Reports of Cases

ORDER OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

(Third Chamber)

10 March 2016*

(Civil service — Open Competition EPSO/AD/293/14 — Decision of the selection board not to admit a candidate to sit tests at the assessment centre — Request for review — New decision of the selection board confirming its initial decision — Communication by EPSO of a reasoned reply — Purely confirmatory act — Time-limit for bringing proceedings — Manifest inadmissibility — Article 81 of the Rules of Procedure)

In Case F-152/15,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Małgorzata Kozak, residing in Warsaw (Poland), represented by J. Łojkowska-Paprocka, lawyer,

applicant,

v

European Commission,

defendant,

THE CIVIL SERVICE TRIBUNAL (Third Chamber),

composed of S. Van Raepenbusch, President, H. Kreppel and J. Svenningsen (Rapporteur), Judges,

Registrar: W. Hakenberg,

makes the following

Order

1 By application received at the Registry of the Civil Service Tribunal on 28 December 2015, Ms Kozak brought the present action seeking, in essence, the annulment of (i) the decision of the selection board in Open Competition EPSO/AD/293/14 ('the selection board') of 15 April 2015 stating that she had not passed the 'Talent Screen Test' organised in that competition, meaning that she was not eligible to sit tests at the assessment centre in connection with that competition, and (ii) the decision of 11 June 2015 by which the selection board, after review, confirmed its initial decision.

* Language of the case: English.

2 Pursuant to Article 4 of Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office [(EPSO)] (OJ 2002 L 197, p. 53), the present action, although formally brought against EPSO as the defendant, must be deemed to be brought against the European Commission since it concerns requests and complaints relating to the exercise of the powers conferred on EPSO under Article 2(1) and (2) of Decision 2002/620/EC (see, to that effect, judgment of 16 October 2013 in *Italy* v *Commission*, T-248/10, EU:T:2013:534, paragraphs 25 to 27, and order of 10 November 2015 in *Kozak* v *Commission*, F-114/15, EU:F:2015:130, paragraph 2).

Legal context

3 The Notice, published in the *Official Journal of the European Union* on 23 October 2014, of Open Competition EPSO/AD/293/14, based on qualifications and tests, to draw up reserve lists from which to recruit officials in the administrators' (AD) function group at grade AD 7 in five different fields (OJ 2014 C 376 A, p. 1) ('the competition notice') stated, inter alia, in Annex I thereto, entitled '[Field] 1. [Competition law] (AD 7)', that candidates were required to provide proof of a minimum of 6 years' professional experience, at least 3 of which should relate to the application of competition rules and procedures.

4 The competition notice requested that, before applying, candidates carefully read the General rules governing open competitions published in the C series of the Official Journal of 1 March 2014 (OJ 2014 C 60 A, p. 1) ('the General rules'). Under the heading '[Selection based on qualifications] — [The talent screener]', Section 2.4 of the General rules provides:

'... candidates have to go through a phase called "selection based on qualifications". In this phase, the selection board assesses the applications of the candidates and selects those whose qualifications (in particular diplomas and professional experience) best match the duties and selection criteria set out in the competition notice.

[A candidate] in a competition of this type [must] answer a series of questions in the "talent screener" section of the online application form. The questions are based on the selection criteria given in the notice of competition and [the] answers are assessed by the selection board. All candidates in a competition answer the same set of questions. In this way, the selection board is presented with each candidate's answers in the same structured framework helping the board to carry out a careful objective assessment of the comparative merits of all candidates.

This selection is made solely on the basis of responses to specific questions in the "talent screener" tab of the online application form.

The selection board first decides on a weighting (from 1 to 3) for each talent screener question, according to the importance attached to the criterion. Then, the selection board examines the content of the candidates' answers to the questions and awards 0 to 4 points for each answer. The points are then multiplied by the weighting for each question.

The candidates with the highest points go through to the assessment phase ...'

5 Under the heading 'Internal review procedure', Section 3.4.3 of the General rules provides:

'You can request a review of any decision of the selection board or EPSO that directly and immediately affects your legal status in the competition (that is to say, that establishes your results and/or determines if you can proceed to the next stage of the competition or are excluded therefrom).

