2. Orders the Commission to pay the costs.

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 13 May 1982.

P. Heim
Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 18 FEBRUARY 1982 [1]

Mr President,
Members of the Court,

1. Introduction

In the Official Journal of the European Communities, C 225 of 4 September 1980, notice was given on page 8 of Open Competition No COM/LA/315, which was intended to constitute a reserve for the recruitment of translators having as their main language German, English, French, Italian or Dutch. Under Point B.1. the following condition as to age-limit was laid down:

"Candidates must have been born after 15 October 1948. This age-limit does not apply to candidates who on 15 October 1980 have been employed by an institution of the European Communities for at least one year."

Mrs Alaimo, who was born in 1942 and had been employed since 1 December 1976 by the European Centre for the Development of Vocational Training, submitted an application for the competition. By a letter of 7 November 1980 she was however notified by Yves Desbois, Head of the Commission's Recruitment Division, that the Selection Board for the competition had rejected her application because of her age. That rejection was based on a decision not to allow the applicant to benefit from the exemption from the maximum age-limit for persons employed by the European Communities.

Mrs Alaimo has brought this action against that rejection. The Commission does not dispute the admissibility of the action.

The European Centre for the Development of Vocational Training was established, pursuant to Article 235 of

1 — Translated from the Dutch

the EEC Treaty, by Regulation (EEC) No 337/75 of the Council of 10 February 1975 (Official Journal 1975, L 39, p. 1). It appears from the preamble to that regulation that the task of the Centre is to assist the Commission in the implementation of Article 118 of the Treaty, although the Centre is independent of the departments of the Commission. Council Regulation (ECSC, EEC, Euratom) No 1859/76 of 29 June 1976 (Official Journal 1976, L 214, p. 1) lays down the conditions of employment which apply to the staff of the Centre.

2. The arguments adduced

Annex III to the Staff Regulations, entitled "Competitions", provides in Article 1 *inter alia* as follows:

"(1) Notice of competitions shall be drawn up by the appointing authority after consulting the Joint Committee.

It must specify:

(a) ...

...

(g) 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.

..."

The underlined expression is not accompanied by words such as "of the Community" or "of the institutions" [1]. However, in giving notice of competitions the Commission invariably appends the words "of the European Communities".

The applicant considers that as a member of staff of the Centre she comes within the expression "employed by ... the European Communities". In support of that contention she makes the following points:

1. The Centre is a body set up under Community law since it was established by a regulation based on Article 235 of the Treaty and performs a Community task, namely one of the tasks assigned to the Commission under Article 118 of the Treaty.

2. The last recital in the preamble to the regulation establishing the Centre states that the Centre is set up "within the framework of the European Communities".

3. The staff of the Centre perform a Community task and are subject to the special provisions of Regulations Nos 1859/76 and 1237/80. The first part of the third argument is in fact a repetition of the first argument.

The applicant puts forward three further arguments "in case the others are not convincing".

4. Article 16 of the regulation setting up the Centre provides that the Protocol on the Privileges and Immunities of the European Communities are to apply to the Centre, whilst Article 55 of Regulation No 1859/76 provides that Articles 12 to 16 of the Protocol are to apply to staff of the Centre.

5. The first paragraph of Article 55 in conjunction with Article 56 of Regulation No 1859/76 provides that as regards the remuneration of the staff of the Centre the Community system of taxation is to apply.

6. Under Article 44 of Regulation No 1859/76 the Court of Justice is to have jurisdiction in any dispute between the Centre and members of its staff.

Finally, two further considerations are mentioned by the applicant.

1 — Translator's note: It will be noted that, unlike the Dutch version of Article 1 (1) (g) of Annex III to the Staff Regulations, the English version does in fact include the words "of the Communities".

1. The preamble to Regulation No 1237/80 amending Regulation No 1859/76 (Official Journal 1980, L 127, p. 1) states that it is desirable that certain provisions of the conditions of employment applicable to staff of the Centre should be aligned with those applicable to officials of the European Communities. Why should that occur, asks the applicant, if the staff of the Centre are not officials of the Communities?

