JUDGMENT OF THE COURT (FIRST CHAMBER)
24 JUNE 1969[1]

Jeannette Fux
v Commission of the European Communities

Case 26/68

Summary

1. *Officials — Recruitment — Competition — Subsequent action of administration — Proceedings instituted by candidates — Admissibility*
   (Staff Regulations of Officials of the EEC, Article 29)

2. *Officials — Recruitment — No obligation on the part of the administration to fill post which has become vacant*
   (Staff Regulations of Officials of the EEC, Articles 4, 29, 30)

3. *Officials — Experts and officials — Distinction*

4. *Officials — Recruitment — Competition — Candidates entered on list of suitable candidates — Right of candidates to be appointed — No unconditional right*
   (Staff Regulations of Officials of the EEC, Article 30)

1. The fact that a candidate has taken part in a competition with the result that he has been entered on a list of suitable candidates is evidence of an interest which he has in the outcome of that competition as determined by the appointing authority.

2. It does not follow from the provisions of the second paragraph of Article 4 or from Articles 29 and 30 of the Staff Regulations of Officials of the EEC that once a recruitment procedure has been initiated the appointing authority is obliged to pursue it by filling the post which has become vacant.

3. It does not necessarily follow from the concept of an expert that such a person cannot, should the need arise, be consulted regularly and carry out without interruption the activities assigned to him. The distinction between an expert and an official must be sought above all in the nature of the legal relationship which binds each of them to the institution to which they are assigned.

4. The candidates entered on a list of suitable candidates have no unconditional right to be appointed to the vacant post even if they are placed first.

In Case 26/68

JEANNETTE FUX, an official of the Commission of the European Communities, residing at Schaerbeek-Brussels, 27 avenue Adolphe-Lacomblée, assisted by Maurice Colaert, advocate at the Cour d'Appel, Brussels, with an

1 — Language of the Case: French.

address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser Pierre Lamoureux, acting as Agent, with an address for service in Luxembourg at the Chambers of Émile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

Application for the annulment of the decision notified to the applicant by letter of 13 August 1968 and for the payment of damages,

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of Chamber, A. M. Donner and R. Monaco (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of facts and procedure

The applicant entered the service of the Commission of the EEC on 1 October 1958 as a senior administrative assistant in Grade 2 of Category B.

In May 1967 the Commission published Vacancy Notice No 5882 for a post of principal administrative assistant in Grade 1 of Category B in Division III —B—3. The applicant took part in the competition and was informed by letter of 12 July 1967 that she had been placed first on the list of suitable candidates drawn up by the Selection Board.

Since no decision was taken assigning the post to the applicant, she asked by letter of 5 June 1968 addressed to the Director-General of Personnel and Administration to be informed of what had happened with regard to the vacant post.

By letter of 20 June 1968 the head of the Recruitment and Careers Division replied that 'The procedure for filling vacant post no 5882 . . . will have to remain in abeyance until the new detailed list of posts of the Commission, complete in all its details within each administrative unit, has been finally adopted and the officials presently serving

have been assigned to posts. Only then will it be possible to establish whether the abovementioned post still exists under the new administrative structure'.
The applicant was subsequently informed that she was posted 'under the re-organization of the departments of the Commission' to Directorate-General XI—A—1.
On 13 August 1968 she was informed that 'The post of principal administrative assistant, which was vacant according to the detailed list of posts for the former Division III—B—3 of the EEC and which was the subject of Notice of Competition EEC 5882, has been abolished under the re-structuring of the departments of the Commission'.
Against this decision the applicant brought the present application which was lodged at the Court Registry on 13 November 1968. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry. The parties presented their oral submissions at the hearing on 21 May 1969. The Advocate-General delivered his opinion at the hearing on 4 June 1969.

II — Conclusions of the parties

The *applicant* claims that the Court should:

A — *In the first place:*

1. Annul the contested decision notified to the applicant by letter of 13 August 1968 abolishing the post of principal administrative assistant which was vacant according to the detailed list of posts for the former Division III—B—3 of the EEC and which was the subject of Notice of Competition EEC No 5882;
2. Award the applicant the sum of FB 250 000 (two hundred and fifty thousand Belgian francs) by way of damages, subject to the express reservation of the applicant's right to amend this figure in the course of the proceedings;

B — *Alternatively:*

— award the applicant the sum of FB 250 000 (two hundred and fifty thousand Belgian francs) subject to the express reservation of the applicant's right to amend this figure in the course of the proceedings;

C — *In any event:*

— Order the defendant to pay the costs.

