JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

31 March 2011 *

In Case T-117/08,

Italian Republic, represented by R. Adam, acting as Servant, and by P. Gentili, lawyer,

applicant,

supported by

Kingdom of Spain, represented by F. Díez Moreno, acting as Servant,

intervener,

* Language of the case: Italian.

European Economic and Social Committee (EESC), represented initially by M. Bermejo Garde, and subsequently by M. Arsène, acting as Servants, and by A. Dal Ferro, lawyer,

defendant,

ACTION for annulment, firstly, of vacancy notice No 73/07 concerning a post of Secretary-General in the Secretariat of the EESC, published in the English, French and German versions of the *Official Journal of the European Union* of 28 December 2007 (OJ 2007 C 316 A, p. 1), and, secondly, of the corrigendum to that vacancy notice published in the English, French and German versions of the *Official Journal of the European Union* of 30 January 2008 (OJ 2008 C 25 A, p. 19),

THE GENERAL COURT (Sixth Chamber),

composed of V. Vadapalas (Rapporteur), acting as President, K. Jürimäe and L. Truchot, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 April 2010,

gives the following

Judgment

Legal context

1 Articles 12 EC and 290 EC state:

'*Article 12*

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

…

Article 290

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously.'

2 Article 22 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1; 'the Charter'), provides:

'The Union shall respect cultural, religious and linguistic diversity.'

3 Articles 1, 4, 5 and 6 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), in the version applying in this case, provide:

'*Article 1*

The official languages and the working languages of the institutions of the Union shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

…

Article 4

Regulations and other documents of general application shall be drafted in the official languages.

Article 5

The *Official Journal of the European Union* shall be published in the official languages.

Article 6

The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.'

4 Article 1(2) and (3) of Annex III to the Staff Regulations of officials of the European Communities ('the Staff Regulations') states:

'(2) Notice of open competitions shall be published in the *Official Journal of the European Communities* not less than one month before the closing date for applications and, where applicable, not less than two months before the date of the tests.

(3) All competitions shall be advertised within the institutions of the three European Communities, the same time limits being observed.'

5 Article 12 of the Conditions of Employment of Other Servants of the European Communities ('the CEOS') provides:

'(1) The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Communities.'

Background to the dispute

6 On 28 December 2007, in accordance with Article 2(a) and Article 8 of the CEOS, vacancy notice No 73/07 concerning a post of Secretary-General in the Secretariat of the European Economic and Social Committee (EESC) ('the contested vacancy notice') was published only in the English, French and German versions of the Official Journal (OJ 2007 C 316 A, p. 1). The vacancy notice states that the Secretary-General will be recruited as a temporary member of the staff in grade AD 16, third step.

7 Under the heading 'Qualifications and skills', the contested vacancy notice stated, inter alia, the requirement of '[being an e]stablished official or temporary member of the staff of a European institution, body, office or agency' and of having a '[t]horough knowledge of an official language of the European Union and [an] excellent knowledge of at least two other official languages of the European Union', specifying that '[f]or operational reasons, a good knowledge of English and/or French [was] highly desirable'. Under the heading 'Closing date for applications', the vacancy notice stated '28 January 2008'.

8 A notice ('the shortened notice'), drafted and published in all the official languages, also appeared in the Official Journal of 28 December 2007 (OJ 2007 C 316, p. 61), stating that '[s]taff of the European institutions [were t]hereby informed of the [contested vacancy notice] published in the English, French and German versions of the *Official Journal of the European Union* (OJ C 316 A, 28.12.2007)'.

9 On 30 January 2008, a corrigendum to the contested vacancy notice ('the corrigendum') was published only in the English, French and German versions of the Official Journal (OJ 2008 C 25 A, p. 19). In that corrigendum, the EESC gave a new closing date for applications for the post of Secretary-General, namely, 8 February 2008.

10 A notice of a corrigendum to the contested vacancy notice, drafted and published in all the official languages, also appeared in the Official Journal of 30 January 2008 (OJ 2008 C 25, p. 21), stating that '[s]taff of the European institutions [were t]hereby informed that [the contested vacancy notice] published in the English, French and German versions of the *Official Journal of the European Union* (OJ C 316 A, 28.12.2007) [had] been modified (see OJ C 25 A, 30.1.2008)'.

Procedure and forms of order sought by the parties

11 By application lodged at the Registry of the Court on 11 March 2008, the Italian Republic brought the present action against the Commission of the European Communities and the EESC seeking annulment of the contested vacancy notice and its corrigendum.

12 By document lodged at the Registry of the Court on 29 April 2008, the Commission raised a plea of inadmissibility, pursuant to Article 114 of the Rules of Procedure of the General Court.

13 By document lodged at the Registry of the Court on 5 June 2008, the Kingdom of Spain applied for leave to intervene in support of the form of order sought by the Italian Republic. By order of 11 July 2008, the President of the Sixth Chamber of the Court granted that leave to intervene.

14 On 28 August 2008, the Kingdom of Spain lodged its statement in intervention.

15 By order of 16 December 2008 the Court (Sixth Chamber) dismissed the application as inadmissible in so far as it had been brought against the Commission.

16 After hearing the report of the Judge-Rapporteur, the Court (Sixth Chamber) decided to open the oral procedure and, by way of the measures of organisation of procedure provided for in Article 64 of the Court's Rules of Procedure, asked the parties to reply in writing to a number of questions. The parties complied with those requests.

17 By letter of 11 February 2010, the Kingdom of Spain stated that it would not participate in the hearing.

18 The parties presented oral argument and replied to the questions put by the Court at the hearing on 14 April 2010.

19 Since Judge Tchipev was prevented from sitting after the closure of the oral procedure, the case was reassigned to Judge Vadapalas as Judge-Rapporteur, and Judge Jürimäe was designated, in accordance with Article 32(3) of the Rules of Procedure, to complete the Chamber.

20 By order of 8 July 2010, the Court (Sixth Chamber), in its new composition, reopened the oral procedure and the parties were informed that they could present oral argument at a further hearing on 22 September 2010.

21 By letters of 16 and 19 July 2010 respectively, the Italian Republic and the EESC informed the Court that they were waiving their right to be heard afresh.

22 Consequently, the President of the Sixth Chamber decided to close the oral procedure.

23 The Italian Republic, supported by the Kingdom of Spain, claims that the Court should annul the contested vacancy notice and its corrigendum.

24 In addition, the Kingdom of Spain claims that the Court should order the EESC to pay the costs.

25 The EESC contends that the Court should:

— dismiss the action as inadmissible or as unfounded;

— order the Italian Republic to pay the costs.

Law

1. *Admissibility*

26 Without raising an objection of inadmissibility under Article 114 of the Rules of Procedure, the EESC contends that the action, brought under Article 230 EC, is inadmissible.

Arguments of the parties

27 The EESC submits that its acts are not adopted by any of the institutions listed in the first paragraph of Article 230 EC and relies on the judgment in Case C-160/03 *Spain* v *Eurojust* [2005] ECR I-2077, paragraphs 35 to 44. In the EESC's submission, the grounds of that judgment indicates, in essence, that the action was not declared inadmissible only because Eurojust is not included in the abovementioned institutions,

but also because of the very nature of the contested acts, namely, calls for applications, which are not included in the acts listed in Article 230 EC.

28 The Italian Republic contests, in essence, the EESC's lack of capacity to be sued under Article 230 EC.

Findings of the Court

29 As a preliminary point, the EESC is not included in the list of institutions covered by the first paragraph of Article 230 EC. However, that finding does not preclude the Court from reviewing the legality of its acts.

30 As the Court observed, inter alia, in Case T-411/06 *Sogelma* v *EAR* [2008] ECR II-2771, paragraph 36, and Case T-70/05 *Evropaïki Dynamiki* v *EMSA* [2010] ECR I-313, paragraph 64, referring to Case 294/83 *Les Verts* v *European Parliament (Les Verts)* [1986] ECR 1339, the European Community is a community based on the rule of law and the Treaty has established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions. The general scheme of the Treaty is to make a direct action available against all measures adopted by the institutions which are intended to have legal effects. On that basis, the Court of Justice accordingly concluded, in *Les Verts*, that an action for annulment could be brought against measures of the Parliament intended to have legal effects vis-à-vis third parties, even though the provision of the Treaty on actions for annulment, in the version then in force, referred only to acts of the Council of the European Union and of the Commission. The Court of Justice held that an interpretation of that provision which excluded measures adopted by the European Parliament from those which can be contested would have led to a

result contrary both to the spirit of the Treaty as expressed in Article 164 of the EC Treaty (now Article 220 EC) and to its general scheme (see, to that effect, *Les Verts*, paragraphs 23 to 25).

31 The general principle to be elicited from that judgment is that any act adopted by a body of the European Union, such as the EESC, which is intended to have legal effects vis-à-vis third parties, must be amenable to review by the Courts (see, by analogy, *Evropaïki Dynamiki* v *EMSA*, paragraph 65).

32 It is true that *Les Verts* refers only to the Community institutions, while the EESC, as noted in paragraph 29 above, is not one of the institutions referred to in Article 230 EC. Nevertheless, a body such as the EESC has a power to adopt vacancy notices such as that at issue in the present case. By defining the conditions relating to eligibility for the post, vacancy notices determine which persons' applications are likely to be accepted, and are therefore acts which adversely affect the potential candidates whose applications are excluded under those conditions (Case 79/74 *Küster* v *European Parliament* [1975] ECR 725, paragraphs 5 to 8; Case 25/77 *De Roubaix* v *Commission* [1978] ECR 1081, paragraphs 7 to 9; and Case T-185/05 *Italy* v *Commission* [2008] ECR II-3207, paragraph 55). Accordingly, it is clear that the situation of the EESC, a body endowed with the power to adopt acts such as those at issue in the present case, which have legal effects vis-à-vis third parties, is comparable to that of the Parliament in *Les Verts*. Thus it cannot be acceptable, in a community based on the rule of law, that such acts escape all review by the Courts (see, by analogy, *Evropaïki Dynamiki* v *EMSA*, paragraph 66 and the case-law cited).

33 It follows that the contested vacancy notice adopted by the EESC, intended to have legal effects vis-à-vis all the candidates whose applications are excluded under the conditions laid down, constitutes an act which may be challenged.

34 That conclusion is not called into question by the judgment in *Spain* v *Eurojust*, referred to by the EESC, in which an action for annulment based on Article 230 EC against calls for applications for positions as members of the temporary staff was declared admissible, the Court having pointed out in that judgment that Article 41 EU, applicable to that case, did not provide that Article 230 EC is to apply to the provisions on police and judicial cooperation in criminal matters in Title VI of the Treaty on European Union, which cover Eurojust, the jurisdiction of the Court of Justice in such matters being defined in Article 35 EU, to which Article 46(b) EU refers (*Spain* v *Eurojust*, paragraph 38).

35 It therefore follows from the first paragraph of Article 230 EC, as interpreted in the light of the judgment in *Les Verts* (paragraphs 23 to 25) and the judgment in *Sogelma* v *EAR* (paragraphs 36 and 37), that the present action is admissible.

2. *Substance*

36 In support of the present action, the Italian Republic alleges, in essence, infringement of Articles 1, 4, 5 and 6 of Regulation No 1, Articles 12 EC, 253 EC and 290 EC, Article 6 EU, Article 1(2) and (3) of Annex III to the Staff Regulations, Article 22 of the Charter, Article 12 of the CEOS and the principles of non-discrimination, multilingualism and protection of legitimate expectations, and misuse of powers.

37 Firstly, the Court will consider whether the EESC has the power to determine the rules governing the languages of the contested vacancy notice pursuant to Article 290 EC. Secondly, it will examine whether the EESC, by adopting those rules, has disregarded Articles 1, 4, 5 and 6 of Regulation No 1. Thirdly, it will consider whether the

full publication of the contested vacancy notice in the Official Journal in only three languages and the statement in the contested vacancy notice that a good knowledge of English and/or French was among the qualifications and skills required are contrary to the principles of non-discrimination and multilingualism. In the event that the answer to that question is negative, fourthly, the Court will examine the allegations of infringement of the principle of protection of legitimate expectations, misuse of powers and failure to state reasons.

Infringement of Article 290 EC

Arguments of the parties

38 The Italian Republic submits that the EESC has taken the place of the Council in determining the rules governing the languages of the contested vacancy notice, infringing Article 290 EC, while it should merely have followed the rules laid down by the Council in Regulation No 1. Furthermore, none of the rules governing the EESC confers on it powers as regards languages.

39 The Kingdom of Spain supports the arguments put forward by the Italian Republic as regards the EESC's lack of power to alter the rules governing languages laid down in Article 290 EC.

40 The EESC does not dispute the fact that only the Council can adopt acts defining the rules governing the languages of the Community, pursuant to Article 290 EC. Nevertheless, the EESC points out that, under Article 6 of Regulation No 1, the Council has given the institutions discretion as regards their internal needs, of which the EESC made use for the publication of the contested vacancy notice.

Findings of the Court

41 Regulation No 1 determining the languages to be used by the institutions was adopted by the Council under Article 290 EC. Article 6 of that regulation expressly permits the institutions to stipulate in their rules of procedure which of the languages are to be used in specific cases, in the exercise of which power they should moreover be granted a certain degree of operational autonomy in order to ensure their proper functioning (see Opinion of Advocate General Poiares Maduro in *Spain* v *Eurojust*, point 48 and the case-law cited).

42 Having regard to the foregoing, the conclusion must be that the contested vacancy notice does not disregard Article 290 EC, but was adopted on the basis of the power granted to the institutions and Community bodies under Article 6 of Regulation No 1.

43 It follows that the plea alleging infringement of Article 290 EC must be rejected.

Infringement of Articles 1, 4, 5 and 6 of Regulation No 1

Arguments of the parties

44 Firstly, the Italian Republic submits that the publication in the Official Journal of the contested vacancy notice only in English, French and German is contrary to Articles 4 and 5 of Regulation No 1. Acts of general application, such as a vacancy notice, should be drafted in all official languages, in accordance with Article 4 of Regulation No 1 and, thus, appear in the Official Journal in all official languages, in accordance with Article 5 of Regulation No 1.

45 The expression 'documents of general application' used in Article 4 of Regulation No 1 precludes that provision from applying only to normative acts. Thus, Regulation No 1 provides that any expression of intent of the institutions liable to affect all European Union citizens is to be published in the Official Journal in all official languages. A vacancy notice is an act of that nature.

46 The Italian Republic also points out that Article 1(2) and 3) of Annex III to the Staff Regulations, which governs the place of publication of the notice of competition and the closing date for applications, does not give any indication as to the languages in which the notice must be published. However, Article 4 of Regulation No 1 provides that regulations and other documents of general application must be drafted in all official languages.

47 Secondly, the Italian Republic submits that the designation in the contested vacancy notice of only two languages as working languages at the EESC runs counter to Article 1 of Regulation No 1, in accordance with which all national languages of the Member States are to have the status of official language and working language. That limitation also places the languages of the Member States in a hierarchical order, contrary to that article.

48 Nor, in the submission of the Italian Republic, is that limitation justified under Article 6 of Regulation No 1. Admittedly, it is true that that provision permits the institutions to stipulate in their rules of procedure which of the languages are to be used in specific cases. Nevertheless, that power concerns only the internal functioning of the institutions and not the conduct of external competitions for the recruitment of staff to work for the institutions. What is more, to date no institution has adopted any rules providing for the internal use of specific languages, far less the use of English, French or German, the only exception being that laid down for the Court of Justice, which is deliberately referred to specifically in Article 7 of Regulation No 1.

49 The Kingdom of Spain maintains that Article 6 of Regulation No 1 permits the institutions to stipulate in their rules of procedure which of the languages are to be used in specific cases. However, it adds, firstly, that there are no written rules stating that English, French and German are the internal working languages. Secondly, the contested vacancy notice is not intended only for the institutions' staff. Thirdly, there is case-law of the Court of Justice which prohibits giving different weight to different languages (Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36).

50 The EESC contests all of the arguments of the Italian Republic.

Findings of the Court

51 Articles 1, 4 and 5 of Regulation No 1, relied upon by the applicant, do not apply to relations between the institutions and their officials and other servants since they lay down only the language rules applying between the institutions and a Member State or a person coming under the jurisdiction of one of the Member States (see, to that effect, Case T-203/03 *Rasmussen* v *Commission* [2005] ECR-SC I-A-279 and II-1287, paragraph 60, and *Italy* v *Commission*, paragraph 117). The same is therefore true of relations between the bodies, such as the EESC, and the officials and other servants of the Communities.

52 Officials and other servants of the Communities, and candidates for such posts, fall solely within the jurisdiction of the Communities, as regards application of the provisions of the Staff Regulations, including those relating to recruitment within an institution (see, by analogy, Case T-118/99 *Bonaiti Brighina* v *Commission* [2001] ECR-SC I-A-25 and II-97, paragraph 13, and *Italy* v *Commission*, paragraph 118).

53 Applying the same language rules to candidates for posts of officials and other servants of the Communities as to officials and other servants themselves is justified by the fact that such candidates enter into a relationship with an institution solely in order to obtain a post of official or other servant for which certain knowledge of languages is necessary and may be required by the Community provisions applying in respect of appointment to the post concerned (see, by analogy, *Italy* v *Commission*, paragraph 119).

54 It follows that Articles 1, 4 and 5 of Regulation No 1 do not apply to the contested vacancy notice.

55 Article 6 of Regulation No 1 expressly permits the institutions to stipulate in their rules of procedure which of the languages are to be used in specific cases. In those circumstances, the choice of the language to be used for internal communications is the responsibility of those institutions, which are entitled to impose that choice on their employees and those which seek that status (see, to that effect, Opinion of Advocate General Poiares Maduro in *Spain* v *Eurojust*, point 46). The choice of language for the external publication of a vacancy notice is also the responsibility of the institutions (see, to that effect, *Italy* v *Commission*, paragraph 122).

56 Consequently, the argument that the EESC exercised a power which it does not have under Article 6 of Regulation No 1 must be rejected.

57 Having regard to all the foregoing, the plea alleging infringement of Articles 1, 4, 5 and 6 of Regulation No 1 must be rejected.

Infringement of the principles of non-discrimination and multilingualism

Arguments of the parties

58 Firstly, the Italian Republic submits that publication in the Official Journal of the contested vacancy notice in three languages did not enable all European Union citizens to learn of its existence on an equal footing, in accordance with the principle of non-discrimination on grounds of nationality laid down in Article 12 EC. That gives a

competitive advantage to citizens speaking English, French or German over all other Union citizens. Such publication also constitutes a breach of the principle of multilingualism laid down in Article 6(3) EU and in Article 22 of the Charter, in that all Union citizens have the right to be informed, in their own language, of Community acts affecting their rights, particularly as they read the Official Journal in their mother tongue.

59 The Italian Republic submits that it is of little consequence that many Union citizens who are not nationals of English, French or German-speaking Member States, including Italian nationals, applied for the post of Secretary-General of the EESC by learning of the vacancy for that post by the shortened notice published in the other official languages in the Official Journal on the same day as the contested vacancy notice. That is an entirely unforeseeable concurrence of circumstances which does not eliminate the discrimination.

60 There is also, in its submission, discrimination on grounds of nationality as regards the closing date for applications for the post of Secretary-General of the EESC. Although candidates speaking English, French or German had a month from the publication of the contested vacancy notice in the Official Journal in which to apply, other candidates had a shorter period, since they would have learned of the notice after having read the shortened notice published in the Official Journal in their mother tongue, which refers, for the full text of the contested vacancy notice, to the English, French and German versions of the Official Journal.

61 The Italian Republic also contends that publication of the contested vacancy notice in the Official Journal in only three languages is contrary to the very terms of Article 1(2) and (3) of Annex III to the Staff Regulations, Article 12 of the CEOS and Rule 72(2) of the Rules of Procedure of the EESC.

62 The Italian Republic submits that the requirement for a good knowledge of English or French also leads to blatant discrimination against the other languages, which is contrary to the principles of non-discrimination and multilingualism. Moreover, that requirement gives rise to equally clear discrimination against all nationals who have, in addition to their own language, a second and perhaps also a third, fourth and fifth official language which do not include either English or French.

63 Furthermore, the Italian Republic submits that a notice of competition or a vacancy notice is a text whose content is purely legal, from which candidates ascertain their own rights and obligations in connection with an important document, such as participation in a competition for recruitment in the institutions. Accordingly, candidates having an in-depth knowledge of English, French or German are at an advantage in reading a notice published in full in the Official Journal in those three languages, compared with any other candidate who does not have an excellent command of one of those three languages.

64 The Kingdom of Spain supports the argument put forward by the Italian Republic that publication in the Official Journal of the contested vacancy notice in only three languages infringes Article 12 EC and adds that that type of selective publication would set a very serious precedent if it were to be applied to other fields, since it would have the consequence that only three language versions of the Official Journal would be reliable and complete.

65 The EESC points out that it is for the Italian Republic to show that publication of the contested vacancy notice in the Official Journal in only three languages prevented all Union citizens from becoming aware of the existence of the notice on an equal footing or without discrimination and notes that no facts concerning that alleged hindrance have been adduced.

66 The fact that many Union citizens who are not nationals of English, French or German-speaking Member States applied for the post of Secretary-General of the EESC is not the result of a concurrence of circumstances but is explained by the publication in the Official Journal in all official languages of the shortened notice referring to the publication of the contested vacancy notice.

67 The EESC contends that the Italian Republic's argument, that the candidates whose 'first language' is not English, French or German have a shorter period in which to apply than English, French or German-speaking candidates and so are treated unjustifiably differently is unfounded. All potential candidates who became aware of the contested vacancy notice by way of the shortened notice which appeared in the Official Journal in their mother tongues would have been able quickly to obtain the full version of the contested vacancy notice. Those persons who might be interested would be qualified persons who have acquired long experience as officials or other servants within the institutions and who, therefore, would have all the means necessary easily to obtain a particular language version of the Official Journal.

68 The EESC also disputes the Italian Republic's argument that the restriction to English and French leads to discrimination as regards the other official languages. Firstly, English and French have been, with German, the most used working languages within the institutions for more than 35 years. Secondly, the candidates to whom the contested vacancy notice is particularly addressed are officials or other servants of the Communities who have long experience of working at a high level in the institutions and Community agencies and are therefore perfectly placed to understand every last detail of the contested vacancy notice and, accordingly, to be fully informed of its precise content.

Findings of the Court

— Preliminary remarks

69 It must be noted that the present plea is divided into two parts. In the first, the Court is requested, in essence, to rule on whether the publication of the contested vacancy notice in the Official Journal in only three languages, namely, English, French and German, complies with the principles of non-discrimination and multilingualism. In the second, the Court is asked to rule on the compliance with the principles of non-discrimination and multilingualism of the indication in the contested vacancy notice of a good knowledge of English and/or French among the 'highly desirable' qualifications and skills and not, as the applicant claims, among the 'required' qualifications and skills.

— The first part, concerning the selective publication of the contested vacancy notice in the Official Journal

70 Firstly, it should be noted that there is no provision or principle of Community law requiring that vacancy notices, such as that at issue in the present case, should routinely be published in the Official Journal in all the official languages (see, by analogy, *Italy* v *Commission*, paragraph 115).

71 It is correct that the post covered by the contested vacancy notice is likely to be of potential interest to candidates from any Member State. However, as the Court of Justice has already held, the numerous references in the EC Treaty to the use of languages

cannot be regarded as evidencing a general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances (Case C-361/01 P *Kik* v *OHIM* [2003] ECR I-8283, paragraph 82, and *Italy* v *Commission*, paragraph 116).

72 Secondly, it should be noted that, although the administration is entitled to adopt measures which appear to it to be appropriate in order to govern certain aspects of the procedure for recruiting staff, those measures must not result in discrimination on grounds of language between the candidates for a specific post (see, by analogy, *Italy* v *Commission*, paragraph 127).

73 Article 12(1) of the CEOS precludes the institution requiring candidates for a post of temporary member of staff to have a perfect command of a particular official language, where the effect of that language condition is to reserve that post for a specific nationality without such action being justified on grounds connected with the proper functioning of the service (see, by analogy, Case 15/63 *Lassalle* v *European Parliament* [1964] ECR 31, 38, and *Italy* v *Commission*, paragraph 129).

74 If follows that if the EESC decides to publish the full text of a vacancy notice for a post of Secretary-General in the Official Journal only in certain languages it must, in order to avoid discriminating on grounds of language between candidates potentially interested in the notice, adopt appropriate measures to inform all the candidates of the existence of the vacancy notice concerned and the editions in which it has been published in full (see, by analogy, *Italy* v *Commission*, paragraph 130).

75 Provided that condition is met, publication in the Official Journal of a vacancy notice in a limited number of languages is not likely to lead to discrimination between the various candidates if it is agreed that the latter have an adequate knowledge of at least one of those languages and are thus able duly to acquaint themselves with the content of that notice (see, by analogy, *Italy* v *Commission*, paragraph 131).

76 In that regard, it is appropriate to note the case-law according to which the fact that documents sent by the administration to one of its officials are written in a language other than that official's mother tongue, or the first foreign language he has chosen, does not constitute an infringement of the rights of that official if he has an understanding of the language used by the administration which enables him effectively and easily to acquaint himself with the content of the documents in question. That conclusion also holds good in the case of the contested vacancy notice (see, by analogy, *Italy* v *Commission*, paragraph 132 and the case-law cited).

77 Thus, where the requirements of the service or those of the post so require, the institution concerned may legitimately specify the languages of which a thorough or satisfactory knowledge is required (see, a contrario, *Lassalle* v *European Parliament*, pp. 37 and 38; see also Opinion of Advocate General Lagrange under that judgment, p. 49). In the latter case, the fact that the text of the contested vacancy notice is only available in those languages is not likely to lead to discrimination between candidates, since they must all have a command of at least one of those languages.

78 On the other hand, publication of the text of the contested vacancy notice in the Official Journal in only some official languages, when persons who have a knowledge only of other official languages are entitled to submit an application, is likely, in the absence of other measures to enable that category of potential candidates duly

to acquaint themselves with the content of that notice, to result in discrimination against them (see, by analogy, *Italy* v *Commission*, paragraph 135).

79 In that situation, the candidates in question would be in a less advantageous position in relation to the other candidates, since they would not be in a position duly to acquaint themselves with the qualifications required by the vacancy notice and the conditions and procedural rules for recruitment. That is a prerequisite for submitting an application in the best way, to maximise their chances of being accepted for the post concerned (see, by analogy, *Italy* v *Commission*, paragraph 136).

80 In the present case, it is apparent from the provisions of point 3 of the contested vacancy notice, as cited in paragraph 7 above, that knowledge of English and/or French is only 'highly desirable' and not required. Potential candidates for the post of Secretary-General of the EESC, having a thorough knowledge of one official language and an excellent knowledge of at least two other official languages, other than one of the three languages of publication, were therefore eligible to apply and could thus have applied for that post if the vacancy notice had been published in a language which they knew and if they had thus been informed that the vacancy existed.

81 Moreover, even candidates who have a satisfactory knowledge of English, French or German do not necessarily look at the editions of the Official Journal in one of those three languages, but consult the edition in their own language (*Italy* v *Commission*, paragraph 148).

82 There is therefore a significant risk that candidates potentially interested in the contested vacancy notice consulted only the notices published in all official languages, that is to say, the shortened notice of 28 December 2007, merely referring to the publication in the Official Journal of the contested vacancy notice, and the notice of the corrigendum to the contested vacancy notice of 30 January 2008, stating only that the contested vacancy notice had been amended.

83 The view cannot be taken that those two notices, which contain no significant information, such as the duration and possibility of renewal of the mandate for the vacant post, the conditions for admission, the qualifications and professional experience required, the selection procedure and the closing date for applications, are likely to give potential candidates sufficient information as to the content of the contested vacancy notice. As already stated in paragraph 79 above, knowledge of that information is a prerequisite for submitting an application in the best way.

84 *A fortiori*, candidates having no knowledge of English, French or German but nevertheless having the required knowledge of languages will never have had the opportunity of acquainting themselves with the full content of the text of the contested vacancy notice.

85 It follows from all the foregoing that the publication of the contested vacancy notice only in the English, French and German versions of the Official Journal constitutes discrimination on grounds of language between potential candidates, contrary to Article 12 EC.

86 Furthermore, the EESC has also infringed, indirectly, Article 12 of the CEOS, since the publication of the contested vacancy notice only in English, French and German is likely to favour, in the context of the procedure for the recruitment of a

Secretary-General as a temporary member of staff, candidates of particular nationalities, namely those from countries in which those languages are spoken as the mother tongue, and to adversely affect at least some of the candidates who are nationals of the other Member States (see, by analogy, *Italy* v *Commission*, paragraph 150).

87 In the light of those considerations, the first part of this plea should be upheld.

88 Accordingly, the contested vacancy notice, published only in the English, French and German versions of the Official Journal, must be annulled, without it being necessary to examine the second part of the present plea or the other pleas raised by the Italian Republic.

Costs

89 Under Article 87(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. In addition, under the first subparagraph of Article 87(4) of those rules, the Member States which intervened in the proceedings are to bear their own costs.

90 In the present case, the EESC has been unsuccessful. However, the Italian Republic did not apply for costs. In those circumstances, it is appropriate to order each party to bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Annuls vacancy notice No 73/07 concerning a post of Secretary-General in the Secretariat of the European Economic and Social Committee (EESC), published on 28 December 2007, as corrected on 30 January 2008;**

2. **Orders each party to bear its own costs.**

Vadapalas Jürimäe Truchot

Delivered in open court in Luxembourg on 31 March 2011.

[Signatures]