JUDGMENT OF THE COURT (SECOND CHAMBER)
7 APRIL 1965[1]

Cesare Alfieri
v European Parliament

Case 35/64

Summary

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

2. Officials—Recruitment—Competitions—Publications of notice of competition—Purpose
(Staff Regulations of officials of the European Communities, Annex III, Article 2)

1. Cf. para. 1, summary in Case 16/64.
2. The publication of a notice of competition is not intended to prove that all the rules concerning the competition procedure have been observed, but simply to ensure that the competition is sufficiently advertised to induce officials interested to apply.

In Case 35/64

CESARE ALFIERI, a servant of the European Parliament, represented and assisted by André Elvinger, Advocate of the Cour Supérieure de Justice of the Grand Duchy of Luxembourg, with an address for service in Luxembourg at the Chambers of the said André Elvinger, 84 Grand'rue,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary-General, Hans Robert Nord, as Agent appointed for that purpose by the President of the European Parliament, and assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of the said Alex Bonn, 22 Côte-d'Eich,

defendant,

Application for the annulment of a decision, following a competition in which the applicant had taken part, appointing a servant other than the applicant, namely Mr Ducci, to the position of Head of Division in the Directorate-General for General Affairs,

1 – Language of the Case: French.

THE COURT (Second Chamber)

composed of: A. M. Donner, President of Chamber (Rapporteur), 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

By a decision of 12 May 1964, displayed on 26 May 1964, Mr Ducci was appointed, following a competition in which the applicant had taken part, to the position of Head of Division in the Directorate-General for General Affairs at the European Parliament.
On 7 August 1964 the applicant made an application against the European Parliament attacking this decision 'in so far as may be necessary' and also certain decisions inherent in the competition procedure which resulted in the abovementioned appointment.
In fact the complaints are based entirely on the said procedure.

II — Conclusions of the parties

In his application the applicant claims that the Court should:

'I. Entertain the present application as presented; Declare that it is well founded as to its substance;

II. 1 (a) Rule that the publication of the notice of the competition in dispute never took place or at least is null and void for want of authentication by the signatures or seals of the officials or competent authorities;

(b) In addition, rule that the regularity of the notice of competition itself cannot be proved;

(c) Consequently declare that the notice of competition itself is null and void;'

Alternatively:

'2 (a) Rule that the decision to hold the competition is null and void and that the notice of competition is also null and void for failure to carry out the mandatory formality imposed by Article 29 (1) (a) of the Staff Regulations and for failure to state that this had been done; rule that in the absence of such a statement in the notice of competition no proof that the formality was complied with may be accepted;

(b) Find that there are no grounds for supposing that either the appointment or the composition of the Selection Board were in order;

3 Consequently, declare both the notice of competition and the entire procedure subsequent thereto null and void for failure to publish the composition of the Selection Board;

4 Declare that the notice of competition is null and void for failure to include the specification required by Article 1 (1) (d) of Annex III to the Staff Regulations;

5 Declare null and void the list drawn up by the Selection Board of candidates satisfying the conditions laid down by the notice of competition on the ground that a candidate who did not fulfil these conditions was included on it;

III. (a) *Therefore*: annul the entire competition procedure—in particular the decision to hold the competition, the notice of competition, the claim that it was published, the list of candidates satisfying the conditions and the list of suitable persons—and also the result of the competition procedure, being the appointment of the servant Mr Ducci to the post for which the competition was held;

(b) Order that consideration shall be given to the question whether the post can be filled by transfer within the institution, in accordance with Article 29 of the Staff Regulations;

(c) Order that, if, upon considering these possibilities, no one can be found, a competition be held according to the rules of the Staff Regulations and the abovementioned Annex thereto:

In the further alternative:

IV. Order that the injury suffered by the applicant be made good by the payment of damages, such loss being assessed at 1 franc for non-material damage and at 100 000 francs for material damage, expert proof of which amount is offered;

V. Order the defendant institution to bear all the costs and expenses of the proceedings.'

In its statement of defence the European Parliament contends that the Court should:

'rule that the application is admissible;

alternatively, rule that it is unfounded; dismiss the application;

make an order as to costs in accordance with the relevant provisions.'