The *defendant* contends that the Court should:

— dismiss the application in its entirety as inadmissible or unfounded;
— order the applicant to pay the costs.

III — Submissions and arguments of the parties

Submissions and arguments of the parties may be summarized as follows:

Admissibility

The *defendant* objects that the application against a decision of the Commission establishing the detailed list of posts for its departments in respect of posts in Category B is inadmissible.
Officials and servants, according to the defendant, are not entitled to contest measures adopted by the institutions concerning the organization and functioning of the departments in so far as those measures do not adversely affect the rights which they hold under the Staff Regulations.
In the present case the contested measure does not adversely affect the rights which servants, and the applicant in particular, hold under the Staff Regula-

tions, for neither the regulations nor general principles of law acknowledge that servants named on a list of suitable candidates, even when placed first thereon, are entitled to be appointed to the post opened to competition.

The applicant replies that she pleads in support of her application the grounds of infringement of the Staff Regulations and of misuse of powers precisely because the contested measure does prejudice her rights.

She also argues that, since she was placed first on the list of suitable candidates, it is wrong to claim that the contested decision does not adversely affect her. In support of her argument she cites, *inter alia*, the opinion of the Advocate-General in Case 62/65.

The *defendant* rejoins that:

— if the contested measure does adversely affect the applicant it does so only in so far as it denies her any prospect of being appointed, following the competition which she entered, to a post prescribed in the detailed list of posts of the EEC Commission and which no longer appears in the detailed list of posts of the Commission of the European Communities. However such a prospect does not have the features of enforceability, and of exclusiveness to the applicant which are associated with a subjective right;

— after the merger of the three executives, the detailed list of posts relating to each of them was abolished and replaced by the new list adopted by the Commission of the European Communities: the decision of 20 June 1968 whereby the Commission adopted its detailed list of posts so far as posts in Category B were concerned is not therefore a decision abolishing within the detailed list of posts of the EEC Commission the post for which the applicant had competed. It is to be regarded as a decision creating and putting into force a new detailed list of posts which does not include a post corresponding to the one abovementioned.

The defendant contends that what the applicant in fact is asking for is the creation, within the present detailed lists of posts, of a specific post. However, such a request is inadmissible since it interferes on the one hand with the exclusive powers of the Commission as regards the organization of its departments within the budgetary limits fixed by the Council and on the other with the exclusive powers of the Council itself in its capacity as budgetary authority.

The substance of the case

A — The request for annulment

In support of her application the *applicant* makes the following submissions:

1. *Infringement of the provisions of the Staff Regulations*

The *applicant* maintains that the second paragraph of Article 4 and Articles 29 and 30 of the Staff Regulations have been infringed in the present case in that:

— having decided to fill the disputed post by means of the competition procedure, the defendant no longer had the power to abolish the post (infringement of the second paragraph of Article 4);

— the contested decision destroys the procedure which was initiated (infringement of Article 29);

— the contested decision disregards the obligation on the part of the appointing authority to fill the vacant post on the basis of the list of suitable candidates drawn up by the Selection Board (infringement of Article 30).

The *defendant* maintains that this line of argument is unfounded since:

— it amounts to denying to the administrative authorities the jurisdiction and

power vested in them to take at any time the necessary measures of organization or re-organization internal to the service;

— it disregards the principle enshrined in national administrative law, in particular in that of France, according to which candidates put forward by a selection board have no vested right to be appointed, since appointment always presupposes that 'the provisions of the Staff Regulations governing access to the post opened to competition remain in force and that the administration has not altered the organization of its departments or reduced its staff'.

Thus, the defendant goes on to say, what would be perfectly lawful even under normal circumstances is so *a fortiori* where substantial changes, due to the merger of three executives, have been made in the structure of an administration as in the present case. It is obvious that in a situation of this kind the Commission of the European Communities could not, when drawing up its new detailed list of posts within the limits prescribed by the Council, be bound by the presence of vacant posts opened to competition in each of the three previous executives.

The *applicant* replies that she does not deny, in principle, that the administration has the power to organize or reorganize its departments. What she does deny is that the administration has the power to go back on its decisions once they have been adopted.

At the time when the vacancy notice was published the Commission knew that the three executives were to be merged and that this merger could give rise to problems of re-organization. It could therefore have decided to refrain from filling this post for the time being instead of taking the decision, by which it is bound, to initiate the competition. Moreover, although the applicant is not entitled to be appointed to the post in dispute she still has the right to demand that substantial reasons be put forward for her non-appointment.

