JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
25 November 2008 *

(Staff cases — Recruitment — Open competition — Conditions for admission — Rejection of application — Diplomas)

In Case F-53/07,

ACTION under Articles 236 EC and 152 EA,

Ivanka Iordanova, residing in Varna (Bulgaria), represented by G. Kerelov, lawyer,

applicant,

v

Commission of the European Communities, represented by J. Currall and B. Eggers, acting as Agents,

defendant,

* Language of the case: English.

THE TRIBUNAL (Second Chamber),

composed of S. Van Raepenbusch, President, I. Boruta and H. Kanninen (Rapporteur), Judges,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 25 June 2008,

gives the following

Judgment

1 By application lodged at the Registry of the Tribunal by electronic means on 17 December 2007 (the original being lodged on 24 December 2007), Mrs Iordanova brought the present action, seeking, first, the annulment of the decision of the selection board in open competition EPSO/AST/14/06 refusing to admit her to the tests in that competition and, second, an order that the Commission of the European Communities pay damages to make good the loss allegedly suffered.

Background to the case

2 The applicant applied for open competition EPSO/AST/14/06, held to constitute a reserve of assistants (AST 1) with Bulgarian citizenship in the secretarial field ('the contested competition').

3 The notice of competition, published in the *Official Journal of the European Union* of 21 June 2006 (OJ C 145 A, p. 22), ('the notice of competition') defines, in section A.I., the duties to be performed as follows:

'The position will entail the following tasks:

— secretarial tasks associated with organising meetings, preparing missions, etc.,

— a range of other standard secretarial tasks: filing documents and mail, sorting post, keeping appointments diaries, etc.,

— word processing in your main language and possibly another official language of the European Union,

— preparing documents using word-processing software (e.g. page layout, formatting, tables),

— various administrative tasks associated with file management using office software packages.

The European institutions place particular importance on the ability of candidates to grasp problems of all kinds, often complex in nature, to react rapidly to changing circumstances and to communicate effectively. You will have to show initiative and imagination and be highly motivated. You should be able to work frequently under pressure, both on your own and in a team, and to adjust to a multicultural working environment. You will also be expected to develop your professional skills throughout your career.'

4 According to section II(1) of the notice of competition, concerning qualifications and professional experience:

'You must

(i) have completed a course of post-secondary education and obtained the relevant diploma, in a field relevant to the duties described in section A.I.

You must have obtained your qualification by 30 September 2006 at the latest;

or

(ii) have a level of secondary education attested by a diploma giving access to higher education, followed by at least three years' full-time professional experience relevant to the duties described in section A.I.

The three years' professional experience must have been obtained by 30 September 2006 at the latest.

The selection boards will allow for differences between education systems. For examples of the minimum qualifications required, see the tables annexed to the Guide for Applicants … for each category. Note that these are examples only, more stringent requirements may be set in the notice of competition.'

5 The guide mentioned in the preceding paragraph contained the words 'Specialist po.' in respect of the Bulgarian post-secondary education diplomas required of candidates for the competitions to fill posts for assistants at Grades AST 3 to AST 11.

6 By letter of 3 April 2007, the selection board in the contested competition informed the applicant that her application had not been accepted. That letter stated that, contrary to the conditions laid down in the notice of competition, the applicant's post-secondary education was not in a field relevant to the duties

described in section A.I. of the notice of competition. Furthermore, the letter stated that the applicant did not have, by 30 September 2006 at the latest, at least three years' full-time professional experience in a field relevant to the duties described (in section A.I. of the notice of competition) after having obtained her secondary education diploma.

7 The applicant then requested a review of the contested decision by the selection board in the contested competition. By letter of 20 April 2007 from the European Personnel Selection Office (EPSO) the applicant was informed that the selection board had rejected her request.

Procedure and forms of order sought

8 By order of 8 November 2007, the President of the Tribunal granted the applicant legal aid.

9 By order of 2 June 2008, the present case and Case F-50/07, *Hristova* v *Commission*, were joined for the purposes of the oral procedure.

10 By way of measures of organisation of the procedure, the Tribunal requested the Commission, under Article 55(2)(d) of the Rules of Procedure, to produce the guide mentioned in paragraphs 4 and 5 above. By letter received at the Registry of the Tribunal on 13 May 2008, the Commission complied with that request.

11 The applicant claims that the Tribunal should:

— annul the decision of the selection board in the contested competition refusing to admit her to the tests in that competition;

— order the Commission to pay her fixed damages assessed on equitable principles at EUR 28 718 (one year's salary) in respect of the material and non-material damage suffered as a result of the decision of the selection board in the contested competition, with statutory interest from the date on which the application was lodged;

— order the Commission to pay the costs.

12 The Commission contends that the Tribunal should:

— dismiss the action;

— order the applicant to pay the costs.