III — Submissions and arguments of the parties

Admissibility

The defendant draws a distinction between the decision to make the disputed appointment and the various decisions taken during the competition procedure and raises the objection that the applicant is estopped in so far as the application is directed against these latter decisions, contending that since the application against the appointment is only based on the alleged illegality, or even the non-existence, of the said decisions—indeed of the competition as a whole—it also is inadmissible.

The applicant maintains that the decisions forming part of the competition procedure are only of a preparatory nature and do not in themselves have any adverse effect and cannot be contested until the time when an

application is made against the appointment made as a result of the competition and which is capable of having an adverse effect.

In its rejoinder the defendant observes that according to case-law measures which are preparatory to an appointment might be separable from the result, and might be open to attack separately in so far as they have any adverse effect. Then the defendant postulates the following alternative; 'Either the different measures taken during the competition which are criticized by the applicant constitute measures which are severable from the decision to appoint and have an adverse effect. In this case, the applicant may make an application against those measures, provided that he can show that he has an interest in their being annulled. Or the measures taken during the competition which are asserted to be void are not of themselves capable of doing any harm to the applicant or of directly affecting his position. If so they cannot be considered as adversely affecting him. In this case they form part and parcel of the final decision which comes out of them . . . . From this it follows that the applicant must establish his interest in the annulment of the preparatory measures which form part of the material decision taken when he makes his application to have it annulled'. Having thus defined its terms, the defendant examines the different complaints and concludes that, with the exceptions of those directed against lack of publicity and failure to publish the composition of the Selection Board and the list of persons admitted to the competition, they are complaints against decisions taken during the competition which were capable of being impugned as decisions adversely affecting the applicant and are therefore, in its view, inadmissible as being out of time. However these complaints cannot be entertained because of want of interest on the part of the applicant.

The substance of the case

First submission

The applicant observes that, in accordance with Article 1 (1) and (3) of Annex III (Competitions) to the Staff Regulations, the notice of competition is drawn up by the appointing authority and is advertised within the institutions of the Communities. He asserts that as regards the competition under discussion advertising consisted of fixing loose sheets of paper to notice boards used for various purposes. These sheets carried neither the signature of any official, nor any seal, nor any heading of any institution.

The applicant quotes the principle that administrative measures must themselves state that all material formalities have been complied with and goes on to assert that the loose sheets of paper mentioned above cannot amount to a formal notice of competition, drawn up by the appointing authority after consulting the Joint Committee and the Head of the department or departments concerned.

The defendant observes first that the applicant applied to be a candidate and took part in the competition after having learnt that it would take place by means of the notice which he criticizes. Therefore, according to the defendant, the applicant has no interest in raising any alleged defect in it, and thus his complaint against any such defect is inadmissible. Besides in the defendant's view no such defect as alleged exists, because the Staff Regulations do not lay down any particular form which the advertising of a competition should take. Furthermore in this case the advertising was done in the usual way and in the usual places.

The applicant replies that the need to show that one has an interest only applies in relation to the principal measure impugned and not in relation to each submission put forward. He persists in his view that the advertised

notice was null and void, indeed that there never was a notice at all. He sees nothing that proves that the conditions displayed are those drawn up by the competent authority.

Second submission

The applicant alleges that according to the terms of Article 29 of the Staff Regulations the appointing authority must first consider whether the vacant post can be filled by promotion or transfer within the institution before holding a competition. Since the 'loose sheets' did not refer to this preliminary duty it must be presumed never to have been carried out.

The defendant again argues that the applicant has no interest in the matter and maintains that nowhere do the Staff Regulations state that the preliminary consideration to which the applicant refers must be stated in the notice.