In support of her argument the applicant cites, *inter alia,* the case-law of the Court in the judgment in Case 62/65.

The *defendant* rejoins, with regard to Articles 29 and 30 of the Staff Regulations, that the provisions of the Staff Regulations at most require that the appointing authority should choose the candidate which it appoints from the list of suitable candidates drawn up by the Selection Board. Furthermore, the judgment in Case 62/65 does no more than state that, should this authority decide to make an appointment, it must when making its choice follow the precise order of merit in the competition except for reasons which it will be incumbent upon it to evaluate and justify before the Court should it depart substantially from that order.

Moreover, adds the defendant, it is a mistake to claim that the Commission was 'bound by its decision to fill the post in dispute'. On the one hand, after the merger of the executives and the abolition of the detailed list of posts of the Commission of the EEC, the latter's decision to fill the said post became purposeless. On the other hand it is agreed that since the decision to fill a post does not create any individual right right for the benefit of the officials concerned (there can never be vested rights in appointments promotions or transfers), the revocation of such a decision is always possible and permissible.

The applicant's argument, contends the defendant, is made the more untenable by the fact that the merger of the executives has resulted in a reduction in the total number of budgetary posts.

2. *Misuse of powers*

The *applicant* maintains that even allowing that the defendant had the right to abolish the post in dispute, the fact remains that this right could only be exercised in the public interest. On the other

hand it is obvious that this abolition was effected in the endeavour unconnected with the interests of the service and illegal, 'to exclude the applicant and her colleague also appearing on the list of suitable candidates in order to appoint Mr Dietzler to an alleged new post'.

In support, the applicant argues in particular that the abolition of the post in dispute is fictitious and that in fact this post continues to exist. It is occupied on a permanent basis by Mr Dietzler, in his capacity as an expert, and he does 'exactly what his predecessor did'. The latter, like Mr Dietzler, was of German nationality because 'the German cabinet itself demands that this post be filled by a German'.

The *defendant* replies that since what is at issue are measures of internal organization and the exercise of powers vested solely in the administrative authority, it is not for officials to criticize the reasons which are supposed to have prompted any particular measures.

It emphasizes that the arguments on which the applicant founds her submission are not accompanied by evidence but constitute simple assertions which are unfounded and of little relevance. The post in dispute does not in fact exist any more. Mr Dietzler does not occupy this post and does not do exactly the same work as his predecessor. Mr Dietzler is a customs officer of the German national administration who has been consulted in his capacity as an expert since 1 April 1968 on all questions arising out of the harmonization of customs laws having regard to specific German problems. Moreover the Commission regularly consults in the same circumstances other customs experts of various nationalities on similar questions peculiar to particular Member States. These experts, called in specially for each working session, belong to their national administrations, from which they continue to draw their salaries, and not to the staff of the Commission, which confines itself to paying them travel expenses and subsistance allowances.

The *applicant* states in the first place that the administration's power is never arbitrary and that even in the case of the exercise of a discretionary power any official is entitled to submit for review by the Court the reasons for a decision which affects him adversely.

She goes on to remark that the arguments put forward in support of this submission constitute 'a series of objective facts' from which, applying the judgment in Joined Cases 18 and 35/65, the existence of a consistent misuse of powers may be inferred in the present case in that the post in dispute, which was officially abolished, has in fact been preserved and occupied on a permanent basis.

On the one hand the duties attached to that post, as described in the vacancy notice, consisted in the harmonization of customs laws, particularly as regards the Federal Republic of Germany. Mr Dietzler, a German customs officer under his national administration, is consulted on a continuing basis precisely on all the questions arising from this harmonization with regard to specifically German problems.

On the other hand, it is necessary to avoid the confusion to which the term 'consultation', used by the defendant, might give rise. In fact Mr Dietzler occupies the post on a permanent basis just as an official would. Since his appointment he has been in his predecessor's office; his being 'called in' is therefore 'permanent'. This, however, is quite unusual and contrary to normal practice since what typifies an expert is that he is called upon to fulfil special temporary tasks, not those which, as in the present case, are the very ones for which a post was created.

In fact, the applicant continues, the description 'expert' used by the defendant is merely a device for the purpose of surmounting the difficulty that it is impossible for the time being to appoint

Mr Dietzler to the post in question. The sequence of events makes it clear that the post was officially abolished and then given unofficially to Mr Dietzler, until such time as it can be restored and Mr Dietzler's position thus regularized.