13 In her application, the applicant asked the Tribunal to request from EPSO all the documentation concerning her application for the competition and the proceedings of the selection board.

14 The Commission annexed to its defence a translation into English of the specialist's degree, bachelor's degree and master's degree certificates, listing subject areas studied for each of the degrees obtained by the applicant at the Dimitar Apostolov Tsenov Academy of Economics in the City of Svishtov in Bulgaria. The Tribunal took the view it was not necessary to add further documents to the case-file.

The subject-matter of the action

15 The applicant seeks annulment of the decision of the selection board in the contested competition refusing to admit her to the tests in that competition.

16 As regards specific identification of the act adversely affecting the applicant, it should be noted that that decision was reviewed by the selection board, at her request, under the first paragraph, 'Request a review', of the annex to the notice of competition.

17 By letter of 20 April 2007, EPSO wrote to the applicant confirming the decision not to admit her to the tests in the contested competition. The decision of 20 April 2007, adopted after the review that was conducted, thus replaced the initial decision of the selection board in the contested competition and therefore constitutes the act adversely affecting the applicant.

18 According to case-law, when a candidate whom the selection board has not admitted to a competition seeks review of that decision on the basis of a specific provision which is binding on the administration, it is the decision taken by the selection board after review which is to be regarded as the act adversely affecting him within the meaning of Article 91(1) of the Staff Regulations (see, to that effect, Case T-375/02 *Cavallaro* v *Commission* [2005] ECR-SC I-A-151 and II-673, paragraph 56 et seq.; Case F-73/06 *Van Neyghem* v *Commission* [2007] ECR-SC I-A-1-441 and II-A-1-2515, paragraph 39, and Case F-147/06 *Dragoman* v *Commission* [2008] ECR-SC I-A-1-265 and II-A-1-1411, paragraph 29).

19 The effect of the present action must therefore be regarded as being to refer to the Tribunal the selection board's decision of 20 April 2007.

Law

The application for annulment

20 In support of her application for annulment, the applicant relies on a single plea of breach of the notice of competition.

Arguments of the parties

21 The applicant accepts that at 30 September 2006 she did not have the required secondary education diploma, followed by at least three years' full-time professional experience relevant to the duties specified in section A.I. of the notice of competition. However, she points out that this was not the only condition laid down in the notice of competition. The other, alternative, condition in the notice of competition was the possession of a post-secondary education diploma in a field relevant to the duties specified in section A.I. of that notice.

22 She states that she clearly pointed out in her application that she had a post-secondary education diploma (three years' education) at master's level in finance with the qualification of 'Economist – Specialist in Finance'. She enclosed a copy of that diploma and of the certificate joined to the diploma attesting the duration of the course, the subjects studied, the hours' teaching for each subject and the marks she received. The documents sent to the selection board attested that that education was in a field relevant to the duties specified in section A.I. of the notice of competition.

23 The applicant notes that an assistant in the secretarial field must understand correctly the sense and significance of oral and written statements, must be able to file the information he or she handles, and draft correspondence without spelling mistakes, or errors of meaning, syntax or style. The applicant's post-secondary education diploma attests that she has all these fundamental skills. She states that she has in particular studied Computer Science (60 hours of classes and 75 hours of seminars), Business Correspondence (60 hours of seminars), and English (30 hours of classes and 30 hours of seminars).

24 The applicant adds that in Bulgaria there is no post-secondary education diploma in the secretarial field.

25 Lastly, the applicant argues that the selection board had evidence of her computer skills and skills in various administrative tasks since she registered for the competition on line, filled in and dispatched her application for the competition on line and exchanged correspondence with EPSO by e-mail and via the latter's electronic portal.

26 The Commission submits that the selection board in the contested competition did not commit a manifest error of assessment in determining that the applicant's qualifications did not fulfil the conditions laid down by the notice of competition.

27 It is not enough that the candidate has completed a course of post-secondary education and obtained a diploma. The candidate has to demonstrate in addition that the diploma is in a field relevant to the duties described in section A.I. In other words there must be a genuine relationship between the diploma and those duties.

28 The Commission notes that it is clear from the judgment in Case F-12/05 *Tas* v *Commission* [2006] ECR-SC I-A-1-79 and II-A-1-285, paragraph 43, that even if the notice of competition does not specify how relevant the diploma must be to the duties, the relevance must be sufficient. It is for the selection board to determine, in light of the duties described in the notice of competition, what degree of relevance is sufficient.

29 In the light of the duties described in the notice of competition, the Commission is of the view that the selection board was clearly entitled to consider that such duties required a knowledge of administrative and organisational matters.

30 The Commission states that the applicant holds a master's degree in Finance from the Dimitar Apostolov Tsenov Academy of Economics in the City of Svishtov in Bulgaria. On the basis of the list of subject areas studied, the Commission argues that the selection board could rightly conclude that there was not a sufficiently close link between the applicant's studies and the tasks of an AST 1 official in the secretarial field.

