ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
4 March 1996 *

(No need to give a decision)

In Case T-392/94,

Diarmuid Rossa Phelan, residing in Bella Vista (Ireland), represented by Desmond O'Neill, Barrister-at-Law, of the Bar of Ireland,

applicant,

v

Council of the European Union, represented by Michael Bishop and Diego Canga Fano, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for the annulment of the decision of the Council of 16 September 1994 not to admit the applicant to Open Competition CONS/A/338 on the ground that the application form was submitted out of time and for an order that the Council pay him damages,

* Language of the case: English.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: K. Lenaerts, President, P. Lindh and J.D. Cooke, Judges,

Registrar: H. Jung,

makes the following

Order

Facts, procedure and forms of order sought

1 The applicant entered Open Competition CONS/A/338, opened on 18 January 1994 by the Council with a view to drawing up a reserve list for the recruitment of administrators. By letter dated 30 June 1994, the Directorate for Personnel and Administration of the Council (hereinafter 'DPA') informed the candidate that his application could not be accepted because it had been posted after the closing date, fixed in the Competition Notice at midnight on 28 February 1994.

2 The applicant responded to the correspondence from the DPA by sending three faxes on 6 July 1994, 29 July 1994 and 15 September 1994 and a letter by registered mail on 15 September 1994. He pointed out that, on 28 February 1994, the closing date for applications, he had left his application form with a messenger for the floor where he worked at the Court of Justice at the time and he offered to provide evidence of that fact.

3 By letter of 16 September 1994 the DPA informed the applicant that it had re-examined his file. It pointed out that the envelope containing his application form did not bear a postmark and that the date stamped by the Council's internal

mail service was 3 March 1994. It informed the applicant that it could not give him a favourable reply since Section VI of the Competition Notice provided that the application form was to be posted before midnight on 28 February 1994, 'the postmark being taken as proof'.

4 By application lodged at the Court Registry on 19 December 1994, the applicant brought an action for annulment of the decision of the DPA of 30 June 1994 not to admit him to Competition CONS/A/338 and for an order that the Council pay him damages.

5 By a document received at the Court Registry on 14 March 1995, the Council raised a plea of inadmissibility under Article 114 of the Rules of Procedure and requested the Court of First Instance to rule on that plea without considering the merits of the case.

6 By order of 4 July 1995, the Court of First Instance decided to continue the procedure on the merits before taking a decision on the plea of inadmissibility.

7 In its defence, lodged on 12 September 1995, the Council indicated that the appointing authority had annulled the Competition Notice at issue by decision published in the Official Journal of 16 February 1995 (OJ 1995 C 39, p. 8).

8 Since the applicant had not lodged a reply by the date prescribed by the Registrar, 27 October 1995, the written procedure ended on that date.

9 The applicant claims that the Court should:

– annul the decision of 16 September 1994 whereby the DPA refused to admit the applicant to the tests for the general competition in question;

– declare that the applicant is now entitled to enter the competition at its current stage;

– order the Council to pay the applicant [a fixed sum] for material and non-material damage and expenses incurred;

– order the Council to pay the costs.

10 The Council contends that the Court should:

– dismiss the action as inadmissible or, in the alternative, as unfounded;

– order the applicant to pay the costs if he does not discontinue the proceedings and, if he does so, order each party to bear its own costs.

Findings of the Court

11 The Court finds that the action, as defined by the claims set out in the application, has become devoid of purpose following the annulment of the Notice of Open Competition CONS/A/338 by decision of the Council published in the Official Journal of 16 February 1995.

12 As regards the applicant's claim that the decision of the DPA of 16 September 1994 refusing to admit him to Open Competition CONS/A/338 should be annulled, the Court observes that, even if the applicant were to succeed in his application, he could not take part in the competition in question since it has been annulled.

13 In so far as concerns the applicant's claim that he should be compensated for the material and non-material damage he has suffered and the expenses he has incurred in that context, the Court finds that claim to have also become devoid of purpose since the applicant cannot have suffered harm by reason of not being able to take part in a competition which has not been organized.

14 Finally, as regards the declaration sought by the applicant that he is entitled to enter the competition in question at its present stage, the Court finds that, in any event, in the context of an action brought under Article 179 of the EC Treaty, it has no jurisdiction to make such a declaration.

15 There is, therefore, no need to make a decision in the present case.

Costs

16 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are in the discretion of the Court of First Instance. In the present case, the Court finds that it was only in its defence that the Council stated that the competition notice had been annulled, when it could have already done so in its plea of inadmissibility of 14 March 1995. Accordingly, the Council contributed to the applicant's pursuing the action. On the other hand, it should be noted that the applicant could have discontinued the action when he learnt of the annulment of the competition in question upon taking cognizance of the Council's defence. For all those reasons, each party should be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. There is no need to give a decision.

2. Each party shall bear its own costs.

Luxembourg, 4 March 1996.

H. Jung
Registrar

K. Lenaerts
President