ORDER OF THE COURT (First Chamber)
6 March 1997 *

In Case C-303/96 P,

Giorgio Bernardi, residing in Luxembourg, represented by Giancarlo Lattanzi, of the Massa-Carrara Bar, with an address for service in Luxembourg at the appellant's address, 33 Rue Godchaux,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities of 11 July 1996 in Case T-146/95 *Bernardi* v *Parliament* [1996] ECR II-769, seeking to have that judgment set aside,

the other party to the proceedings being:

European Parliament, represented by Ezio Perillo, of its Legal Service, acting as Agent, assisted by Denis Waelbroeck, of the Brussels Bar, with an address for service at the General Secretariat of the European Parliament, Kirchberg,

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, D. A. O. Edward and M. Wathelet (Rapporteur), Judges,

* Language of the case: French.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 17 September 1996, Mr Bernardi brought an appeal, under Article 49 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice, against the judgment of 11 July 1996 in Case T-146/95 *Bernardi* v *Parliament* [1996] ECR II-769 ('the contested judgment'), in which the Court of First Instance dismissed his application for the annulment of the 'Call for nominations for the office of Ombudsman' published on 23 May 1995 (OJ 1995 C 127, p. 4, hereinafter 'the call for nominations'), and all related and consequential acts.

2 Article 138e of the EC Treaty created the post of Ombudsman the holder of which, under the same provision, is appointed by the Parliament.

3 According to the findings of the Court of First Instance, since the first appointment procedure in July 1994 did not result in an appointment, the Parliament initiated a new procedure (paragraph 2). To that end, the Parliament, during its plenary session of 16 May 1995, amended Rule 159 of its Rules of Procedure (paragraph 3).

4 That article now provides:

'1. ... the President [of the Parliament] shall call for nominations for the office of Ombudsman and set a time-limit for submitting nominations. A notice calling for nominations shall be published in the *Official Journal of the European Communities*.

2. Nominations must have the support of a minimum of 29 Members who are nationals of at least two Member States.

Each Member may support only one nomination.

Nominations shall include all the supporting documents needed to show conclusively that the nominee fulfils the conditions required by the Regulations on the Ombudsman.

3. Nominations shall be forwarded to the committee responsible, which may ask to hear the nominees.

...'

5 On 23 May 1995, the Parliament published the call for nominations. Its sole article repeated the terms of Article 159(2) of the Rules of Procedure referred to above. Paragraph 3 requested candidates to forward their nominations to the President of the Parliament by 16 June 1995 (paragraph 5 of the contested judgment).

6 On 9 June 1995 the appellant sent to the President of the Parliament a letter to which he attached his nomination for the post of Ombudsman (paragraph 6).

7 At the same time, the appellant raised objections as to both the form and the substance of the condition requiring that nominations should have the support of 29 Members. According to the appellant, the manner in which such support was to be given, the type of Member whose support was to be sought (whether Members of the European or national parliaments) and the date at which such support had to be given, were not made sufficiently clear. Moreover, the requirement for such support itself undermined, in his view, the Ombudsman's independence, despite the fact that it is expressly enshrined in Article 138e of the Treaty. His nomination therefore did not include names of Members likely to support him. In order, however, to satisfy that requirement, the appellant requested the President of the Parliament, if he considered it appropriate, to distribute his nomination document as a matter of urgency, translated into all the official languages of the Union, among the Parliament's various Members and political groups (paragraph 6).

8 By letter of 15 June 1995, the Secretary General of the Parliament informed the appellant that his nomination had been registered but indicated that the registry 'had no power to intervene in the procedure by distributing nominations among the Members of Parliament in order to seek their support within the meaning of Article 159(2) of the Rules of Procedure' (paragraph 7).

9 On the same date, the appellant sent a letter together with his nomination to the Chairmen of the political groups of the Parliament and to the various Members from the new Member States of the Union (paragraph 8).

10 By letter of 23 June 1995 the appellant wrote to the President of the Parliament, reminding him of his letter of 9 June 1995. According to the appellant, only the distribution of his nomination document could fulfil the condition requiring him to have the support of 29 Members without sacrificing the independence of the office of Ombudsman. In the name of that independence, he also challenged the nomination of politicians (paragraph 9).

11 By letter of 4 July 1995, the Secretary General of the Parliament confirmed his reply of 15 June 1995 (paragraph 10).

12 On 2 July 1995 the appellant brought an action for annulment before the Court of Justice and, by separate document, submitted an application for the adoption of interim measures (paragraphs 11 and 12).

13 By order of 11 July 1995, the Court of Justice, finding that the applications fell within the jurisdiction of the Court of First Instance, referred the two cases to that Court (paragraph 13).

