Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Third Chamber)

20 June 2012*

(Civil service — Open competition — Decision of the selection board not to admit the applicant to the assessment tests in a competition — Remedies — Proceedings brought without awaiting the decision on the administrative complaint — Admissibility — Specific conditions for admission to the competition — Required professional experience)

In Case F-66/11,

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

Alma Yael Cristina, residing in Brussels (Belgium), represented by S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers,

applicant,

v

European Commission, represented initially by B. Eggers and P. Pecho, and subsequently by B. Eggers, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (Third Chamber)

composed of S. Van Raepenbusch, President, R. Barents and K. Bradley (Rapporteur), Judges,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 29 February 2012,

gives the following

Judgment

1 By an application received at the Registry of the Tribunal on 12 July 2011 Ms Cristina brought the present action seeking, first, annulment of the decision of the selection board in open competition EPSO/AST/111/10 not to allow her to take part in the assessment tests for that competition, and, second, an order that the European Commission compensate her for the harm she claims to have suffered as a result of that decision.

* Language of the case: French.

Legal context

2 Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') provides that:

'Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. …'

3 Article 91(2) of the Staff Regulations reads as follows:

'An appeal to the Court of Justice of the [European Union] shall lie only if:

— the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within the period prescribed therein, and

— the complaint has been rejected by express decisions or by implied decision.'

4 Article 2 of Annex III to the Staff Regulations, concerning the procedure for competitions referred to in Article 29 of the Staff Regulations, provides that:

'Candidates shall complete a form prescribed by the appointing authority.

They may be required to furnish additional documents or information.'

5 On 17 November 2010 the European Personnel Selection Office (EPSO) published in the *Official Journal of the European Union* notice of open competition EPSO/AST/111/10 for the constitution of a reserve list from which to recruit assistants at grade AST 1 in the secretarial field (OJ 2010 C 312 A, p. 1, 'the competition notice').

6 Section II of the competition notice, entitled 'Duties', read as follows:

'The position will entail the following tasks:

— organising and coordinating meetings, including compiling files and working documents,

— answering, filtering and transferring telephone calls, handling correspondence and giving general information to callers,

— managing email boxes and functional mailboxes,

— managing timetables, supervising the schedule and ensuring that deadlines are complied with,

— providing general administrative support, in particular for document management (receiving, processing, following up and classifying documents and correspondence),

— preparing and managing missions; managing absences,

— presenting and checking documents (page layout, formatting and tables),

— drafting (secretarial level) draft notes, letters and reports,

— other administrative secretarial tasks associated with file management and information gathering using office software,

— in translation departments: receiving, managing and processing translation requests, in particular preparing, processing and finalising documents, mainly using translation software, feeding material into and updating translation memories, and performing typing, page layout and formatting work.

…’

7 The specific conditions for admission to the competition, laid down in paragraph 2 of Section III of the competition notice, stipulated, as regards qualifications, that candidates had to have either post-secondary education attested by a diploma relevant to the nature of the duties (paragraph III.2.1(a)), or secondary education attested by a diploma giving access to post-secondary education, followed by at least 3 years’ professional experience relevant to the nature of the duties (paragraph III.2.1(b)).

8 Section IV, paragraph 1, of the competition notice stated that only candidates who had declared, when submitting their online application, that they fulfilled the general and specific conditions listed in Section III of the competition notice would be invited to sit the admission tests.

9 Section V, paragraph 1, of the competition notice stated that candidates would be admitted to the assessment exercises if they had not only obtained one of the highest marks in the admission tests and a pass mark in each, but also if, in the light of the information given in their online application, they fulfilled the general and specific conditions listed in Section III of the competition notice.

10 The same provision stated that admission to the assessment exercises would be confirmed subject to subsequent verification of the supporting documents enclosed with the application form of each candidate.

11 Section VII, paragraph 2, of the competition notice stated that candidates admitted to the assessment exercises would be asked to submit a full application file (signed online application form and supporting documents).

12 The competition notice also included the following introductory information, in bold and in a box:

‘Before applying, you should carefully read the guide published in *Official Journal of the European Union* C 184 A of 8 July 2010 and on the EPSO website.

This guide is an integral part of the competition notice and will help you to understand the rules governing the procedure and how to apply.’

13 The guide to open competitions, in the version in force at the relevant time (OJ 2010 C 184 A, p. 1, ‘the guide for candidates’), states in paragraph 6.3, entitled ‘Appeal procedures’:

‘If, at any stage of the competition, you consider that EPSO or the selection board has acted unfairly or has failed to comply with:

— the rules governing the competition procedure, or

— the provisions of the competition notice,

and that your interests have been prejudiced as a result, you can take the following action:

— you can lodge an administrative complaint under Article 90(2) of the Staff Regulations …,

either by post to:

European Personnel Selection Office (EPSO)

…

or via the contact page on EPSO's website.

Please quote in the subject line of your letter:

— the competition number,

— your application number,

— one of the following: "Complaint under Article 90(2)", "réclamation Article 90, §2" or "Beschwerde Artikel 90, Absatz 2" (your choice),

— what stage of the competition … your complaint concerns.

Note that selection boards enjoy wide powers of discretion.

It is pointless to submit a complaint against a decision by a selection board, as boards act in complete independence and their decisions cannot be overturned by the Director of EPSO. The wide discretion enjoyed by selection boards is not subject to review unless the rules which govern the proceedings of selection boards have clearly been infringed. If this is the case, however, action against the board's decision can be brought directly before one of the courts of the European Union without the need for a prior complaint under Article 90(2) of the Staff Regulations.

— You can submit a judicial appeal under Article 270 [TFEU] and Article 91 of the Staff Regulations to the:

European Union Civil Service Tribunal

…

Note that appeals concerning an error of assessment relating to the general eligibility criteria are not matters for which the selection board is responsible and will therefore not be admissible before the European Union Civil Service Tribunal unless an administrative complaint under Article 90(2) of the Staff Regulations has first been made following the procedure described above.

For details of how to submit an appeal, please consult the website of the European Union Civil Service Tribunal …

The time limits for initiating both types of procedure (see Staff Regulations …) start to run from the time you are notified of the act allegedly prejudicing your interests.'

Background to the dispute

14 On 18 November 2010 the applicant applied for open competition EPSO/AST/111/10 ('the competition') by completing the relevant online form.

15 On 17 March 2011 EPSO informed the applicant that she had passed the admission tests.

16 However, by an email of 7 April 2011 EPSO notified the applicant that, in the light of an examination of her application form, the selection board had decided not to allow her to take part in the assessment tests, on the ground that she did not fulfil the specific conditions for admission to the competition.

17 The applicant disputed her exclusion from the competition in two emails of 7 and 8 April 2011 respectively.

18 EPSO replied to the applicant in an email of 6 June 2011, informing her that the selection board had reviewed her file but reiterated its decision not to allow her to take part in the assessment tests. According to the selection board, the diploma the applicant held did not fall within the field of the competition and, consequently, she should have had at least three years' professional experience relevant to the nature of the duties of the post to be filled. Since she had not provided any details, in the application form, of her professional experience as an assistant, the selection board had not been able to regard her as fulfilling the condition relating to professional experience.

19 In an email to EPSO of 9 June 2011 the applicant stated that the letter of 6 June 2011 did not provide her with any useful answer and requested that she be allowed to take part in the subsequent tests in the competition, as she considered that she fulfilled all the requisite criteria. She received no reply to that email.

20 On 11 July 2011 the applicant lodged a complaint 'as a precaution' under Article 90(2) of the Staff Regulations against the selection board's decision not to admit her to the assessment tests, and on the following day, 12 July 2011, she brought proceedings before the Tribunal.

21 At the hearing the applicant informed the Tribunal that, on 11 October 2011, the appointing authority had rejected her complaint and that she had not appealed against that decision.

Forms of order sought and procedure

22 The applicant claims that the Tribunal should:

(1) as a main claim:

— annul the decision adopted on 7 April 2011 not to allow her to take part in the assessment tests for the competition;

— as a result, rule that she must be reinstated within the recruitment process initiated by that competition, if necessary through the organisation of fresh assessment tests;

(2) in the alternative, should the main claim not be upheld, order the defendant to pay, by way of material damages, an amount fixed provisionally and *ex aequo et bono* at EUR 20 000, together with default interest at the statutory rate from the date of the judgment to be delivered;

(3) in any event, order the defendant to pay, by way of non-material damages, an amount fixed provisionally and *ex aequo et bono* at EUR 20 000, together with default interest at the statutory rate from the date of the judgment to be delivered;

(4) order the defendant to pay all the costs.