Requests for review may be based on one or more of the following reasons:

— a material irregularity in the competition process ...;

— non-compliance, by the selection board or EPSO, with the rules governing the competition procedure as laid down by the Staff Regulations [of Officials of the European Union], the notice of competition, [the General] rules, and case-law.

...

Procedure

Submit your request [for review] within 10 calendar days from the date when the decision you wish to contest is uploaded in your EPSO account:

...

You must clearly indicate the decision you wish to contest, and you must state the grounds on which your request is based.

The internal review procedure is managed by the legal team of EPSO.

...

Your request will ... be analysed and submitted for consideration to the same body that adopted the contested decision (either the selection board or EPSO) .... The selection board or EPSO will then take a decision on your request. After a decision is taken, a reasoned reply addressing your arguments will be prepared by the legal team.

...'

6 Under the heading 'Judicial appeals', Section 3.4.4.2 of the General rules is worded as follows:

'As a candidate in a competition, you have the right to submit a judicial appeal to the ... Tribunal, under Article 270 [TFEU] and Article 91 of the Staff Regulations [of Officials of the European Union].

Note that appeals against decisions taken by EPSO rather than by the selection board will not be admissible before the ... Tribunal unless an administrative complaint under Article 90(2) of the Staff Regulations [of Officials of the European Union] has first been made following the procedure described above in Section 3.4.4.1. In particular, this is the case with the decisions concerning the general eligibility criteria, which are taken by EPSO not the selection board.

...'

Background to the dispute

7 The applicant submitted an application online for Open Competition EPSO/AD/293/14. She was asked to answer a series of questions in the 'talent screener' tab of her online application form. Those questions were based on the selection criteria set out in Annex I to the competition notice.

8 By electronic communication of 15 April 2015 sent via the applicant's EPSO account, EPSO informed the applicant that, after examining the answers she had given to the questions raised in the 'Talent screener' section of her online application form, the selection board had decided to award her a total

of 20 points, but that, since the admission threshold to be invited to the assessment centre had been set at 22 points, she was not eligible for the next stage of the competition ('the decision of 15 April 2015').

9 By electronic communication of 16 April 2015 sent via her EPSO account, the applicant asked the selection board to review the decision of 15 April 2015 not to invite her to sit tests at the assessment centre ('the request for review'). In her request for review, she argued in particular that two irregularities had affected the conduct of the competition. First, the questions raised in the 'Talent screener' tab were not compatible with the criterion relating to '[p]rofessional experience' as set out in Annex I to the competition notice and in the General rules and, second, the information given as regards how to provide details of professional experience in the corresponding tab was misleading to candidates and, in her case, resulted in her failing to mention her experience as an assistant to a Member of the European Parliament, as she considered it irrelevant to the field of competition and it had taken place more than five years previously.

10 By electronic communication of 11 June 2015 sent via the applicant's EPSO account, EPSO informed the applicant that, after reviewing her situation in the light of the points she had raised in her request for review, the selection board had decided to maintain the decision of 15 April 2015 not to admit her to the next stage of the competition ('the review decision of 11 June 2015'). In the same communication, EPSO explicitly told the applicant that the 'letter containing the comments of the [s]election [b]oard concerning [her] request for review w[ould] be published in [her] EPSO account in the course of the following weeks'.

11 By application received at the Registry of the Tribunal on 11 August 2015, the applicant brought an initial action, which was registered as Case F-114/15, seeking the annulment of the decision of 15 April 2015 and the review decision of 11 June 2015.

12 By electronic communication of 27 October 2015 sent via the applicant's EPSO account, EPSO — following the procedure set out in Section 3.4.3 of the General rules and acting on behalf of the chairman of the selection board — sent the applicant the selection board's reasoned reply to the arguments which she had put forward in her request for review.