In his reply the applicant asserts that he has an interest, arguing that he is eligible for promotion to the post in question, an assertion which the defendant denies.

Third submission

The applicant draws attention to the fact that the disputed notice of competition did not state that a Selection Board had been appointed, or who was on it. He asserts that any advertised notice of competition which does not state the composition of the Selection Board is automatically vitiated by the omission of an essential procedural requirement.

The defendant denies that the Staff Regulations require such a statement to be made and asserts that the provisions clearly distinguish between the drawing up of the notice and the appointment of the Selection Board.

Fourth submission

It is claimed that, since the disputed notice did not require more than 'university education supported by a degree or clearly equivalent experience', it did not comply with the requirement of Article 1 of Annex III to the Staff Regulations, which states that the notice must specify the degrees and other evidence of formal qualifications or the level of experience required for the post to be filled. It is alleged that the wording under criticism is tantamount to asking for either a degree or no degree. It is also asserted that the said wording is equally vague about the 'level' of experience both as to its nature and extent, that is to say, the level of the duties carried out in the course of acquiring such experience.

The defendant agrees that the wording used intentionally leaves a wide power of assessment to the Selection Board, but denies that Article 1 of Annex III requires more precise wording on pain of nullity of the notice. The defendant states further that the wording cannot be looked at in isolation, as the disputed notice had specified that 'the holder of this post must have a very solid background in administrative and legal matters together with a thorough knowledge of politics and a good grasp of parliamentary procedure'.

Fifth submission

The Selection Board put Mr Falcone, who does not have a university degree, on the list of candidates. The applicant disputes the view that this candidate has experience clearly equivalent to university level.

The defendant replies that in its view the decision of the Selection Board is final and that no appeal to the Court may be made against it.

The defendant draws attention at the end of its statement of defence to the fact that no submission is directed against the decision of the Selection Board drawing up the list of suitable candidates or against the decision of appointment and thus contends that the

application is inadmissible in so far as it is directed against these measures.
The applicant replies that these decisions adversely affect him and he asks that they be annulled by reason of the submissions establishing the nullity of the different measures of the competition procedure which resulted in the said decisions, and which were the indispensable legal basis for them.
The conclusion in the 'further alternative' concerning compensation for loss suffered is not supported by any reasons in the body of the application, and in the remainder of the written procedure the parties refrained from discussing it.

IV — Procedure

The procedure followed the normal course.
The hearing in open court took place on 3 February 1965.
On 17 March 1965 the Advocate-General delivered his opinion to the effect that the application should be dismissed.

Grounds of judgment

Admissibility

The defendant distinguishes between the contested decision of appointment and the various measures taken during the course of the recruitment procedure. It raises the objection that the applicant is estopped in so far as his application is directed against these latter measures, and contends that that part of the application directed against the appointment is also inadmissible because no submissions are directed against it as such.

Since the recruitment procedure consists of several interdependent measures, this objection would be tantamount to requiring the persons concerned to bring as many actions as the number of acts capable of adversely affecting them contained in the said procedure. Having regard to the close connexion between the different measures comprising the recruitment procedure, it must be accepted that in an action contesting the later steps in such a procedure the applicant may contest the legality of earlier steps which are closely linked to them.

It follows that the complaints made by the applicant and in particular those against the disputed notice may be taken into consideration by the Court in deciding whether the appointment of Mr Ducci was valid, this being the main issue involved in the application.

On the other hand, it is not admissible to argue against the due form of a competition on account of the fact that a candidate was allowed to take part who did not, in the applicant's opinion, fulfil the conditions laid down by the notice of competition, as the candidate's participation did not influence the result of the competition.

Apart from this reservation, the objection of inadmissibility must therefore be dismissed.

The substance of the case

The applicant asserts that the publication of the disputed notice of competition never took place because it was not authenticated by the signature or seals of the competent officials or authorities.