14 By order of 18 August 1995 (Case T-146/95 R *Bernardi* v *Parliament* [1995] ECR II-2255), the President of the Court of First Instance dismissed the application for interim measures.

15 In his application for annulment, the appellant claimed that the Court should:

'declare that:

— no Parliamentary committee was expressly and formally declared "competent" with regard to Article 159 of the Rules of Procedure of the European Parliament;

— no official or Member was expressly or formally assigned to consider the nominations;

— no time-limit was prescribed for bringing an action challenging decisions as to the admissibility or otherwise of the nominations;

— the requirement that the Ombudsman be independent is in principle incompatible with being a politician, subscribing to and active in a political party and subject to party discipline and to various existing political commitments;

— the Ombudsman's monitoring role is complementary to the role of the European Parliament (EP) (and of its committee on petitions) regarding political control;

annul the notice entitled "Call for nominations for the office of Ombudsman", published on 23 May 1995 (OJ 1995 C 127, p. 4), and all related and consequential acts, in particular:

— Decision No 019473 of the Secretary General of 15 June 1995, in particular in so far as it refuses to distribute the applicant's nomination document among the Members of Parliament;

— the acts, written or otherwise, relating to the admissibility of the nominations of the persons concerned, particularly of politicians;

— the administrative acts following the public hearing of 28-29 June 1995;

find at the same time that the applicant's nomination document was in fact received by the Parliament, but that no clear, written and reasoned decision regarding him was made known to him personally; that he was given no opportunity either to establish whether his exclusion was improper or to challenge it;

in any event, in view of the urgency of the matter:

— suspend the administrative procedure for the appointment of the Ombudsman until after the vote due to take place on 12 July 1995 in Strasbourg;

— rule that the applicant is entitled to have his nomination document and supporting documents, including copies of the application in the main proceedings and the application for interim relief, made known to every Member of Parliament; or

— (rule) that the applicant is entitled to be heard before (or during) the vote of the EP due to be held on 12 July 1995 in Strasbourg;

reopen the period for the submission of nominations for the office of Ombudsman; in the meantime, have the nomination document of the applicant (and of the other candidates) and related documents — duly translated either into the main or into all the official languages — made known in their entirety to the various Members of Parliament;

make any other appropriate orders;

make an interim order that the applicant is entitled to have copies of the application in the main proceedings and the application for interim relief and of the interim order itself forwarded by the Parliament, at its own cost, to the 626 Members (appearing in the EP Directory of March 1995, or in a more up-to-date EP Directory) of the 15 countries of the European Union (EU) and translated into the 11 official languages;

order the defendant to pay all the costs of the proceedings ...' (paragraph 17).

16 In his reply, the appellant claimed that the Court should:

'find that the applicant had been "denied justice" as a result of the non-application of Article 36 of the EC Statute (of the Court of Justice);

find that the application for interim relief submitted on 26 June 1995 (and again in the afternoon of 26 June, on 28 June and on 2 July 1995) was not finally considered (and partially at that) until 11 July 1995 by an order referring the case to the Court of First Instance, and on 18 August 1995 when it was dismissed;

find, on that point, that the principle of a "reasonable period" has been infringed, in particular in the present application for interim relief;

find that the fundamental rights of the defence, embodied in Articles 6, 13 and 14 of the Strasbourg Convention, have been generally infringed ...' (paragraph 18).

The contested judgment

17 With the exception of the claim seeking the annulment of the letter of the Secretary General of the Parliament sent to the appellant on 15 June 1995, the Court of First Instance declared the action inadmissible in its entirety.

18 It found, in paragraph 23 of the contested judgment, that the claims which only sought declarations in respect of matters of fact or matters of law could not, of themselves, be considered valid in the context of an action for annulment and, in paragraphs 26 and 27, that the claim seeking the annulment of 'all related and consequential acts' and the claim for 'any other appropriate orders' were not sufficiently precise to comply with Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, according to which the applicant is required to state in his application the subject-matter of the proceedings. The Court observed, at paragraph 29, that, in order to be admissible, an application for interim measures should, under Article 104(3) of the Rules of Procedure, be submitted by a separate document and, at paragraph 31, that, under Article 19 of the EC Statute of the Court of Justice and Article 44 of the Rules of Procedure, new claims may not be introduced at the reply stage. Accordingly, in paragraphs 30 and 32, it declared inadmissible both the applications for interim measures included in the main application and the claims put forward in the reply, the latter with the exception of those seeking a declaration that the action was admissible and well founded and those referring to the claims in the application.