13 By order of 10 November 2015 in *Kozak* v *Commission* (F-114/15, EU:F:2015:130), the Tribunal dismissed the action brought as Case F-114/15 as manifestly inadmissible, on the ground that the applicant — herself a lawyer by profession — had not complied with the obligation to be represented by a lawyer as provided for in Article 19 of the Statute of the Court of Justice of the European Union, applicable to proceedings before the Tribunal pursuant to Article 7 of Annex I thereto.

Form of order sought by the applicant

14 The applicant claims, in essence, that the Tribunal should:

— annul the decision of 15 April 2015;

— annul the review decision of 11 June 2015;

— order the Commission to pay the costs.

Law

Decision to give a ruling by reasoned order

15 Under Article 81 of the Rules of Procedure, where an action is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Tribunal may, without taking further steps in the proceedings, give a decision by reasoned order, including at the time when the application is lodged and, hence, without there necessarily being a need to serve that application on the defendant.

16 In particular, in accordance with settled case-law, the dismissal of an action by reasoned order made on the basis of Article 81 of the Rules of Procedure not only benefits procedural economy, but also saves the applicant the costs entailed by the lodging of a statement of defence by the defendant institution and/or by the holding of a hearing, if, upon reading the case-file, the Tribunal, provided that it considers itself to be sufficiently informed by the documents before it, is entirely convinced of the manifest inadmissibility of the application or that it is manifestly lacking any foundation in law and further considers that the serving of the application on the defendant with a view to the lodging of a statement of defence and, where appropriate, the holding of a hearing would be unlikely to provide new evidence capable of affecting that belief (see orders of 10 July 2014 in *Mészáros* v *Commission*, F-22/13, EU:F:2014:189, paragraph 39, and 22 April 2015 in *ED* v *ENISA*, F-105/14, EU:F:2015:33, paragraph 16).

17 In the present case, the Tribunal considers itself to be sufficiently informed by the application and the annexes thereto to give a ruling, and thus decides that it is appropriate to apply Article 81 of its Rules of Procedure and to give a ruling by reasoned order without taking further steps in the proceedings.

Admissibility

18 As a preliminary point, the Tribunal notes that, in the present case, the applicant has complied with the obligation to be represented by a lawyer and, in that regard, the application has been duly signed by her lawyer.

19 However, it should be borne in mind that, according to Article 91(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), an action in a staff case is admissible only if the appointing authority has previously had a complaint submitted to it and the complaint has been rejected by an express or implied decision (order of 25 April 2012 in *Oprea* v *Commission*, F-108/11, EU:F:2012:55, paragraph 14).

20 In that regard, the Courts of the European Union have stated that the condition laid down in Article 91 of the Staff Regulations refers only to measures which the appointing authority can review (judgments of 16 March 1978 in *Ritter von Wüllerstorff und Urbair* v *Commission*, 7/77, EU:C:1978:68, paragraph 9, and 14 July 1983 in *Detti* v *Court of Justice*, 144/82, EU:C:1983:211, paragraph 16), with the result that, according to settled case-law, the legal remedy available regarding decisions of a competition selection board may consist, as in the present case, of a direct application to the Courts of the European Union (judgments of 31 May 2005 in *Gibault* v *Commission*, T-294/03, EU:T:2005:190, paragraph 22, and 23 November 2010 in *Bartha* v *Commission*, F-50/08, EU:F:2010:148, paragraph 25; order of 25 April 2012 in *Oprea* v *Commission*, F-108/11, EU:F:2012:55, paragraph 15).

21 In the present case, it is apparent from the documents submitted by the applicant that, on 11 June 2015, she was informed of the review decision of the same day by which the selection board had definitively decided not to admit her to the next stage of the competition. The Tribunal notes that, by the present action, she is once again seeking, as she did in her previous action registered as Case F-114/15, only the annulment of the decision of 15 April 2015 and the review decision of 11 June 2015 confirming that initial decision.

22 However, pursuant to Article 91(3) of the Staff Regulations, and as the Tribunal previously found in paragraph 10 of the order of 10 November 2015 in *Kozak* v *Commission* (F-114/15, EU:F:2015:130), the three-month time-limit laid down in those regulations, extended on account of distance by a single period of 10 days as provided for in Article 38 of the Rules of Procedure, for bringing an action for annulment of the decision of 15 April 2015 and the review decision of 11 June 2015 under Article 270 TFEU expired at the latest on 21 September 2015, with the result that the present action, brought on 28 December 2015 and once again seeking the annulment of those decisions, is manifestly out of time and, therefore, manifestly inadmissible.