In this connexion, adds the applicant, it is interesting to note that the Selection Board had drawn up the list of suitable candidates at the beginning of the month of June and that in the course of the same month the Commission suddenly found that it must await the outline of the new organization of the internal departments so that it might know whether the post in dispute was preserved. Such a change of position is all the less explicable as the merger of the executives had no effect on the Customs Directorate whose powers derive solely from the EEC Treaty.

The *defendant* rejoins by pointing out that:

— Mr Dietzler was not appointed since he was not a servant of the Communities but an official of the German national administration;

— the post in dispute does not exist in the Commission's present list of detailed posts so that the argument put forward by the applicant remains a simple unverified supposition.

It contends that it is for these reasons that the applicant does not tender and is in no position to tender any serious evidence in support of her argument. On the one hand her arguments are to say the least trifling; on the other, she presents as established facts categoric assertions which are entirely untrue.

In this connexion it should be pointed out in particular that:

— there is no identity of duties between those of Mr Dietzler and those carried out by the previous holder of the post in question, since the latter was concerned with problems relating to the application of the agricultural policy whereas Mr Dietzler is concerned almost exclusively with questions dealing with the origin of goods and secondarily with problems concerning Community transport;

— contrary to the applicant's statement that the list of suitable candidates was drawn up at the beginning of June 1967, the Selection Board did not meet until 3 July 1967 at 3.30 p.m.

B — The claim for damages

The *applicant* maintains that in any event there is a wrongful act or omission on the part of the defendant resulting from the fact that the appointing authority took the decision to fill the disputed post and did not pursue this decision. It is not enough for the defendant to plead the merger of the executives and the necessity for restructuring the departments in order to escape all responsibility in this matter. When it published the vacancy notice, thus taking the decision to fill the post in dispute, it was obviously not unaware that the merger of the executives was at hand and that this could cause re-structuring problems. Thus it was for the defendant, before adopting such a decision, to examine any bearing which the merger might have on the existence of this post.

The damage suffered, continues the applicant, is considerable. On the one hand, bearing in mind her position in the list of suitable candidates drawn up by the Selection Board, she entertained legitimate hopes of being given the post in dispute. On the other hand, serious preparations for such a competition is no light task and calls for certain sacrifices. Finally, the confidence which she was entitled to place in the institutions was unfounded in the present case.

The *defendant*, having noted that the conclusions referring to the payment of damages were formulated both as a primary and secondary claim and wondered what significance to attribute to this repetition, maintains that it was guilty of no wrongful act or omission when it adopted the detailed list of posts

which does not include the post in dispute. Faced with the exigencies arising from the merger of the executives it acted in accordance with and within the limits of its jurisdiction and its powers.

Furthermore, the second factor which must be present for liability to exist, namely damage suffered by the applicant, is not established either. In the connexion it should be noted that:

— first, the candidates put forward by a selection board have no right to be appointed and therefore the applicant's claim lacks the necessary content for it to be possible to take into account and repair the alleged damage;

— further, the applicant does no more than formulate general assertions, without proving the existence of objective facts establishing the alleged damage. Her references to serious preparation for the competition, to the sacrifices called for by such preparation etc., are 'figures of speech' incapable of establishing the actual existence or the extent of the damage. A competition within the Community does not call for 'cramming' on the part of those participating but rather for the demonstration of a sound previous training. Even supposing that in the present case many hours of work were devoted to preparing for the competition this is an entirely personal matter which is of concern only to the applicant;

— lastly, by relying on the argument that 'the confidence which she was entitled to place [in the institutions] was unfounded', the applicant is making use of an expression which has never been employed in connexion with the concept of damage but which is merely one of the very numerous attempts at a definition of the concept of a wrongful act or omission.

The *applicant* defines her position by explaining that either her request for annulment is upheld and the wrongful act or omission accordingly established or her request is refused in which event the wrongful act or omission follows from the fact that the Commission published the vacancy notice and notice of competition and thus decided to fill the vacant post, whereas at that time it should already have been taking account of the problems arising from the merger of the executives. The conduct of the Commission is in any event seriously negligent and culpably frivolous.

The applicant goes on to argue that the alleged damage is certain even though the amount thereof is not. The damage affects in the first place her career since, from the time when the list of suitable candidates was drawn up until the time when she was informed that the post had been abolished she was kept in uncertainty with the result that she did not consider making moves in other directions and did not take part in any other competition.