However no such authentication is required by the Staff Regulations of officials nor is one usually made. The applicant fails to distinguish between the decision adopting the wording of the notice and the notice itself, and fails to appreciate that the publication of the notice is only required as a means of inducing officials interested to apply. So far as the applicant is concerned the advertising which did take place seems to have fulfilled this purpose since he did in fact apply to be a candidate at the competition.

This submission must therefore be rejected.

The applicant argues that the decision to hold the competition and the disputed notice are both void because the notice fails to state whether consideration was given to filling the post by promotion or transfer within the institution and that the absence of any such statement is tantamount to the absence of the act itself.

This submission cannot succeed either. Article 1 of Annex III, which sets out the matters which the notice of competition must specify, does not mention that consideration has been given to the filling of the post by promotion or transfer. Here again the applicant fails to appreciate that the publication of a notice of competition is not intended to prove that all the rules concerning the competition procedure have been observed, but simply to ensure that the competition is sufficiently advertised.

The applicant argues that the disputed notice of competition is void on the ground that it did not include a statement concerning the appointment and composition of the Selection Board. As Annex III to the Staff Regulations of officials clearly distinguishes between the appointment of the Selection Board and the drawing up of the notice, this submission must be rejected for the same reasons as the preceding submission.

The applicant also claims that in requiring no more than 'university education supported by a degree or clearly equivalent experience' the said notice did

not comply with the requirement of Article 1 (1) (d) of Annex III to the Staff Regulations, and is therefore void. However the wording used must be considered in conjunction with the clarifying statement, which also appears in the notice, that 'the holder of this post must have a very solid background in administrative and legal matters together with a thorough knowledge of politics and a good grasp of parliamentary procedure'. Once this requirement is looked at, the wording used, which is not in itself incompatible with the provision of Annex III to which reference has been made, appears to be justified.

All the applicant's submissions have failed and therefore his application against the impugned decision must be dismissed.

Furthermore his conclusions in respect of compensation for the injury which he claims to have suffered cannot be accepted because he has not succeeded in proving the existence of any wrongful act affecting him.

Costs

The applicant has failed in his application. Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However Article 70 of the said Rules provides that costs incurred by institutions in actions brought by servants of the Communities must be borne by the institutions.

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 respective Protocols on the Statute of the Court of Justice annexed to the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community;
Having regard to the respective Staff Regulations of officials of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application 35/64 as unfounded;**
2. **Orders the applicant to pay costs except those incurred by the defendant.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 7 April 1965.

H. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED 17 MARCH 1965[1]

Mr President,
Members of the Court,

Following an internal competition held by the European Parliament Mr Ducci was appointed Head of Division (A 3) in the General-Directorate for General Affairs by a decision dated 12 May 1964.

Mr Alfieri, who is a Grade L/A 4 official in the language service of the Parliament, and who had taken part in the competition, has made an application to you directed principally against the appointment of Mr Ducci. He also criticizes, for various reasons, the publication of the disputed notice of the competition, the notice itself and the decisions by which the Selection Board let Mr Falcone take part in the competition and by which it drew up the list of suitable persons mentioned in Article 30 of the Staff Regulations. Finally as an alternative point he asks you to order the Parliament to pay damages.

I

An important—if not essential—part of the discussion between the parties hinges on the admissibility of the conclusions and, where applicable, the submissions in support of them.

First of all the Parliament asserts that, in so far as the conclusions are directed against various acts which formed part of the competition procedure, they are out of time and that, since the appointment is only impugned by reason of the alleged illegality of these acts or on the grounds that they did not take place, and not for some defect appertaining to the appointment itself, the application is in its view also inadmissible to the extent that it is directed against the decision of appointment. Developing this line of argument further it recalls that according to the case-law of this Court (see in particular the judgment in the Lassalle case concerning the holding of a competition) certain preparatory acts prior to

1 – Translated from the French.