19 In paragraphs 33 and 34, the Court of First Instance also held inadmissible the claim seeking the annulment of the call for nominations on the ground that the appellant was not individually and directly concerned within the meaning of the fourth paragraph of Article 173 of the EC Treaty. It took the view that the contested act was a call for nominations which, by its nature, was addressed to an unspecified number of persons.

20 With regard to the substance, the Court dismissed the claim seeking the annulment of the letter of 15 June 1995 sent by the Secretary General of the Parliament, a claim based on the breach of the principle of equal treatment. It found, in paragraph 38, that the appellant had not adduced any evidence that other nominees were treated differently.

21 Finally, the Court ordered the appellant to pay the costs.

The appeal

22 By his appeal, the appellant claims that the Court of Justice should set aside the contested judgment and uphold the claims he made at first instance.

23 This appeal is divided into eight 'elements'.

24 In the first 'element', the appellant argues that the Court of First Instance had no jurisdiction to hear and determine his action. Under Article 3(1)(c) of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), proceedings initiated pursuant to Article 173 of the Treaty may not be brought before that Court unless they relate to the implementation of the competition rules applicable to undertakings.

25 The second 'element', which contains four parts, is worded as follows:

'1. Infringement (or erroneous application) of Article 138e of the EC Treaty in the following implementing measures:

*The 16 May 1995 version of Article 159 of the EP Rules of Procedure;

*The EP's Decision (Notice) "Call for nominations" (in OJ 1995 C 127, p. 4, of 23 May 1995);

*The EP's Decision of 9 March 1994 (in OJ 1994 L 113 of 4 May 1994);

*The appointment procedure;

2. Lack of competence (of the official who "decided" whether nominations were admissible and in particular, to exclude — among others — the appellant and to admit other candidates);

3. Infringement of essential procedural requirements inasmuch as the appellant's nomination:

*was not registered as a nomination;

*was not made known to the Members who were to elect the Ombudsman, so that it was impossible for them to make an objective choice;

*was rejected by officials who evidently did not have the authority to take a decision from the point of view of Community law;

in a situation where no procedure for review or appeal was either indicated or provided for in the event of a challenge;

4. Misuse of powers, in particular in the specific form of "abuse of procedure" (that is as a means consisting of providing for a procedure which is in itself lawful but which is impossible in practice to apply to the process pursued):

in that the ambiguities surrounding the clause relating to the support of 29 Members of the European Parliament (vagueness as to nature, form, scope and type of that support), as well as the extremely brief time-limits provided for the lodging of nominations may lend themselves to a purpose other than that for which the clause purports to be actually necessary, contrary to the provisions of the Treaty and the seventh recital in the preamble to the Regulations on the Ombudsman;

...'

26 In the third 'element', the appellant seeks the annulment of paragraph 23 of the contested judgment in which the Court of First Instance observed that claims which only seek declarations in respect of matters of fact or matters of law cannot, of themselves, be considered valid in the context of an action for annulment. In support of that claim, he alleges infringement of Community law by the Court of First Instance consisting in misuse of powers and various procedural irregularities to the detriment of his interests.

27 In his fourth 'element', the appellant seeks the annulment of paragraphs 25 to 27 of the contested judgment in which the Court of First Instance held that the claim for the annulment of all related and consequential acts and that for any other appropriate orders to be made were not sufficiently precise and that, if the latter claim were to be interpreted as an application for a direction to be issued, the Court had no power so to do.

28 According to the appellant, the Court of First Instance infringed Community law by interpreting erroneously the concepts of 'purpose of the claims', 'related and consequential acts' and the power to make 'any other appropriate orders'.

29 In the first part, the appellant recalls the purpose of his application before the Court of First Instance and, in the second part, he sets out what he understands by 'related and consequential acts'. In the third part he emphasizes 'the requirement, for example, to refer the case back, in order to enable proper proceedings to be reopened'.

30 The fifth 'element' seeks the annulment of paragraph 29 of the contested judgment in which the Court of First Instance stated that, under Article 104(3) of its Rules of Procedure, an application for interim measures must be submitted by a separate document.

31 According to the appellant, that article 'must necessarily remain subject — where there is actual urgency — to Article 36 of the Statute of the Court of Justice (which provides for a summary procedure, which may, in so far as necessary, differ from some rules, such as for example the abovementioned Article 104)'.

32 In the sixth 'element', the appellant criticises the statement made by the Court of First Instance in paragraphs 33 and 34 of the contested judgment that the call for nominations, by its nature, was addressed to an unspecified number of persons, so that the appellant was not individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty. According to the appellant, he was directly, individually and potentially concerned by the contested decision.