31 The Commission adds that the applicant's argument that assistants must be capable of grasping complex problems and showing initiative cannot change the fundamental characteristics of the notice of competition, such as the description of the duties in section A.I. This part of the notice shows that the institution is seeking to recruit candidates who are likely to be able to take up their duties rapidly, either by reason of relevant higher educational qualifications, or by reason of relevant professional experience.

32 The Commission next responds to the applicant's argument that no post-secondary studies for secretaries exist in Bulgaria. It takes the view, first, that such an argument cannot mean that any Bulgarian university degree is relevant to the field of the contested competition, or alternatively that this condition should be disregarded. Secondly, the Commission notes that the applicant provides no evidence in support of her assertion, although the burden of proof is incumbent on her. The Commission adds that in any event it is aware of certain Bulgarian

courses which might be relevant to administrative duties. It gives as an example of such a course in Bulgaria the 'Specialist in Tourism' diploma offered by the Ivan Vazov Institute of International Tourism in Varna. There are also similar diplomas for librarians, for example.

33 Even if there were no relevant Bulgarian qualifications, the eligibility condition would not be devoid of sense since Bulgarians can take courses available in other Member States. At least one candidate was admitted to the competition at issue in the present case on the basis of a post-secondary course run by the Chamber of Commerce and Industry in London (United Kingdom) leading to a certificate in Business Administration and Business English.

Findings of the Tribunal

34 It is settled case-law that the selection board in a competition based on qualifications and tests is responsible for determining, case by case, whether the diplomas submitted or the professional experience presented by each candidate correspond to the level required by the Staff Regulations and the notice of competition (Case T-332/01 *Pujals Gomis* v *Commission* [2002] ECR-SC I-A-233 and II-1155, paragraphs 39 to 41, *Tas* v *Commission*, paragraph 39). The selection board enjoys a broad discretion in that regard and the Community judicature must confine itself to ascertaining whether the exercise of that discretion was vitiated by a manifest error (Case T-244/97 *Mertens* v *Commission* [1999] ECR-SC I-A-23 and II-91, paragraph 44; Case T-25/03 *De Stefano* v *Commission* [2005] ECR-SC I-A-125 and II-573, paragraph 34, and *Tas* v *Commission*, paragraph 39).

35 It is also established case-law that, notwithstanding its discretion, the selection board is bound by the wording of the notice of competition as published (Case T-139/00 *Bal* v *Commission* [2002] ECR-SC I-A-33 and II-139, paragraph 35, and *Tas* v *Commission*, paragraph 43).

36 It is in the light of those considerations that the Tribunal must ascertain whether, in the circumstances of the present case, the selection board in the contested competition could, without committing a manifest error of assessment, refuse to admit the applicant to the tests in that competition on the ground that she did not fulfil the conditions of the notice of competition as regards the relevance of her post-secondary education diploma to the nature of the duties described in that notice.

37 The notice of competition stipulated in section A.II.(1)(i) possession of a diploma in a field relevant to the duties described in section A.I. of that notice (see paragraph 4 above). Even though the notice of competition did not specify how relevant the diploma should be, the selection board could require, in the light of the duties described in section A.I. of the notice, that the relevance should be of a sufficient degree (see, to that effect, *Tas* v *Commission*, paragraph 43). It is therefore within that framework that the selection board was required to exercise its discretion.

38 In order to determine whether the applicant's secondary education diploma was relevant to the duties and whether it was sufficiently so, the selection board was required to assess the content of the diploma and take into particular consideration in that regard the subject areas studied.

39 On this point, it should be noted first of all that neither the field chosen for the applicant's master's degree, namely finance, nor the specialist area of banking management in itself clearly establishes the relevance of these studies to the duties described in the notice of competition, which comprise secretarial work involving various administrative tasks.

40 Secondly, the lists of the subject areas studied by the applicant do not disclose that she studied areas that prepared her for undertaking secretarial work.

41 The applicant, however, points to the fact that she studied computer science and business correspondence. From this she infers that her diploma permits her 'to understand correctly the sense and the significance of the oral and written statements done before [her], to be able to classify the information [she] handles, and to be able to do [her] correspondence work without any orthographic mistakes or any sense or style/language errors'.

42 The acquisition of such skills cannot be taken to demonstrate in itself that the applicant's diploma is sufficiently relevant to the duties described in the notice of competition. They cover only some aspects of the kind of duties described in the notice of competition. Moreover, the applicant has not explained to what extent the teaching she received in the subjects covered by her post-secondary education diploma corresponded to the specific demands of secretarial work.

43 Lastly, it should be noted that the mere fact that the applicant's application was properly submitted on line and that electronic messages were exchanged between her and EPSO does not show that the applicant had the requisite computer and administrative skills.