23 It is true that, on 27 October 2015, the applicant received a communication by EPSO of the selection board's reasoned reply to the arguments which she had put forward in her request for review.

24 However, it must be held that that communication sent by EPSO on behalf of the chairman of the selection board cannot be considered to be a new decision taken by the selection board following a second review of the applicant's situation different from the first review already carried out by that board for the purposes of adopting the review decision of 11 June 2015 confirming the decision of 15 April 2015.

25 Indeed, EPSO's communication of 27 October 2015 — the annulment of which, moreover, is not sought by the applicant in the present case — does not necessarily contain any new elements as compared with the review decision of 11 June 2015. Furthermore, it is not apparent from the case-file — and nor does the applicant argue — that that communication was preceded by a further review of the applicant's situation by the selection board. The communication of 27 October 2015 thus merely confirms the review decision of 11 June 2015, with the result that the adoption of that act cannot have the effect of resetting the time-limit for bringing an action against the decision of 15 April 2015 and against the review decision of 11 June 2015, which are the only acts of which the applicant seeks annulment in the present case (see judgments of 10 November 1980 in *Grasselli* v *Commission*, 23/80, EU:C:1980:284, paragraph 18, and 14 September 2006 in *Commission* v *Fernández Gómez*, C-417/05 P, EU:C:2006:582, paragraph 46; orders of 7 September 2005 in *Krahl* v *Commission*, T-358/03, EU:T:2005:301, paragraph 47, and 22 April 2015 in *ED* v *ENISA*, F-105/14, EU:F:2015:33, paragraph 37).

26 Furthermore, the fact that, by the communication of 27 October 2015, EPSO disclosed to the applicant, in accordance with the rules set out in Section 3.4.3 of the General rules, the content of the grounds on the basis of which the selection board had, by its review decision of 11 June 2015, confirmed its previous decision of 15 April 2015, is not such as to reset, in favour of the applicant, a time-limit for bringing an action against the review decision of 11 June 2015 or against the decision of 15 April 2015, that is, against the two decisions of which she is seeking annulment in the present case.

27 Indeed, if the Tribunal were bound to accept the applicant's reasoning, any explicit decision of a competition selection board, such as the decision of 15 April 2015 and the review decision of 11 June 2015, containing either an inadequate statement of reasons or no statement of reasons (and thus necessitating a substantive examination) would be liable at any moment to become the subject of a request for an additional statement of reasons enabling candidates for the competition in question to set themselves a new time-limit, running from the receipt of that additional statement of reasons, for bringing an action under Article 270 TFEU and Article 91 of the Staff Regulations or, where appropriate, lodging a complaint within the three-month time-limit laid down in the Staff Regulations, even though the fact that a competition selection board's decision contains an inadequate statement of reasons or no statement of reasons is actually a plea which may be raised in an action or, where appropriate, a complaint (see order of 22 April 2015 in *ED* v *ENISA*, F-105/14, EU:F:2015:33, paragraph 41 and the case-law cited).

28 It follows from the foregoing that the present action, which seeks the annulment of the decision of 15 April 2015 and the review decision of 11 June 2015, is out of time and, consequently, must be dismissed as manifestly inadmissible, without there being any need to serve the application on the defendant.

Costs

29 Under Article 100 of the Rules of Procedure, the Tribunal is to give a decision as to costs in the judgment or order which closes the proceedings.

30 In the present case, given that the Tribunal has given a ruling on the present action without serving the application on the defendant and, therefore, without that party having incurred any costs in that regard, the applicant is only to be ordered to bear her own costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Third Chamber)

hereby orders:

1. **The action is dismissed as manifestly inadmissible.**

2. **Ms Kozak is to bear her own costs.**

Luxembourg, 10 March 2016.

W. Hakenberg
Registrar

S. Van Raepenbusch
President