23 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

24 By letters from the Registry of 21 October 2011 and 30 January 2012 the Tribunal invited the parties to comply with certain measures of organisation of procedure. The parties obeyed the Tribunal's requests within the time-limits set.

25 By order of the President of the Third Chamber of the Tribunal of 26 January 2012, the present case was joined with Case F-83/11 *Cristina* v *Commission* for the purposes of the oral procedure.

Subject-matter of the action and admissibility of the second main head of claim

26 First of all, although the applicant is seeking annulment of the selection board's initial decision, notified by EPSO's letter of 7 April 2011, it must be stated, in the light of settled case-law, that she is adversely affected only by the decision not to admit her to the assessment tests, taken by the selection board after review and notified by EPSO's letter of 6 June 2011 (see, in particular, the judgment of 4 February 2010 in Case F-15/08 *Wiame* v *Commission*, paragraph 20), and that it must therefore be held that the applicant is claiming annulment of that latter decision ('the contested decision').

27 Secondly, the Tribunal finds that the second main head of claim essentially seeks an order that the administration reinstate the applicant within the recruitment process initiated by the competition.

28 However, according to settled case-law, it is not for the Courts of the European Union to issue injunctions to the Union institutions as part of a review of legality on the basis of Article 91 of the Staff Regulations or to take decisions in their place (judgments of 5 April 2005 in Case T-336/02 *Christensen* v *Commission*, paragraph 17, and of 23 November 2010 in Case F-50/08 *Bartha* v *Commission*, paragraph 50).

29 This head of claim must therefore be dismissed as inadmissible.

Admissibility of the action

Arguments of the parties

30 The Commission expressly acknowledges in its defence that 'candidates in competitions are entitled to bring legal proceedings [before the Courts of the European Union] without a prior complaint where they are challenging a decision of [a] selection board'. However, it considers that the present action is manifestly inadmissible on the ground that it was not preceded, in accordance with Article 91(2) of the Staff Regulations, by a complaint which was rejected by an express or implied decision.

31 The Commission points out that, while it is true that a candidate may refer a decision of a selection board directly to the courts, according to the case-law, however, where a complaint has been lodged, the period for bringing an action begins to run, in accordance with Article 91 of the Staff Regulations, on the date of notification of the decision taken in response to the complaint, and for a legal action brought subsequently to be admissible, the person concerned must have complied with all the procedural requirements applicable to the prior complaint.

32 According to the Commission, those procedural requirements include the obligation for the person concerned to await the end of the pre-litigation procedure before being able to bring legal proceedings.

33 The Commission therefore considers that, since the applicant had lodged a complaint against the selection board's decision not to admit her to the assessment tests, she should have waited for the appointing authority's response before bringing the present action.

34 Finally, the Commission maintains that it would be contrary to the principle of legal certainty and sound administration to declare admissible an action before the Tribunal against a decision of a selection board, while still leaving open a pre-litigation procedure intended, inter alia, to obtain an amicable settlement.

35 At the hearing, in reply to the plea of inadmissibility raised by the Commission, the applicant pointed out that, in its judgment of 20 June 1990 in Case T-133/89 *Burban* v *Parliament*, the General Court declared admissible an action brought in circumstances essentially identical to those in the present case.

Findings of the Tribunal

36 According to Article 91(2) of the Staff Regulations, an appeal to the Court of Justice of the European Union lies only if the appointing authority has previously had a complaint submitted to it and if that complaint has been rejected by express or implied decision.

37 However, according to the settled case-law, the administrative complaint procedure is devoid of purpose where a complaint is directed against the decisions of a selection board in a competition, since the appointing authority is not empowered to amend such decisions (see judgments of 16 March 1978 in Case 7/77 *Ritter von Wüllerstorff und Urbair* v *Commission*, paragraph 7; of 14 July 1983 in Case 144/82 *Detti* v *Court of Justice*, paragraph 16; of 23 January 2002 in Case T-386/00 *Gonçalves* v *Parliament*, paragraph 34). That being so, the legal remedy open in respect of a decision of a selection board normally lies in a direct application to the Courts of the Union without a prior complaint ('direct application', see *Bartha* v *Commission*, paragraph 25).

38 It follows that, where a candidate who has been eliminated challenges a decision of a selection board in a competition, there is no need for him to lodge a prior complaint against the decision he is challenging, still less to lodge a complaint 'as a precaution', as the applicant did in the present case.