2. By a resolution of 19 September 1980 the European Parliament pressed for greater mobility between the Centre and the institutions of the Communities (Official Journal 1980, C 265, p. 93).

The Commission considers that the expression "employed by ... the Communities" does not cover the staff of the Centre. It infers that from the following considerations:

1. The Centre is not an "institution" of the Community but a separate body set up by the Council in implementation of Article 235 of the Treaty.

2. The Centre has its own legal personality (Article 1 of Regulation No 337/75).

3. Recruitment of personnel to the Centre is not accompanied by the same guarantees as recruitment to the "institutions".

4. In its rejoinder the Commission refers to Article 29 (1) (c) of the Staff Regulations. In so far as is relevant, Article 29 provides as follows:

"1. Before filling a vacant post in an institution, the appointing authority shall first consider:

(a) ...

(b) ...

(c) what applications for transfer have been made by officials of other institutions of the three European Communities".

More generally, the viewpoint which may be gleaned from the Commission's pleadings is that the staff of bodies set up in pursuance of Article 235 of the EEC Treaty have completely separate status from the ordinary staff of the Communities.

3. The questions of law

3.1. In this dispute two connected questions of law arise. In the *first* place it must be ascertained what is to be understood by the words "servants of the Communities" in Article 1 (1) (g) of Annex III to the Staff Regulations or, put another way, what is the sphere of application *ratione personae* of the Staff Regulations. In the *second* place it must be established what is to be understood by the expression "of the European Communities" used by the Commission in the Notice of Competition. The six arguments adduced by the applicant will fall to be dealt with in the discussion of those two questions.

3.2. Article 1 of the Staff Regulations renders them applicable to the "institutions of the Communities" and, by express provision in the last paragraph of that article, to bodies treated as institutions, such as the Economic and Social Committee and the Court of Auditors. The word "institutions" is a connecting factor running through the other provisions of the Staff Regulations. So far as it is relevant for present purposes, the term "institutions" is defined in Article 4 of the EEC Treaty, in the Convention on certain institutions common to the European Communities

and in the Treaty establishing a Single Council and a Single Commission of the European Communities.

Article 1 of the Staff Regulations expressly provides that the Economic and Social Committee and the Court of Auditors are to be treated as institutions. It may be deduced therefrom that, in the case of other bodies which are not institutions, such an assimilatory provision is likewise necessary. Thus, there is no reference in Article 1 of the Staff Regulations to the European Investment Bank, which has its own staff regulations. Moreover, those other bodies must be regarded as including in particular those set up under Article 235 of the Treaty, of which the Centre is one. In the light of the above-mentioned scheme of the Staff Regulations as regards their sphere of application *ratione personae,* it is clear that the expression "servants of the Communities" appearing in Article 1 (1) (g) of Annex III to the Staff Regulations must likewise be interpreted in that way.

As to the applicant's first three contentions, the following may be said. The applicant's *first* argument that the Centre is a body set up under Community law and carries out a Community task in itself says nothing about the sphere of application *ratione personae* of the Staff Regulations. The same may equally be said of the European Investment Bank, which, as mentioned above, clearly falls outside the scope of the Staff Regulations.

The same reasoning may be applied to the applicant's *second* argument that the Centre is established "within the framework of the Communities". The *third* argument as to the separate system set up by Regulations Nos 1839/76 and 1237/80 may even be used to support the proposition that Article 1 of the Staff Regulations and Article 1 (1) (g) of Annex III apply only to the institutions and bodies expressly treated as such.

3.3. From the foregoing considerations alone it may in my view be said that Article 1 (1) (g) of Annex III to the Staff Regulations applies only to the bodies mentioned in Article 1 of the Staff Regulations and thus not to the Centre.

A complication is however caused by the fact that the Commission in the relevant notice of competition uses the words "... of the European Communities". Although it is clear from its pleadings that by that wording it means the same as Article 1 of the Staff Regulations, there are strong grounds for fearing that that wording may be or even must be interpreted in a wider sense.