44 It follows from all the foregoing that the selection board neither failed to comply with the wording of the notice of competition nor committed a manifest error of assessment by refusing to admit the applicant to the tests in the contested competition.

45 The applicant maintained in her application, without expanding on the argument, that in Bulgaria there was no post-secondary education diploma in the secretarial field.

46 In that regard, it is necessary first of all to point out that the notice of competition did not expressly require as a condition for admission to the competition possession of a diploma in the secretarial field, but rather a diploma in a field relevant to the duties described in the notice of competition. Moreover, the Commission cited in its defence and at the hearing examples of diplomas which, although not specifically relating to the secretarial field, were regarded by the selection board as fulfilling the conditions of the notice of competition. Moreover, as the Commission stated, in particular in its defence, the notice of competition did not exclude diplomas obtained in Member States other than Bulgaria.

47 Lastly, it should be noted that the applicant has not contended that a total absence of candidates possessing a relevant diploma has shown the notice of competition, as far as that condition is concerned, to be inoperative for the purpose of admitting candidates.

48 Consequently, the applicant's argument derived from her assertion that in Bulgaria there was no post-secondary education diploma in the secretarial field must be rejected.

49 It follows from all the foregoing that the single plea of breach of the notice of competition must be rejected, as too must the corresponding application for annulment.

The claim for damages

Arguments of the parties

50 The applicant claims payment of damages of EUR 28 718, amounting to one year's salary, in respect of the material and non-material damage suffered as a result of the decision of the selection board in the contested competition, with statutory interest from the date on which the application was lodged.

51 The Commission notes that the applicant does not submit any argument in support of her claim. The claim should therefore be rejected as inadmissible as it is contrary to Article 35 of the Rules of Procedure.

52 In any event, the applicant did not demonstrate that the conditions are fulfilled for the Community to incur non-contractual liability.

53 The Commission adds that the decision of the selection board in the contested competition is lawful. Moreover, there can be no sufficient certainty that the applicant would have passed the competition and would have been recruited by the Commission.

54 At the hearing the applicant argued that the Tribunal's decision will not affect the situation of the parties in any way since the tests in the contested competition are over and all the posts are now filled. Consequently, the applicant claimed that if the Tribunal were to accept her claim for annulment the only adequate penalty for the Commission would be to pay her damages.

Findings of the Tribunal

55 It is settled case-law that a claim for compensation for damage must be rejected where it is closely related to a claim for annulment which has itself been rejected as inadmissible or unfounded (Case T-330/03 *Liakoura* v *Council* [2004] ECR-SC I-A-191 and II-859, paragraph 69, and Case T-5/04 *Scano* v *Commission* [2005] ECR-SC I-A-205 and II-931, paragraph 77).

56 In the present case the claim for compensation is closely related to the claim for annulment since the applicant is claiming damages to make good the material and non-material loss resulting from the selection board's decision not to admit her to the tests in the contested competition.

57 Since consideration of the arguments submitted in support of the claim for annulment has revealed no illegality and, therefore, no wrong capable of giving rise to non-contractual liability on the part of the Community, the claim for damages must also be rejected, without the need to rule on the objection of inadmissibility raised by the Commission.

Costs

58 The Rules of Procedure, adopted on 25 July 2007 (OJ 2007 L 225, p. 1), entered into force on 1 November 2007 under Article 121 thereof. The first paragraph of Article 122 of the Rules of Procedure provides that the provisions of Title 2, Chapter 8, on costs are to apply to this case as it was brought before the Tribunal after 1 November 2007.

59 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Title 2, Chapter 8, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 98(4) of the Rules of Procedure, where the recipient of legal aid is unsuccessful, the Tribunal may, in ruling as to costs in the decision closing the proceedings, if equity so requires, order that one or more other parties should bear their own costs or that those costs should be borne, in whole or in part, by the cashier of the Tribunal by way of legal aid.

60 It should be noted that the applicant is the unsuccessful party. Moreover, in its pleadings, the Commission applied for the applicant to pay the costs.

61 The circumstances of the present case however justify application of the provisions of Article 98(4) of the Rules of Procedure. By application lodged at the Registry of the Tribunal on 11 June 2007, the applicant requested legal aid in order to bring an action for annulment of the selection board's decision refusing to admit her to the contested competition.

62 As stated in paragraph 8 of this judgment, the President of the Tribunal granted the applicant legal aid, by order of 8 November 2007, with the consequence that the action in the main proceedings was not brought until after the entry into force of the Rules of Procedure of the Tribunal. In those circumstances, the Tribunal decides that each party shall bear its own costs.

On those grounds,

THE TRIBUNAL (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders each party to bear its own costs.

Van Raepenbusch Boruta Kanninen

Delivered in open court in Luxembourg on 25 November 2008.

W. Hakenberg
Registrar

H. Kanninen
President