39 However, it is not apparent either from the Staff Regulations or the case-law that a candidate in a competition who has nevertheless lodged a complaint with the appointing authority against a decision of the selection board in that competition cannot apply to the courts directly, without awaiting the appointing authority's decision on the complaint.

40 On the contrary, the Courts of the Union have already explicitly accepted that, where a candidate in a competition submits an administrative complaint to the appointing authority, such a step, whatever its legal significance may be, cannot have the effect of depriving him of his right to apply directly to the courts (judgment of 30 November 1978 in Joined Cases 4/78, 19/78 and 28/78 *Salerno and Others* v *Commission*, paragraph 10; *Burban* v *Parliament*, paragraph 17).

41 Consequently, where a candidate in a competition decides to apply directly to the Tribunal, the Tribunal must determine whether the application was brought within the period of three months and ten days from the date when the applicant was notified of the decision adversely affecting him (see *Burban* v *Parliament*, paragraph 18).

42 However, the admissibility of such an action before the Tribunal cannot be subject to the condition that the pre-litigation procedure laid down in Article 91 of the Staff Regulations have been exhausted, since such a condition applies only to actions for which an administrative complaint is mandatory. The

solution proposed by the Commission would be tantamount to imposing on a direct application to the Tribunal an additional admissibility requirement which in fact only applies where the application to the Tribunal must be preceded by a complaint.

43 That conclusion is not contradicted by paragraph 6.3 of the guide for candidates, which states that candidates may challenge a selection board's decisions through administrative channels and by submitting a judicial appeal, without specifying at any point that lodging a complaint precludes a direct application to the courts.

44 The Tribunal also notes that this conclusion is not called into question by the case-law referred to by the Commission in its written submissions, analysed below, or by the arguments put forward at the hearing.

45 Admittedly, as the Commission points out, according to a considerable body of case-law in disputes concerning decisions of competition selection boards, first, where the applicant chooses first to submit an administrative complaint to the administration, the admissibility of the action brought subsequently will depend on his compliance with all the procedural requirements applicable to the prior complaint (judgment of 13 December 2007 in Case F-73/06 *Van Neyghem* v *Commission*, paragraph 37) and, second, where a complaint has been lodged against a decision of a selection board, the period for bringing an action begins to run, in accordance with Article 91 of the Staff Regulations, on the date of notification of the decision taken in response to the complaint (*Detti* v *Court of Justice*, paragraph 17; judgments of 27 June 1991 in Case T-156/89 *Valverde Mordt* v *Court of Justice*, paragraph 90; of 16 September 1998 in Case T-215/97 *Jouhki* v *Commission*, paragraph 22; of 31 May 2005 in Case T-294/03 *Gibault* v *Commission*, paragraph 22; order of 25 November 2005 in Case T-41/04 *Pérez-Díaz* v *Commission*, paragraph 32; judgments of 8 June 2006 in Case T-156/03 *Pérez-Díaz* v *Commission*, paragraph 26; of 12 March 2009 in Case F-4/08 *Hambura* v *Parliament*, paragraph 24, and *Bartha* v *Commission*, paragraph 26).

46 However, it should be noted that all but one of those judgments related to the admissibility of actions brought after a complaint had been rejected and after the time-limit for a direct application to the courts had expired. The judgments therefore concern an admissibility requirement which is specific to actions brought following the procedure laid down in Article 91(2) of the Staff Regulations.

47 As regards the judgment in *Pérez-Díaz* v *Commission*, the General Court found that the complaint and the action had different purposes. The complaint sought to question the Commission's decision to hold a fresh oral test following the annulment, by the General Court's judgment of 24 September 2002 in Case T-102/01 *Pérez-Díaz* v *Commission*, of the selection board's decision to exclude the applicant from the reserve list, whereas the legal proceedings challenged the selection board's further decision not to include the applicant on the reserve list following the fresh oral test. It follows that, in that case, there was no need for the General Court to declare premature an action for annulment brought before the pre-litigation administrative procedure initiated against the disputed measure – the Commission's decision to hold a fresh oral test – was concluded by the rejection of the complaint, the General Court having merely noted that the legal proceedings could not be regarded as having been preceded by an administrative complaint (*Pérez-Díaz* v *Commission* (T-156/03), paragraphs 27 and 34).