In the *first* place, Article 16 of Regulation No 337/75 establishing the Centre makes the Protocol on the Privileges and Immunities applicable to the Centre. Since the full title is the "Protocol on the Privileges and Immunities of the European Communities", that provides an argument for regarding the Centre as coming within the scope of the expression "European Communities". That argument is strengthened by the following consideration. The preamble to the Protocol as well as Article 22 thereof states that the Protocol is also to apply to the European Investment Bank. It may be concluded therefore that, since Article 4 of the EEC Treaty, the Convention and the Merger Treaty do not mention that body, a special assimilatory provision is needed in order to make the Protocol applicable to the Centre. Although the Protocol does not provide for such an extension of its scope, the Council certainly did so by adopting,

pursuant to Article 235 of the Treaty, Article 16 of the regulation setting up the Centre, evidently assuming that the Centre came within the "European Communities". Further support for that argument may be derived from the judgment of the Court in Case 110/75 *Mills* v *Investment Bank* [1976] ECR 955. The applicability of the Protocol to the Investment Bank was used as a principal argument by the Court in paragraph 13 of that judgment ("thereby") for holding that that body came within the scope of the term "Community" with the meaning given to it by Article 179 of the Treaty. Furthermore, Regulation No 1859/76 expressly makes Chapter V of the Protocol (Articles 12 to 16) entitled "Officials and Other Servants of the European Communities" applicable to the Centre.

In the *second* place, Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities is made applicable to the Centre. Likewise in Article 12 of that regulation the European Investment Bank was mentioned separately and no express provision was made for an extension of the scope of the regulation. Nevertheless, the Council, by placing reliance on Article 235 of the Treaty, brought the Centre within the scope of the regulation.

Thirdly, Article 44 of Regulation No 1859/76 provides that the Court of Justice is to have jurisdiction in disputes between the Centre and its staff. By virtue of Article 179 of the Treaty the Court of Justice is to "have jurisdiction in any dispute between *the Community and its servants* within the limits and under the conditions laid down in the Staff Regulations *or the Conditions of Employment*". From the words underlined it may once again be inferred that the Centre is to be considered as falling within the scope of the term "Community" contained in that article.

4. Conclusion

In conclusion therefore I consider that the Centre comes within the term "Community" or "European Communities", as those words are used in Article 179 of the Treaty, in the Protocol and in the above-mentioned regulations. The use of that wording in the notice of competition may therefore have led the applicant to believe that she also might come within Article 1 (1) (g) of Annex III to the Staff Regulations.

However, neither the conduct of the Commission nor any other contentions or arguments put forward by the applicant constitute a ground upon which the provisions of the Staff Regulations may be given a wider sphere of application *ratione personae* than may be deduced from Article 1 of the Staff Regulations. Accordingly, Article 1 (1) (g) of Annex III to the Staff Regulations may not be considered as having application to the staff of the Centre. In my view, the Commission should be ordered to pay all the costs of the proceedings pursuant to the first subparagraph of Article 69 (3) of the Rules of Procedure as a result of the expectations which it aroused in the applicant by the misleading notice. The strong arguments which militate in favour of interpreting the words used by the Commission in its notice, taken by themselves, in the same way as the applicant, constitute a further reason for regarding the expectations aroused as an exceptional circumstance in the sense of the aforementioned provision. The fact that a detailed analysis of the case shows

that regrettably an amendment to the Staff Regulations would be necessary in order to do full justice to the arguments put forward by the applicant, some of which were particularly telling, does not alter my opinion as to the decision on costs. In my opinion only an amendment to the Staff Regulations would enable it clearly to be established how far it is intended to extend the preferential rules laid down in Article 1 (1) (g) of Annex III to the Staff Regulations for "servants of the Communities" to "quasi-Community institutions" of varying kinds which have been created with differing legal frameworks since the Staff Regulations were adopted in their present version.

I therefore propose that the Court should:

1. Dismiss the application;

2. Order the Commission to pay the costs including those of the applicant.