

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
18 June 1996

Case T-150/94

Juana de la Cruz Vela Palacios
v
Economic and Social Committee of the European Communities

(Officials – Application for annulment and compensation – Admissibility –
Submission of a complaint by fax – Periodical report – Delay – Statement of
reasons for a lower assessment – Non-material damage)

Full text in French II - 877

Application for: annulment of the decision of the Economic and Social Committee of 18 June 1993 drawing up reports on the applicant for the periods from 1 December 1986 to 31 August 1988 and from 1 September 1988 to 31 August 1990, and of the decision of 13 January 1994 rejecting the complaint against those reports, and for compensation for the damage the applicant claims to have suffered as a result of the defendant's alleged maladministration.

Decision: Order for compensation for non-material damage. For the rest, application dismissed.

Abstract of the Judgment

The applicant was recruited by the Economic and Social Committee of the European Communities (ESC) in 1986 and appointed as a secretary/shorthand typist in 1987. There has since been a history of personal and administrative problems between the applicant and the defendant institution. In particular, the applicant has frequently been transferred from one service to another.

On 4 March 1992, the defendant drew up reports on the applicant for the periods from 1 December 1986 to 31 August 1988 and from 1 September 1988 to 31 August 1990. The reports, dated 1 September 1988 and 14 September 1990 respectively, were made available to the applicant on 6 March 1992. She acknowledged receipt on 7 April 1992.

The first paragraph of Article 43 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides that the ability, efficiency and conduct in the service of each official is to be the subject of a periodical report made at least once every two years in accordance with Article 110. The second paragraph of Article 43 provides that the report is to be communicated to the official, who is entitled to make any comments thereon which he considers relevant.

The first paragraph of Article 110 of the Staff Regulations provides that the general provisions for giving effect to the Staff Regulations are to be adopted by each institution. Decision No 1001/81 A of the ESC, adopting those general provisions for ESC officials, states *inter alia* that a periodical report must be made on each official once every two years, each report must relate strictly to the reference period, reasons must be given for any assessment that is less favourable than the

assessment in the previous report, and the report must be communicated to the official concerned within one month of the end of the reference period.

On 7 April and 7 May 1992, the applicant appealed against the two abovementioned reports on the ground that there were irregularities in the manner in which they had been drawn up. On 19 February 1993, the Joint Committee on Staff Reports issued an opinion, in which it suggested some changes. Finally, by decision notified to the applicant on 18 June 1993, the Director General of the ESC definitively confirmed the two reports, incorporating the changes suggested by the Joint Committee on Staff Reports.

On 17 September 1993, between 7.07 and 7.10 p.m., the applicant sent the defendant a fax, in which she submitted a complaint pursuant to Article 90(2) of the Staff Regulations against the decision of 18 June 1993. On 13 January 1994, the defendant rejected the complaint on the ground that it had been submitted out of time and was in any case unfounded.

Admissibility

The admissibility of the claim for annulment

The admissibility of the application cannot be called in question on the ground that it was submitted by fax. No form is prescribed for complaints through official channels made by an official (paragraph 23).

See: T-139/89 *Virgili-Schettini v Parliament* [1990] ECR II-535, para. 19

Only the date upon which the administration is able to be apprised of the complaint may be taken into consideration. Moreover, it is the responsibility of the party alleging non-compliance with a time-limit to provide proof of its allegation (paragraphs 24 and 25).

See: T-19/90 *Von Hoessle v Court of Auditors* [1991] ECR II-615, para. 25; T-54/90 *Lacroix v Commission* [1991] ECR II-749, para. 29

In the present case, it is common ground that the applicant sent her complaint by fax on 17 September 1993, the day before that on which the time-limit expired, and the defendant was consequently able to be apprised of the complaint on 17 September 1993. The defendant has not produced any evidence to refute that conclusion (paragraphs 26 and 27).

The admissibility of the claim for compensation

A claim for compensation will be admissible in cases where there has been no pre-litigation procedure only if it is closely linked to a claim for annulment (paragraph 31).

See: T-5/90 *Marcato v Commission* [1991] ECR II-731, para. 49

In the present case, the applicant's claim for compensation is based on the allegation that the periodical reports at issue were late, incomplete and incorrect and that she suffered damage as a result of that conduct on the part of the administration. The applicant therefore cites, in support of her claim for compensation, the same

irregularities that prompted her to seek the annulment of her reports. It follows that there is a close link between the claim for compensation and the claim for annulment, and the applicant was not therefore required to initiate the pre-litigation procedure before submitting her claim for compensation (paragraphs 32 and 33).

Substance

The claim for annulment

A delay in the assessment procedure is not likely by itself to affect the validity of the report which is the culmination of that procedure. However, it remains to be considered whether the validity of the reports in question was affected by manifest errors of assessment or by failure to state reasons. In this connection, no evidence was produced as to the error of which the applicant complains, namely that the reports at issue did not reflect her administrative status or the true nature of her functions (paragraphs 44 to 46).

See: 36/81, 37/81 and 218/81 *Seton v Commission* [1983] ECR 1789, para. 14

As regards the assessment 'unsatisfactory' under the heading 'adaptation to requirements of the service' in the last periodical report, which is less favourable than the corresponding assessment ('fair') in the previous report, no reasons are given as to why she was marked down, either in the report itself, or in the opinion of the Joint Committee on Staff Reports, or in the letter of 18 June 1993 on the decision to draw up the report. Only in the defendant's letter of 13 January 1994 rejecting the applicant's complaint are any reasons for the lower assessment to be found. However, an institution may fulfil its obligation to state the reasons for a decision addressed to one of its officials even at the stage when it rejects a complaint against such a decision (paragraphs 47 and 48).

See: T-52/90 *Volger v Parliament* [1992] ECR II-121, para. 36; T-16/94 *Benecos v Commission* [1995] ECR-SC II-335, para. 31

The claim for compensation

Although some of the applicant's arguments are concerned essentially with material damage, she confines herself in her formal claim to seeking compensation for the non-material damage she claims to have suffered (paragraph 50).

Claims for compensation for damage must be rejected where they are closely linked with claims for annulment which have themselves been rejected. However, an exception to this rule must be allowed in cases such as this, in which a claim for annulment is rejected not because there has been no illegality but solely because, if the act at issue were to be annulled, it could not be replaced by an act that was more consistent with Community law. In such a case, the delay in drawing up a periodical report does not affect its validity but may nevertheless constitute maladministration that may entitle the official concerned to compensation. An official in possession of an irregular and incomplete personal file thereby suffers non-material damage as a result of being put in an uncertain and anxious state of mind with regard to his professional future (paragraphs 51 and 52).

See: 1/87 *Picciolo v Commission* [1988] ECR 711, para. 32; T-73/89 *Barbi v Commission* [1990] ECR II-619, para. 41; T-27/90 *Latham v Commission* [1991] ECR II-35, para. 49; T-562/93 *Obst v Commission* [1995] ECR-SC II-737, para. 88

In the present case, it took three and a half years and one and a half years respectively to draw up the draft reports at issue, which is not in keeping with the principles of good administration. As a result, the applicant was in a state of uncertainty and anxiety for more than three years. It follows that the defendant's maladministration did in fact cause her to suffer non-material damage entitling her to compensation (paragraph 53).

Operative part:

The Economic and Social Committee is ordered to pay the applicant the sum of BFR 50 000 by way of compensation for non-material damage.

For the rest, the application is dismissed.