48 Consequently, since the case-law referred to in paragraphs 45 and 47 of the present judgment relates to factual and legal situations which are significantly different from those in the present case, it cannot be regarded as relevant in this instance.

49 The Commission also contends that the present action must be declared inadmissible for reasons relating to legal certainty and the sound administration of justice.

50 First of all, however, compliance with the requirements of legal certainty cannot justify imposing, in a direct application to the courts, a condition of admissibility which is not required in the case of such an application, which would limit the right unsuccessful candidates enjoy to refer a decision of a selection board directly to the courts. Furthermore, it must be observed that, where a candidate in a competition lodges a complaint before submitting a direct application to the courts, if a favourable decision on the complaint were issued before the Tribunal delivered its decision on the action, the applicant would lose his interest in bringing proceedings and his action would therefore be rendered nugatory. On the other hand, if the decision were not in his favour, the applicant would be entitled, in any event, to a decision from the Tribunal in order to settle his dispute with the administration.

51 As for observance of the principle of the sound administration of justice, the Tribunal considers that the best way to comply with that principle is to deal with the direct action before it, without taking account of the uncertainties of a complaint which is not before it.

52 Lastly, the arguments presented at the hearing by the Commission in support of its plea of inadmissibility on the ground that the present action is premature cannot be accepted either.

53 First of all, the Commission claimed that the decision reached in the judgment in *Burban* v *Parliament*, was rendered obsolete by the subsequent case-law. However, as the Tribunal has explained in paragraphs 45 to 48 of the present judgment, the case-law cited by the Commission is not relevant in the present case since it relates to actions brought following a complaint, whereas the judgments in *Salerno and Others* v *Commission* and *Burban* v *Parliament*, in contrast, occurred in factual contexts that were substantially the same as in the present case.

54 Secondly, the Commission stated that, in *Burban* v *Parliament*, the applicant had 'finally' chosen to bring the matter directly before the Court (*Burban* v *Parliament*, paragraph 18), whereas in the present case the applicant was trying to use both legal remedies at the same time. That argument does not take account of the fact that, in the present case, the applicant, like the applicants in *Salerno and Others* v *Commission* and *Burban* v *Parliament*, chose to apply directly to the courts, which she did, admittedly without awaiting the administration's decision on her complaint, but within the time-limit for appeal of three months and ten days from notification of the selection board's decision.

55 Thirdly, in order to distinguish the present case from *Burban* v *Parliament*, the Commission underlined the fact that, in the present case, the applicant was represented by lawyers when she filed her complaint. Such an argument is irrelevant, since the fact that the applicant was assisted by lawyers in drawing up her complaint has no influence on her right to apply directly to the Tribunal.

56 Fourthly, the Commission claimed that its recruitment and selection procedures had become much more complex, particularly as regards the opportunities for an eliminated candidate to obtain information about the selection board's decisions and, where appropriate, to challenge them. However, the Commission failed to show the relevance of those statements of fact for the admissibility of a judicial appeal which was, in any event, brought after all the specific legal remedies offered to candidates in competitions were exhausted.

57 Fifthly and lastly, the Commission stated, both in its written submissions and at the hearing, that in many situations the decision on the complaint gives eliminated candidates a 'satisfactory' response, as was shown by the fact that the number of actions brought before the Tribunal was much smaller than the number of complaints relating to selection board decisions dealt with by the Commission.

58 First of all, the Tribunal finds that the Commission has produced no evidence to bear out those statements. Secondly, even if those statements were correct, the Commission has admitted that it happens only very rarely that a selection board changes its original decision not to admit a candidate to a competition. Thirdly, the guide for candidates expressly states in paragraph 6.3 concerning appeals that '[i]t is pointless to submit a complaint against a decision by a selection board, as boards

act in complete independence and their decisions cannot be overturned by the Director of EPSO'. Fourthly, even if the Commission's statements were substantiated, they do not call into question settled case-law according to which the mandatory prior administrative complaint provided for in Article 91 of the Staff Regulations relates only to measures which the appointing authority can amend, if necessary, and the fact that the appointing authority cannot amend a selection board's decisions. Fifthly, the Commission's argument is contradictory, in that if an action brought before expiry of the time-limit for responding to the prior complaint were ruled inadmissible, it would have the effect of deterring eliminated candidates from lodging such complaints, whereas, according to the Commission itself, those complaints might deliver a satisfactory outcome for eliminated candidates, at least in certain cases.

