91)

3. Officials — Actions — Plea of illegality — Incidental nature — Main action inadmissible — Plea inadmissible
(Art. 277 TFEU)

1. According to Article 90(2) of the Staff Regulations, a complaint must be lodged within a period of three months which starts to run, if the measure affects a specified person, on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received

such notification. That time limit was established in order to ensure that legal positions are clear and certain, so that it is a matter of public policy and is not subject to the discretion of the parties or the Court.

(see para. 22)

See:

21 June 2010, T-284/09 P *Meister* v *OHIM*, para. 25, and the case-law cited therein

28 April 2009, F-72/06 *Verheyden* v *Commission*, para. 39, and the case-law cited therein

2. Although Article 90(1) of the Staff Regulations provides that any official may request the appointing authority to take a decision relating to him, that right does not allow an official to set aside the time limits laid down in Articles 90 and 91 of the Staff Regulations for the lodging of a complaint and an appeal by indirectly calling in question by means of such a request a previous decision which has not been challenged within the period prescribed. Only the existence of material new facts may justify the submission of a request for a review of such a decision.

(see para. 27)

See:

15 May 1985, 127/84 *Esly* v *Commission*, para. 10

7 June 1991, T-14/91 *Weyrich* v *Commission*, para. 33

20 September 2007, F-111/06 *Giannopoulos* v *Council*, para. 28; 25 March 2010, F-102/08 *Marcuccio* v *Commission*, para. 36

3. Article 277 TFEU does not create an entitlement to take action independently and may be relied on only as an incidental plea in an admissible action, rather than constituting the subject of an action. A plea of illegality raised in the course of an inadmissible action is thus inadmissible.

(see para. 32)

See:

23 April 2008, F-103/05 *Pickering* v *Commission*, para. 94; 23 April 2008, F-112/05 *Bain and Others* v *Commission*, para. 96, and the case-law cited therein; 4 June 2009, F-134/07 and F-8/08 *Adjemian and Others* v *Commission*, para. 38