In the second place, account must be taken of the fruitless efforts expended in the necessary preparation for the competition. The applicant states that she had the sound training required for the post in dispute since on the one hand she came from the French customs administration (where she was an inspector) and on the other her knowledge of the German language is confirmed by a university degree. Thus when she speaks of a considerable effort expended in preparation, this does not in her case mean 'cramming'.

The *defendant* rejoins that neither the EEC Commission nor the present Commission acted improperly. The former, in conformity with the basic principle of the continuity of the post, had to organize the competition—even at the risk of its subsequently appearing to have no purpose—if at the time the competition corresponded to the requirements of the service. The latter did no more than exercise its exclusive authority and powers as regards internal organization, within the limits of the number of posts laid down by the Council.

Moreover, as regards the existence of the alleged damage it must be remarked that, since the applicant was entitled only to reasonable priority and not to a right to be appointed, she ought not, without being guilty of serious negligence the consequences of which fall on her alone, to have allowed her career to depend on the happening of an event as uncertain as that appointment or to have been content to remain inactive instead of pursuing her efforts through all the channels open to her.

Finally, as regards her preparation for the competition, if there was no question of 'cramming' and if she already possessed a sound basic training upon which she merely sought to improve it is hard to see why she had to undertake such intensive preparation that, by reason of the contested measure, she suffered the damage alleged.

Grounds of judgment

Admissibility

1 The defendant objects that the application is inadmissible, claiming that officials and servants cannot be heard to contest measures adopted by the institutions concerning the organization and the functioning of the departments in so far as those measures do not adversely affect the rights which they hold under the Staff Regulations.

2 In the present case the contested measure is said not to affect adversely the rights of the applicant since the officials named on the list of suitable candidates have no right to be appointed to the post opened to competition.

3 The fact that a candidate has taken part in a competition with the result that he has achieved a favourable position is evidence of an interest which he has in the outcome of that competition as determined by the appointing authority.

4 In the present case the applicant argues that the Commission's decision to terminate the recruitment procedure in dispute infringed certain provisions of the Staff Regulations and constitutes a misuse of powers since it was prompted by reasons unconnected with the interests of the service.

5 It is claimed that on these grounds the decision affects the applicant adversely.

6 The consideration of these submissions involves an examination of the substance of the case.

7 The objection of inadmissibility cannot therefore be upheld.

The substance of the case

The request for annulment

A — Infringement of the Staff Regulations

8 The applicant refers to the second paragraph of Article 4 and to Articles 29 and 30 of the Staff Regulations and concludes from these that the appointing

authority, once it has decided to fill a vacant post and to this end has initiated the recruitment procedure prescribed by the Staff Regulations, no longer has the power to abolish that post and to go back on its original decision.

[9] The said provisions state the objective criteria which any procedure for filling vacant posts in the interests of the service must satisfy.

[10] They are intended at the same time to provide a guarantee for the person concerned that the appointed authority will only make appointments in conformity with the rules prescribed by law.

[11] However, it does not follow from these provisions that once a recruitment procedure has been initiated the said authority is obliged to pursue it by filling the post which has become vacant.

[12] Futhermore, the defendant justifies the abolition of the post in dispute on grounds derived from the merger of the executives.

[13] Subsequent upon this merger it became apparent that the departments required to be re-structured and rationalized in order to ensure that the single executive would be equipped with the appropriate means of action.

[14] Regulation No 259/68 therefore authorized the Commission to reduce the number of posts already occupied by officials but the preservation of which was incompatible with the requirements of the re-structuring of the departments.

[15] With all the more reason, then, it was empowered to take decisions to abolish posts which were still vacant and which needed to be dispensed with to meet the requirements of the new administrative structure.

[16] It follows from the foregoing that the submission founded on infringement of the Staff Regulations must be dismissed as unfounded.

B — Misuse of powers

[17] The applicant maintains that the contested decision constitutes a misuse of powers in that the abolition of the post in dispute is fictitious and was solely inspired by the desire to assign the duties which were attached to it to Mr Dietzler as an official having German nationality.

[18] According to the applicant Mr Dietzler who is 'consulted regularly on the problems of the harmonization of customs laws having regard to specific German problems' is in fact performing the same duties as those prescribed for the post in dispute.

19 Furthermore she says that this official has been wrongly described as an expert since he is consulted on a continuing basis and performs his duties on a permanent basis.

20 It is apparent from Vacancy Notice No 5882 relating to the post in dispute that the duties which were entrusted to Mr Dietzler only partly correspond to those attached to this post.