59 In the light of all the above considerations, it must therefore be ascertained whether, in the present case, the direct application to the Tribunal was made within the period of three months and ten days from the date on which the applicant was notified of the decision adversely affecting her (see *Burban* v *Parliament*, paragraph 17).

60 In that respect, it is clear from the file that the contested decision was received by the applicant on 6 June 2011 and that the action was brought on 12 July 2011.

61 In the light of the foregoing, it must be held that the action was not premature.

Merits

The claim for annulment

62 In support of her claim for the annulment of the contested decision, the applicant raises two pleas alleging, respectively, manifest error of assessment by the selection board, and breach of the principle of sound administration and of the duty to have regard for the welfare of staff.

The first plea, alleging manifest error of assessment by the selection board

– Arguments of the parties

63 The applicant contends that the selection board committed a manifest error of assessment in failing to take account of the declarations made in her application form concerning her education and professional experience.

64 In particular, according to the applicant, on the basis of her declarations in the application form, the selection board should have asked her to provide supporting documentation showing both her level of education and her professional experience, and verified the relevance of her degree and professional experience to the nature of the duties mentioned in the competition notice.

65 The Commission counters that the applicant had stated under the heading 'Professional experience' in the competition application form that she had 2 months and 17 days' professional experience. Since the selection board was justified in taking only that period into consideration in order to assess the applicant's professional experience, without being obliged to obtain further details from her, it had found, without committing a manifest error of assessment, that this was not sufficient professional experience to satisfy the minimum requirement of three years.

66 The Commission therefore considers that the first plea should be dismissed as manifestly unfounded.

– Findings of the Tribunal

67 It should be noted first of all that, according to settled case-law, it is for the selection board in a competition to assess in each case whether the professional experience of each candidate corresponds to the level required by the notice of competition. The selection board enjoys a discretion, under the provisions of the Staff Regulations concerning competition procedures, when assessing the nature and duration of the previous experience of candidates and its relevance to the post to be filled (judgments of 25 March 2004 in Case T-145/02 *Petrich* v *Commission*, paragraph 37, and of 31 January 2006 in Case T-293/03 *Giulietti* v *Commission*, paragraphs 65 and 66).

68 In its review of legality, therefore, the Tribunal must confine itself to ascertaining whether the exercise of that discretion was free from manifest errors (judgments of 21 November 2000 in Case T-214/99 *Carrasco Benítez* v *Commission*, paragraph 71, and of 1 July 2010 in Case F-40/09 *Časta* v *Commission*, paragraph 58).

69 Furthermore, the case-law has clarified that, in order to ascertain whether the conditions of admission have been satisfied, the selection board is entitled to take account only of the information provided by candidates in their application and of the documents which they are required to produce in support (see *Časta* v *Commission*, paragraph 67 and the case-law cited).

70 In the contested decision, the selection board concluded that, since the applicant's degree in EU law and economics was not relevant to the secretarial field of the competition, she should have had, in accordance with Section III.2.1(b) of the competition notice, at least three years' professional experience as a secretary. However, since she had not provided any details of her professional experience in the application form, except as regards its duration of 2 months and 17 days, the selection board considered that she did not have the professional experience required and refused to admit the applicant to the competition on that ground.

71 The applicant made clear at the hearing that she did not dispute that her degree was not relevant to the nature of the duties mentioned in the competition notice and that she should therefore have satisfied the specific conditions laid down in Section III.2.1(b) of the competition notice.

72 Nor does the applicant dispute that, in the section of the application form relating to professional experience, she mentioned only having worked as an assistant at the Commission for 2 months and 17 days. However, at the hearing she acknowledged that, as a result of a clerical error, she had set out her professional experience in the section of the application form relating to reasons for applying.

73 In that respect the Tribunal notes that, in the section of the application form on reasons for applying, the applicant merely declared that she had worked as an administrative secretary for more than ten years. However, her application did not contain any other information which would have enabled the selection board to determine the extent and relevance of that professional experience in the light of the conditions for admission to the competition.

74 It follows that, in the light of the case-law cited above, the selection board cannot criticised for not having invited the applicant to provide additional documentation, or for not having made further enquiries itself regarding that information on the applicant's professional experience, which was not supported by any verifiable evidence (see *Carrasco Benítez* v *Commission*, paragraphs 77 and 78).

75 Consequently, the selection board did not commit a manifest error in considering, on the basis of the information supplied by the applicant in her application form, that the condition relating to professional experience was not satisfied.

76 It follows that the first plea must be dismissed as unfounded.

The second plea, alleging breach of the principle of sound administration and of the duty to have regard for the welfare of staff

– Arguments of the parties

77 The applicant complains that the selection board failed to take into consideration all the factors which might influence its decision, including not only the interests of the service but also her personal interest, and she claims that the contested decision has the effect of excluding from the competition a candidate who in every respect meets the interests of the service.

78 The Commission claims that the plea must be rejected as manifestly unfounded.

– Findings of the Tribunal

79 First of all, the Tribunal notes that paragraph 2.1.3.1 of the guide for candidates, which forms an integral part of the competition notice and which the applicant also attached to her application, clearly provides that the information requested when applying for an open competition concerns, among other things, 'your professional experience (if required): name and address of your employer, the nature of the duties performed, and their starting and ending dates'. In the present case, the competition notice did indeed require information on professional experience.

80 Secondly, it must be pointed out that according to the case-law referred to in paragraphs 67 to 69 of the present judgment, a selection board is not under any obligation to invite candidates to provide additional documentation, or to make enquiries itself in order to ascertain whether the person concerned fulfilled all the conditions in the competition notice.

81 Thirdly, it is clear from the provisions of the second paragraph of Article 2 of Annex III to the Staff Regulations that those provisions merely enable a selection board to request additional information from candidates if it is in doubt as to the exact significance of a document submitted. There can be no question of transforming into an obligation that which the legislature viewed as a mere possibility open to the selection board in a competition (*Carrasco Benítez* v *Commission*, paragraph 78).

82 Fourthly, under Section V, paragraph 1, and Section VII, paragraph 2, of the competition notice, the submission of the full application file and the verification of the supporting documents enclosed with it are a second phase in the conduct of the competition, to which are admitted only candidates who have obtained one of the highest marks in the admission tests and a pass mark in each, and who, on the basis of the information given in their online application, fulfil the general and specific conditions listed in Section III of the competition notice.

83 Fifthly and lastly, even if the applicant's mere claim, which is not corroborated by any evidence, that she met the interests of the service in every respect because of her degree and her professional experience were established, the selection board cannot be alleged to have breached the principle of sound administration by taking a decision based on the fact that the applicant did not supply sufficient information in her application form to enable the selection board to ascertain that she satisfied the specific conditions for admission. Likewise, the duty to have regard for the welfare of staff certainly does not require a selection board to admit to a competition all candidates who, in their own opinion, satisfy the requirements of the posts to be filled.

84 Consequently the selection board did not infringe the principle of sound administration or its duty to have regard for the welfare of staff by taking the contested decision without having first requested additional information to that supplied in the application form by a candidate who had not provided sufficient information to enable the selection board to ascertain that she fulfilled the specific conditions for admission to the competition.

85 Therefore, the second plea in law must be rejected as unfounded.

The claim for damages

86 According to consistent case-law relating to the civil service, a claim for compensation for damage must be dismissed where there is a close connection between it and a claim for annulment which has been rejected as unfounded (judgment of 23 November 2010 in Case F-75/09 *Wenig* v *Commission*, paragraph 71).

87 In the present case, it must be observed that the claim for damages has a close connection with the claim for annulment which has been dismissed as unfounded. In so far as the consideration of the claim for annulment did not reveal any unlawfulness such as to render the institution liable, the claim for damages must be dismissed as regards both the material and the non-material damage.

88 It follows from all of the foregoing that the action must be dismissed in its entirety.

Costs

89 Under the terms of Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Title 2, Chapter 8 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. By virtue of Article 87(2), if equity so requires, the Tribunal may 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.

90 It follows from the reasons set out above that the applicant is the unsuccessful party. Furthermore, in its pleadings the Commission has expressly requested that the applicant be ordered to pay the costs. Since the circumstances of this case do not warrant application of the provisions of Article 87(2) of the Rules of Procedure, the applicant must bear her own costs and be ordered to pay the costs incurred by the Commission.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Third Chamber)

hereby:

1. Dismisses the action;

2. Declares that Ms Cristina is to bear her own costs and orders her to pay the costs incurred by the European Commission.

Van Raepenbusch Barents Bradley

Delivered in open court in Luxembourg on 20 June 2012.

Registrar
W. Hakenberg

President
S. Van Raepenbusch