JUDGMENT OF THE COURT (First Chamber)
20 May 1987 *

In Case 432/85

Theano Souna, a self-employed proof-reader supplying services to the Office for Official Publications of the Commission on demand, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18A rue des Glacis,

applicant,

v

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of a decision by which the Selection Board of Open Competition COM/B/416 refused to admit Mrs Souna to that competition,

THE COURT (First Chamber),

composed of: F. Schockweiler, President of Chamber, G. Bosco and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 11 December 1986,

* Language of the Case: French.

after hearing the opinion of the Advocate General delivered at the sitting on 24 February 1987,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 December 1985, Mrs Theano Souna, a self-employed proof-reader supplying services to the Office for Official Publications of the Commission on demand, brought an action for the annulment of the decision of the Selection Board of the Commission's Open Competition COM/B/416 (Official Journal 1985, C 43, p. 16) of 26 September 1985 refusing to admit her to the competition and for compensation for the non-material damage which she was caused by the contested measure.

2 The competition notice stated that candidates must have been born after 15 February 1949 and before 16 February 1967. It stated that that age-limit was not to apply to candidates who, between 15 February 1985 and 29 March 1985, had been serving continuously as an official or other servant of the European Communities for at least one year. That exception to the age-limit was based on Article 1 (1) (g) of Annex III to the Staff Regulations of Officials of the European Communities, which provides that the notice of competition must specify 'where appropriate, the age-limit and any extension of the age-limit in the case of servants of the Communities who have completed not less than one year's service'. In addition, the notice of competition stated that the age-limit would be extended by a fixed period in the case of candidates who had been out of paid employment for at least one year in order to look after a young child, candidates who had performed military service and candidates who were handicapped.

3 On 6 August 1985 the Head of the Recruitment Division of the Commission informed Mrs Souna that the Selection Board of Competition COM/B/416 had refused to admit her to the tests on the ground that she did not comply with the age-limit fixed by the notice of competition and did not satisfy the conditions to qualify for the extension of the age-limit provided for in the case of candidates

who had been out of paid employment for at least one year in order to look after a young child, candidates who had performed military service and candidates who were handicapped.

4 On 24 August 1985 Mrs Souna asked that that decision should be reconsidered and relied on the exception to the age-limit in favour of candidates who had served continuously as officials or other servants of the European Communities for at least one year.

5 On 26 September 1985 the Head of the Recruitment Division informed the applicant that the Selection Board had maintained its decision not to admit her to the tests on the ground that she was outside the age-limit fixed in the notice of competition.

6 On 23 December 1985 Mrs Souna brought the present action.

7 Reference is made to the Report for the Hearing for a more detailed account of the facts and for the submissions and arguments of the parties.

Admissibility

8 The Commission contends that the contested decision merely confirms the decision of 6 August 1985 and the application is therefore out of time.

9 In this regard it should be stressed that in the contested decision the Commission implicitly decided that an exception to the age-limit on which it had not ruled in its decision of 6 August 1985 was not applicable. The contested decision therefore does not merely confirm the previous decision. The action was brought within three months of notification of the contested decision and was therefore commenced within the prescribed period.

Substance

10 In her first submission Mrs Souna claims that the contested decision breaches the rule *patere legem quam ipse fecisti* inasmuch as it refuses her the benefit of the exception to the age-limit provided for by the competition notice for officials and other servants who have served continuously for at least one year, whereas self-employed proof-readers supplying services on demand are also servants of the Communities and Mrs Souna fulfils the condition as to the length of service.

11 In that regard it must be noted that, as the Commission acknowledges, Mrs Souna has worked for the period required by the notice of competition to qualify for the exemption upon which she relies.

12 However, since the exception in question is based on Article 1 (1) (g) of Annex III to the Staff Regulations, which provides that the notice of competition must specify, where appropriate, the age-limit and any extension of the age-limit in the case of servants who have completed not less than one year's service, it must be considered whether Mrs Souna is a servant within the meaning of that provision.

13 The term 'servant' must be interpreted as referring, on the one hand, to officials of the Communities and, on the other hand, to 'other servants' as defined in Article 1 of the Conditions of Employment of Other Servants of the European Communities, namely temporary staff, auxiliary staff, local staff and special advisers.

14 Since Mrs Souna was engaged not in one of those capacities but as a self-employed proof-reader supplying services on demand, she is not entitled to benefit from the exception to the age-limit provided for in the notice of competition for officials and other servants of the Communities who have completed not less than one year's service. The contested decision therefore correctly interpreted the exception provided for by the notice of competition.

15 Consequently, the submission based on breach of the rule *patere legem quam ipse fecisti* must be rejected.

16 In her second submission Mrs Souna claims that the decision is discriminatory and in breach of the administration's duty of good faith towards its staff, in so far as it refuses her an advantage enjoyed by proof-readers who are officials or other servants of the Communities, even though Mrs Souna worked under the same conditions, in particular as regards her hours, supervision and place of work, as the former.

17 In this connection it must be stated that the contested decision is based on a provision of the Staff Regulations which has not been claimed to be illegal.

18 The second submission must therefore be rejected.

19 In her third submission Mrs Souna claims that the decision does not state the reasons on which it is based, inasmuch as it does not explain why it refuses Mrs Souna the benefit of the exception on which she relied in her request of 24 August 1985 that the decision be reconsidered.

20 It should be noted that the Commission could not, having regard to the provision of the Staff Regulations on which the contested decision is based, take any decision other than that which it took. In this regard, it should be recalled that an applicant has no legitimate interest in seeking the annulment of a decision for breach of a procedural requirement when the administration has no discretion and is bound to act as it did. In such a case the annulment of the contested decision could only give rise to another decision substantially identical to the decision annulled (judgment of 6 July 1983 in Case 117/81 *Geist* v *Commission* [1983] ECR 2191, at p. 2207).

21 Consequently, the submission based on the failure to state the reasons on which the decision was based must be rejected.

22 The claim for compensation for the non-material damage which Mrs Souna alleges she was caused by the contested decision must be rejected, since the examination of the contested decision has revealed no ground of illegality.

Costs

23 According to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, according to Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities the institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Schockweiler Bosco Joliet

Delivered in open court in Luxembourg on 20 May 1987.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber