JUDGMENT OF THE COURT (SECOND CHAMBER) 14 JULY 1965[1]

Filippo Alvino and Others and Jacqueline Benoit and Others v Commission of the European Economic Community

Joined Cases 18 and 19/64

Summary

1. Procedure — Application for annulment — Joint application — Conditions of admissibility

2. Officials — Recruitment — Appeal against later steps in recruitment procedure — Possibility of contesting the legality of earlier steps
(Staff Regulations of Officials of the EEC, Article 91)

3. Officials — Recruitment — Competitions — Candidates not holding a university degree — Experience in employment — Equivalence to such a degree — Criteria

1. A joint application is only admissible if the conclusions of the applicants refer only to identical measures or to measure which concern them equally. The original conclusions of the applicants may be amended during the action in order to meet these requirements. Cf. paragraph 4, summary, judgment in Case 13/57, Rec. 1958, page 265.
2. Cf. paragraph 1, summary, judgment in Case 35/64.
3. Experience in employment equivalent to a university degree is obtained through promotion to activities and duties normally reserved for the holders of such degrees. It is acceptable to require such experience to be spread over a certain period. However, as regards the length of this period the duration of university studies cannot be regarded as a criterion.

In Case 18/64

FILIPPO ALVINO, ARTIN BARTH, CLAUDE BRUS, ALBERTO DE PASCALE, ROGER DETILLIEU, JEAN ERHARD, GIAN PIETRO FONTANA-RAVA, JEANNE FUX, LEOPOLDO GIUNTI, WILHELM HILBERT, AMBROGIO MATTINO, ALVARO MOZZICAFREDDO, GEORG PAULINI, DIONIGI PIZZUTI, ANDRÉ SAUDRAY, FR. HORST SCHMIDT, GUSTAV TREIKE, UDO WARTENBERG, JOSEF MOENS,

all officials of the Commission of the European Economic Community, represented by Marcel Slusny, Advocate of the Cour d'appel, Brussels, with an

1 — Language of the Case: French.

address for service in Luxembourg at the residence of Bernard Schmitz, 6, rue J.-B.-Esch,

applicants,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Louis de la Fontaine, acting as Agent, assisted by Cyr Cambier, Advocate of the Cour d'appel, Brussels, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2, place de Metz,

defendant,

In Case 19/64

JACQUELINE BENOIT, PIETRO DEL VAGLIO, ANTONIO GRIPPO,

all officials of the Commission of the European Economic Community, represented by Marcel Slusny,

applicants,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Louis de la Fontaine, assisted by Cyr Cambier,

defendant,

Application for the annulment of the recruitment procedure (Competition No 165-A) held by the Commission in order to establish a reserve list of 120 administrators whose career brackets cover Grade 7 and 6 of Category A, and the resultant appointments;

THE COURT (Second Chamber)

composed of: A. M. Donner (Rapporteur), President of Chamber, W. Strauß and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

In EEC Commission Staff Information Bulletin No 48 of 16 August 1963 the Commission of the European Economic Community by which the applicants are employed as officials (in various grades and posts) published Notice of Competition No 165-A worded as follows:
'Notice of competition No EEC/165-A — Internal
A competition internal to the institution will be held in order to establish a reserve list of 120 administrators whose career brackets cover Grades 7 and 6 of Category A.
The reserve list is intended to fill posts in that category and grade and for that type of duty which are at present vacant or are likely to become vacant or be created before 31 December 1964 and which are not filled by the promotion or transfer of officials already in the service of the Commission of the EEC. The time-limit of 31 December 1964 may be extended.

I — *Nature of duties*: Administrators

Official engaged in planning, advisory and supervisory duties on the basis of general Directives. Where appropriate assists directly the person in charge of one sector of activity in a Division.

II — *Competition*:

This competition will be on the basis of qualifications and is open only to applicants who satisfy the following conditions:

1. *Necessary qualifications and experience*:

(a) Qualifications:
University education, supported by a degree, or equivalent experience in employment.

(b) Experience:
At least three years' experience in appropriate employment or training for such employment.

2. *Knowledge of languages*:

A thorough knowledge of one of the Community languages.
A satisfactory knowledge of another Community language.
Knowledge of other languages will be taken into consideration.
Candidates may be required to attend an interview with the Selection Board in order to demonstrate that they possess the knowledge of languages and other skills necessary for the duties to be performed.

3. *Age*:

Candidates must be at least 24 years of age on 1 January 1964.
Candidates who wish to take part in this competition must submit their applications to the Recruitment Division, Competition Section, Office No 19, 4th Floor, Avenue de Cortenberg, before 9 September 1963 at the latest. They will receive an acknowledgement. Applications must be submitted on the special form which will be provided on request by the Competition Section (Tel. 2442). Candidates will be informed individually of the results of the competition. A candidate appointed on the basis of an internal competition will be appointed as a probationer.'
The applicants submitted their applications and took part in this competition.
The applicants in Application 18/64 were advised that, after examination of their qualifications, the Selection Board considered that they could not be included in the preliminary list for admission, (list of candidates who meet the requirements set out in the notice

of competition) as laid down by the first paragraph of Article 5 of Annex III to the Staff Regulations of Officials.

The applicants in Application 19/64 were advised that the Selection Board for the competition considered that they could not be included in the list of suitable candidates provided for by Article 30 and the fifth paragraph of Article 5 of Annex III of the Staff Regulations of Officials.

On 12 May 1964 the applicants made the present applications for the Court to review the procedure followed in drawing up the notice of competition and in the competition itself.

II — Conclusions of the parties

After amending their conclusions during the course of the proceedings the *applicants* claim that the Court should:

'1. Declare null and void Notice of Internal Competition No 165-A and, to the extent necessary, the decisions taken to hold this competition and to publish the abovementioned announcement which forms the basis of the Notice of Competition;
2. Declare null and void the decision of 19 June 1963, taken by the Commission at its 232nd meeting, concerning the composition of Selection Boards in competitions (Executive Secretariat S/01965/63) (memorandum of 21 June 1963);
3. In any event, declare null and void Internal Competition No 165-A by reason of both the irregular composition of the Selection Board and the irregular procedure followed, and for the reasons set out in the application, with all the consequences that this entails both in fact and in law, in particular as regards the appointments made on the basis of the competition in dispute;
4. Declare null and void the inclusion in the list of suitable candidates of auxiliary staff recruited after 1 January 1962;
5. To the extent necessary and as the Court shall see fit, declare null and void the express or implied decisions of the Commission adopting the results of the competition and the lists drawn up in consequence thereof;
6. Order the defendant to pay all the costs of the proceedings.

As a subsidiary matter:

Order the defendant to produce the minutes of the meeting of the Commission concerning the decision to organize Competition No 165-A;

Order the Commission to give the Court all necessary information:

1. on the reasons why the Selection Board in Competition No 164-B (a competition held in order to establish a reserve list for future recruitment for posts in Category B) considers itself unable to fulfil its task;
2. on the vacant posts which Competition No 165-A was intended to fill;
3. on the appointments made on the basis of the said competition.'

The *defendant* contends that the Court should:

'Dismiss the applications as inadmissible and, in any event, unfounded;

Order the applicants to pay the costs in accordance with the relevant provisions.'

III — Submissions and arguments of the parties

Admissibility

The *defendant* claims that the present applications are inadmissible for several reasons based on:

(A) the collective nature of the applications;
(B) their introduction out of time;
(C) the lack of purpose, or of purpose recognized by law, in the applications.

(A) The defendant observes that by means of joint applications a group of applicants is requesting the annulment of a series of measures which are in no way of equal concern to them. They base their claims on situations which can only be personal to each of them and the irregularities referred to in the proceedings of the Selection Board could only apply individually to each candidature and to the information thereon.

The *applicants* reply that both the case-law of the Court of Justice and that of the Conseil d'Etat of France accept the concept of the admissibility of applications which have either different subject-matter or are made by a group of applicants. They make no individual submissions and bring no application which is not common to them all. They request the Court to treat the applications as connected from the beginning and therefore, to the extent necessary, to agree that they may be submitted jointly. The authors of the Community legislation and the Court itself in its Rules of Procedure intended to facilitate applications by officials in order to enable them to defend their rights in the most favourable circumstances. The applicants also maintain that the applications are admissible in the name of the first party to each one as regards all the heads of the claim.

(B) The *defendant* claims that the applications are out of time since their object is the annulment of Notice of Competition No 165-A, published in Bulletin No 48 of 16 August 1963 and no application has been lodged against this notice in the three months following its publication.

The *applicants* claim that the notice of competition was not published in the Official Journal of the European Communities but only in the Staff Information Bulletin, which is a semi-official document. Moreover, should the notice of competition be considered separable from the subsequent procedure, it must still be contestable as a measure preliminary to the competition. The applications are not out of time to the extent to which they refer to the inclusion on the list of suitable candidates of auxiliary staff recruited after 1 January 1962 since Notice of Competition No 165-A does not permit the participation of auxiliary staff.

The *defendant* refers to page 19 of Staff Information Bulletin No 48, in which it is stated that:

'The following competitions are open to members of staff in the service of the Commission of the EEC, that is to say, to officials, even if they belong to a lower group or category, and to auxiliary staff'.

(C) According to the *defendant* the applications are inadmissible on the grounds of lack of purpose and lack of identification or of the unlawful nature of such purpose. The applications contain several submissions in favour of the annulment of unidentified express or implied decisions of the Commission adopting the results of the competition, as well as the lists drawn up and appointments made on the basis thereof.

The *applicants* reply that it had not been possible when the applications were lodged or during the written procedure to determine precisely which appointments had been made on the basis of the list of suitable candidates. The applicants maintain that this is due to the fault of the Commission which had delayed publication of the appointments and had not specified whether they were the result of promotion or a competition.

The substance of the case

The *applicants* put forward several complaints against the contested measures.

(A) The notice of competition was published and the competition organized

without the preliminary preparation of implementing provisions in accordance with Article 110 of the Staff Regulations. These provisions were not drawn up after consulting the Staff Committee and the Staff Regulations Committee as laid down in Article 110 and in addition they were not brought to the notice of the staff.

According to the *defendant,* this complaint and several of those following are inadmissible in that they are directed against a measure which, being published more than three months before the application was lodged, cannot now be contested. Moreover, it considers the complaint to be unfounded. The provisions of the Staff Regulations form a complete entity capable of being directly applied without the necessity for any intermediate implementing provisions.

The *applicants* consider the plea of inadmissibility to be unfounded, at all events as regards the application against the composition of the Selection Board, of which the applicants became aware in the course of the proceedings and against the competition in its entirety, since the applicants were informed of the outcome less than three months before filing their application.

(B) As the competition was intended to recruit administrators for all the departments of the Commission the notice of competition ought to have been drawn up after the heads of departments concerned had been consulted; this was not done, and thus Article 1 of Annex III to the Staff Regulations of Officials is infringed.

The *defendant* replies that the requirement of consultation with heads of departments is laid down in the interest of the departments alone and does not constitute a safeguard for the rights of officials. Thus, failure to observe this formality could not adversely affect the applicants. Moreover, since the preparation of a reserve list concerned all departments, the provision referred to was inapplicable in this case.

Whilst maintaining that consultation with the heads of departments concerned constitutes a safeguard for servants participating in the competition, the *applicants* observe that the wording of Article 1 of Annex III is of general application and does not allow exceptions to be made.

(C) (In Case 18/64) By requiring that candidates possess experience equivalent to a university education, supported by a degree, the notice of competition strained the meaning of the second subparagraph of Article 5 (1) of the Staff Regulations which, when prescribing that Category A shall comprise eight grades, divided into career brackets ordinarily containing two grades each for staff engaged in administrative and advisory duties which require university education or equivalent experience in employment, laid down no such requirement.

According to the defendant the notice in question added no requirement to those provided for in the Staff Regulations since, particularly in the case of competitions on the basis of qualifications, a 'university education' could only be assessed by the production of a degree.

(D) By providing that candidates will be required to attend an interview with the Selection Board in order to demonstrate that they possess the knowledge of languages and other skills necessary for the post, the notice of competition contradicts the very concept of a competition on the basis of qualifications, since any test of the candidates on their linguistic or other abilities could only take place within the context of a competition on the basis of tests and according to the conditions laid down for this type of competition by Annex III.

Whilst maintaining the objection of inadmissibility, the *defendant* considers this complaint to be unfounded, since the interviews with the Selection Board

were intended to verify the accuracy of the declarations made by the candidates as to their attainments.

The *applicants* maintain that the Selection Board, being composed only of officials of the Directorate-General of Administration, was incapable of making such a verification.

(E) By allowing competitions to be held for the purpose of constituting a reserve for future recruitment, Article 29 only intended to refer to open competitions for recruitment to minor posts.

Whilst still objecting that the complaint was made out of time, the *defendant* nevertheless considers it to be unfounded, since no provision of Article 29 of the Staff Regulations supports the interpretation claimed.

(F) The directives concerning the composition of Selection Boards in competitions, drawn up by the Commission on 19 June 1963 during its 232nd meeting and given on 21 June 1963, were not observed as regards the composition of the Selection Board for this competition. Thus, applying the rule *patere legem quam ipse fecisti,* the composition of the Selection Board was irregular for the following reasons:

1. Contrary to Rule No 1 (2) the Directorates-General and the Departments concerned (that is, all the Directorates-General, since this competition was intended to constitute a reserve for future recruitment) were not represented by two members of the Selection Board:
2. Contrary to Rule No 1 (3) none of the members of the Selection Board designated by the appointing authority was a specialist from another Directorate-General or Department conversant with the subject with which the servant would be concerned, since, with the exception of the staff representative, the members of the Board were all officials from the Directorate-General of Administration;
3. Contrary to Rule No 1 (4) as the chairman of the Selection Board belonged to one of the Directorates-General concerned (that of Administration) the majority of the members of the Board should not have come from this Directorate-General.

The *defendant* replies that:

— the 'directives' of 21 June 1963 to which the applicants refer do not have the character of a regulation;
— the directives in question do not have the significance given to them, since the minutes of the 232nd meeting of the Commission during which the very principles of these instructions were drawn up clearly stipulate that the latter 'shall not prejudice any implementing measures which the Commission may subsequently be led to adopt as regards competitions, such as ..... the constitution of reserves for future recruitment';
— the appointment of a 'specialist' is appropriate only in the case of an examination in particular subjects (that is, to a competition on the basis of tests).

(G) (In Case 18/64) By regarding experience in employment over a period of six years as not equivalent to 'university education, supported by a degree' the Selection Board introduced an additional criterion.

The *defendant* objects that this complaint extends beyond the framework of an application for annulment since the Court does not exercise unlimited jurisdiction. Although it is true that the Court has jurisdiction to check whether in adopting the criteria of assessment in question the Selection Board misused its powers, it cannot substitute its own judgment for the judgment of that body. The defendant objects that this submission is unfounded since the Selection Board referred to objective criteria. The six-year period in question is the normal period for university studies and has been adopted as a criterion in other competitions in Category A.

(H) The Board also took into account reports appearing in the personal files of the candidates, that is, it considered a factor which, not being mentioned in the notice of competition, could not validly be considered.
The *defendant* states that it does not understand why the reports could not be considered by the Selection Board.
(I) Since the decisions of the Selection Board for the competition not to include the applicants in the list provided for in the first subparagraph of Article 5 of Annex III to the Staff Regulations of Officials constituted decisions adversely affecting the parties concerned, they should have been notified to the candidates according to Article 25 of the Staff Regulations; no such notification took place.
The *defendant* questions whether Article 25 of the Staff Regulations is applicable in this case since the procedure for recruitment by means of competitions is a special matter governed by Article 29 et seq. of the Regulations and the provisions of Annex III, from which it is clear that it is unnecessary for each candidate to be given a reasoned notification of the outcome of the Board's discussions.

IV — Procedure

The procedure followed the normal course.
By order of 18 November 1964 the Second Chamber joined the two cases for the purposes of the procedure and the judgment.
At the request of the Chamber the defendant lodged on 4 February 1965 the list of candidates appointed before 31 January 1965 on the basis of the competition in dispute.
The parties presented oral argument at the hearing on 5 May 1965.
At the hearing on 1 June 1965 the Advocate-General gave his opinion that the present applications were admissible and well founded.

Grounds of judgment

The present applications are made against Notice of Internal Competition No 165-A and various decisions taken both by the Commission and by the Selection Board during the competition procedure, including the decisions of the Commission consequent thereon.

The defendant maintains that the application is inadmissible on three grounds.

By means of joint applications the applicants are contesting various measures which are in no way of equal concern to them.

Although it is true that certain of the original conclusions were directed against various separate measures taken by the Selection Board, the applicants amended their conclusions in the course of the proceedings with the result that they refer only to identical measures or to measures which concern them all equally.

It appears, therefore, that the first submission of inadmissibility has no factual basis.

As the notice of competition and all the measures taken in the competition procedure were published or communicated to the applicants more than three months before the applications were lodged it is claimed that such applications are out of time.

Having regard to the close connexion between the different measures comprising the recruitment procedure, it must be accepted that in an action contesting later steps in such a procedure the applicants may contest the legality of earlier steps which are closely linked to them.

Both the grounds of complaint invoked by the applicants against the notice of competition and the implementing measures taken during the competition procedure may therefore be taken into consideration by the Court in its appraisal of the legality of the appointments made on the basis of this competition, which constitute the main subject matter of the application.

As regards these appointments, the defendant complains that the applications do not identify the decisions by which the Commission adopted the results of the competition, that is, the appointments made on the basis of the competition.

Although it is true that they have failed to identify these appointments, the applicants cannot be criticized on this ground.

It is in the nature of a competition held to constitute a reserve for future recruitment that it should be impossible to state, from the appointments published, which of them resulted from Competition No 165-A.

As the applicants have expressly claimed the annulment of the above appointments without identifying them and as the defendant has submitted to the Court a list of the 55 appointments made before 31 January 1965 on the basis of the competition in dispute, the subject-matter of the action appears to be sufficiently clearly defined.

For all these reasons the objection of inadmissibility must be dismissed.

The substance of Application 18/64

In Application 18/64 the applicants make several submissions for the annulment of the decisions of the Commission sanctioning the competition in dispute.

They maintain that, *inter alia*, the Selection Board for the competition failed to appreciate the requirements laid down by the notice of competition in that it regarded only experience obtained in employment over a period of six years as equivalent to a qualification obtained by 'university education, supported by a degree'.

In this respect it is clear from the report of the Selection Board produced by the defendant in a schedule to its statement of defence that in order to determine the equivalence of the experience in employment of candidates not possessing a university degree, the Board decided to establish two criteria based first on the 'duration of equivalent experience in employment' and secondly on the 'level of equivalent experience in employment'.

The effect of these two criteria is to be seen clearly in a letter from the Directorate-General of Administration to several candidates who had been eliminated and had requested the reasons for their elimination.

This letter explained in particular that:

'In order to assess the equivalence of the experience of candidates in employment the Selection Board considered both their activities before their entry into the service of the institution and their later activities within the institution. Equivalence was determined on the basis of the level and duration of such activities. Having taken into account the normal duration of university studies and the practice followed in other competitions for Category A, the Selection Board considered that the only activities capable of being regarded as equivalent to university studies were those performed over a period of at least six years. Moreover, the level of these activities must be comparable to those of an official who has received a university education, supported by a degree, and who is engaged in performing duties appropriate to Category A, within the meaning of Article 5 of the Staff Regulations.'

In acting in this way the Selection Board seriously failed to appreciate the terms of the notice of competition and the concept of equivalence.

The fact that a candidate performs activities in his employment at a level comparable to those performed by an official who has received a university education, supported by a degree, and who is engaged in performing the duties appropriate to Category A within the meaning of the Staff Regulations is in itself proof that having acceded to these duties the official in question possesses, as regards the requirements of public office, experience in employment equivalent to such a level of education, supported by a degree.

It is clear from its report that by insisting that the necessary experience should have been obtained over a period of at least six years the Selection Board wished to establish a certain balance between this period and that required for university studies.

On the one hand it is unreasonable to treat this period as the normal duration of university studies and on the other the Selection Board has adopted a criterion which is completely foreign to the problem to be solved.

This problem may be formulated in the following way: by what standards should equivalent experience in employment be assessed in the case of candidates who do not possess a university degree?

It is sufficient to require—as the Selection Board has in fact done—experience in employment acquired through promotion to activities and duties normally reserved for the holders of university degrees.

Although it is acceptable to require such experience to be spread over a certain period, this requirement must be based on more appropriate criteria than the duration of university studies.

Thus, by introducing the requirement in dispute the Selection Board acted *ultra vires* in such a way as to vitiate the preparation of the list of candidates admitted to the competition.

The competition is therefore illegal and cannot provide a legal basis for appointments and promotions.

The appointments made by the Commission on the basis of the results of Competition No 165-A must therefore be annulled.

Application 19/64

Application 19/64 has lost its purpose as a result of the outcome of Application 18/64.

Costs

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

The defendant in Case 18/64 has failed in its pleas and must therefore be ordered to pay the costs.

Under the terms of Article 69 (5) of the Rules of Procedure where a case does not proceed to judgment the costs shall be in the discretion of the Court.

Since Application 19/64 has lost its purpose no decision need be made on the substance.

On those grounds,

Upon reading the pleadings;
Upon hearing 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 Staff Regulations of Officials of the European Economic Community, especially Article 91 and Annex III;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

THE COURT (Second Chamber)

hereby:

1. **Declares that Application 18/64 is well founded;**
2. **Annuls Internal Competition No 165-A and the appointments made by the Commission on the basis thereof;**
3. **Declares that no decision need be given in Application 19/64;**
4. **Orders the defendant in Application 18/64 to pay the costs;**
5. **Orders that the parties in Application 19/64 shall bear their own costs.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 14 July 1965.

A. Van Houtte
Registrar

A. M. Donner
President of the Second Chamber