21 Moreover it does not necessarily follow from the concept of an expert that such person cannot, should the need arise, be consulted regularly and carry out without interruption the activities assigned to him.

22 The distinction between an expert and an official must be sought above all in the nature of the legal relationship which binds each of them to the institution to which they are assigned.

23 It is common ground in the present case that Mr Dietzler continues to be employed by his national administration, the Commission merely paying him subsistence allowances and reimbursing his travel expenses as far as Brussels.

24 A situation of this kind is not one which could conceivably fit into a service relationship existing between the Community and one of its officials within the meaning of the Staff Regulations.

25 Although the practice of having recourse within the departments of the Community to the services of national officials does call for certain reservations to be expressed if the use of such officials attains sizeable proportions proportions and lasts a considerable time, it can be justified in the present case because of the need for close cooperation between the Commission and the national customs administrations when the transitional period comes to an end.

26 For those reasons a misuse of powers has not been proved in the present case.

27 The request for annulment must therefore be dismissed as unfounded.

28 Accordingly the claim for damages must also be dismissed as unfounded in so far as it is based on the allegedly illegal nature of the contested decision.

The claim for damages

29 The applicant maintains alternatively that the Commission was guilty of a wrongful act or omission in that in May 1967 it decided to fill the post in dispute and arranged the competition procedure and that it then went back on this decision on grounds connected with the merger of the executives.

30 She claims that at that time it could and should already have been paying heed to the problems presented by such a merger so far as its administrative structure was concerned.

31 The applicant states that as a result of this gross negligence it was impossible for her, as long as the outcome of the competition procedure remained undecided, to apply for other vacant posts and that she thereby suffered damage to her career.

32 Furthermore she had to expend fruitless efforts by way of preparation in order to take part in the competition.

33 The applicant has failed to show the existence of any damage caused by the wrongful act or omission of which she accuses the Commission.

34 Since the candidates entered on a list of suitable candidates have no unconditional right to be appointed to the vacant post, even if they are placed first, there does not exist in the present case an adequate causal connexion between the conduct of the Commission and the damage alleged.

35 Since, moreover, the competition in dispute was, as appears from the vacancy notice, on the basis of qualifications, it did not prescribe tests which would have called for special effort by way of preparation on the part of the candidates.

36 Furthermore the applicant has brought no evidence of the expenses she incurred on this occasion.

37 In these circumstances the claim for damages must be dismissed as unfounded.

Costs

38 The applicant has failed in her application.

39 Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

40 However, under Article 70 of the said Rules the institutions shall bear their own costs in proceedings commenced by servants of the Communities.

On those grounds,

Upon reading the pleadings;
Upon reading the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Staff Regulations of Officials of the European Economic Community, especially Articles 4, 29 and 30;
Having regard to the Rules of Procedure of the Court of Justice:

THE COURT (First Chamber)

hereby :

1. **Dismisses the application as unfounded;**
2. **Orders the parties to bear their own costs.**

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 24 June 1969

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 4 JUNE 1969[1]

Mr President,
Members of the Court,

The applicant in the present proceedings, a French citizen, entered the service of the European Economic Community on 1 October 1958. She was employed as an official in Grade B 2 in Directorate-General XI (Foreign Trade) Directorate A (Trade Policy) Division 2 (Questions relating to GATT). In May 1967 the Commission of the European Economic Community published a notice of competition for the purpose of filling a post, which had become vacant through promotion, of principal administrative assistant (in Grade B 1) in Directorate-General III Directorate B Division 3. The applicant was one of those who participated in the competition the outcome of which was that at its meeting on 3 July 1967 the selection board placed the applicant first on its list of suitable candidates and this was communicated to her by letter of 12 July 1967. However, no appointment was made to the post in question. After repeated inquiries the applicant was informed on 20 June 1968 that the procedure for filling the post would progress no further until a new detailed list of posts had been drawn up. On 20 June 1968 the new Commission fixed the detailed list in respect of officials in Category B. The post of principal administrative assistant, for which the applicant had applied, no longer appeared in it. The applicant was informed of the abolition of the post by a letter from the Directorate-General for Administration dated 13 August 1968.

Since she found this unacceptable she decided—having been assigned to another post in Grade B 2 by decision of 25 July 1968—to institute proceedings before the Court. In her application which was lodged on 13 November 1968 she puts forward the following conclusions:

— for the annulment of the decision communicated to the applicant by letter of 13 August 1969;

1 — Translated from the German.