33 In the seventh 'element', the appellant seeks the annulment of paragraph 36 of the contested judgment, in which it is stated that in his action only a single plea in law is put forward in support of his claim for annulment. According to the appellant, the Court of First Instance has infringed Community law and misused its powers by wrongly ignoring the various other pleas in law in the action.

34 Finally, in his eighth 'element', the appellant challenges the order for costs against him made by the Court of First Instance. According to the appellant, Article 87(2) of the Rules of Procedure of the Court of First Instance, which provides that 'the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings', should not have been applied in that instance, which he describes as 'an exceptional case ... which in any event should contribute, at the very least, to an adjustment, and thus to an improvement, of the procedure for appointing the Ombudsman in the future'.

Findings of the Court

35 Under Article 119 of the Rules of Procedure of the Court of Justice, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time, by reasoned order dismiss the appeal, without opening the oral procedure.

36 Before considering the pleas in law put forward by the appellant, it should be observed that, according to the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal is limited to points of law and may lie on grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interest of the appellant or the infringement of Community law by the Court of First Instance; Article 112(1)(c) of the Rules of Procedure further provides that an appeal must contain the pleas in law and the legal arguments relied upon.

37 It follows from those provisions that an appeal must indicate precisely the contested elements of the judgment which it is requested to have set aside and also the legal arguments which specifically support that request (orders in Case C-244/92 P *Kupka-Floridi* v *Economic and Social Committee* [1993] ECR I-2041, paragraph 9; Case C-338/93 P *De Hoe* v *Commission* [1994] ECR I-819, paragraph 18; Case C-26/94 P *X* v *Commission* [1994] ECR I-4379, paragraph 12; and Case C-62/94 P *Turner* v *Commission* [1995] ECR I-3177, paragraph 16).

38 In the present case, the second, fourth, sixth and seventh pleas put forward by the appellant to not satisfy those requirements.

39 The second plea in law merely reproduces word for word the pleas previously relied upon before the Court of First Instance, without indicating precisely which elements of the contested judgment are challenged, or the legal arguments which support the appeal. The first two parts of the fourth plea in law merely repeat almost word for word the arguments submitted by the appellant in his application before the Court of First Instance and the third part is not set out sufficiently precisely. The sixth and seventh pleas in law contain no argument in support of the submissions set out therein.

40 Accordingly, those pleas in law must be rejected as clearly inadmissible.

41 The first, third, fifth and eighth pleas in law must next be considered.

42 So far as concerns the first plea in law, it need merely be observed that, by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the Council extended the jurisdiction of the Court of First Instance to all actions brought by natural or legal persons.

43 Moreover, it should be pointed out that, by the order of 11 July 1995 mentioned in paragraph 13 above, this Court has already ruled definitively on the jurisdiction of the Court of First Instance. The appellant cannot challenge the validity of that order in the context of the present appeal without disregarding its authority as *res judicata*.

44 The first plea in law is therefore both clearly unfounded and clearly inadmissible.

45 So far as concerns the third plea in law, as the Court of First Instance rightly held, actions initiated under Article 173 of the Treaty can have as their purpose only the annulment of a measure adopted by a Community institution. They cannot seek mere declarations of fact or law.

46 The third plea in law is therefore clearly inadmissible.

47 So far as concerns the fifth plea in law, it need only be stated that Article 104 of the Rules of Procedure of the Court of First Instance implements Article 36 of the EC Statute of the Court of Justice. Contrary to the appellant's arguments, the latter provision does not provide for a summary procedure which differs from Article 104 of the Rules of Procedure of the Court of First Instance.

48 Accordingly, the fifth plea in law is clearly unfounded.

49 Finally, with regard to the eighth plea in law, it need only be observed that, in the event that all the other pleas in law relied upon in an appeal against a decision of the Court of First Instance are rejected, the plea that that decision is invalid so far as concerns costs must, by virtue of the second paragraph of Article 51 of the EC Statute of the Court of Justice, be rejected as inadmissible (orders in Case C-253/94 P *Roujansky* v *Council* [1995] ECR I-7, paragraphs 13 and 14, and Case C-264/94 P *Bonnamy* v *Council* [1995] ECR I-15, paragraphs 13 and 14; judgment in Case C-396/93 P *Henrichs* v *Commission* [1995] ECR I-2611, paragraphs 65 and 66).

50 The appeal must therefore be dismissed in its entirety.

Costs

51 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant has been unsuccessful in his appeal, he must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby orders:

1. The appeal is dismissed.

2. Mr Bernardi shall pay the costs.

Luxembourg, 6 March 1997.

R. Grass — Registrar

L. Sevón — President of the First Chamber