General Court of the European Union
PRESS RELEASE No 107/15
Luxembourg, 24 September 2015

Press and Information

Judgment in Cases T-124/13 Italy v Commission and T-191/13 Spain v Commission

The General Court annuls three competition notices which require the candidates to choose English, French or German as their second language and as the language of communication with EPSO

In December 2012 and January 2013, the European Personnel Selection Office (EPSO) published three open competition notices in the *Official Journal of the European Union* in order to constitute a reserve for recruitment.[1] Those notices required candidates to have thorough knowledge of one of the official languages of the EU (23 languages at the time) and a satisfactory knowledge of a second language to be chosen by each candidate from English, French or German. The second language chosen had to be used for communications between EPSO and the candidates and for the selection procedure and in the tests for the competition. The notices indicated that that restriction was justified, in particular, by the interests of the service, so that candidates were immediately operational and able to communicate efficiently in their daily work; otherwise the effective functioning of the institutions would be severely impaired.

Italy and Spain requested the General Court to annul the relevant competition notices. In essence, those two Member States took the view that the notices are discriminatory and that they infringe the language regime of the EU laid down by 'Regulation No 1'[2] of 1958 and the principle of proportionality. Italy and Spain challenged the requirement imposed on candidates to choose English, French or German not only as the language of communication with EPSO, but also as the second language for the competitions concerned.

By today's judgment, the General Court annuls the contested competition notices.

As regards the limitation on the languages which may be used in communications between the candidates and EPSO, Italy maintains that European citizens have the right to address the EU Institutions using any one of the 23 official languages, and that they have the right to receive answers from the Institutions in the same language. Therefore, the limitation at issue constitutes discrimination against citizens whose official language is not English, French or German. Spain adds that, in practice, that limit confers a competitive advantage on all candidates whose first language is one of the three languages mentioned above.

Citing a judgment of the Court of Justice on that subject,[3] the General Court states that, even if the Institutions may determine the detailed rules for the language regime in their internal rules, the Institutions concerned by the contested notices did not use that option, since competition notices cannot in any way be regarded as internal rules. Thus, in the absence of other relevant provisions,

[1] Notice of open competition EPSO/AST/125/12 to constitute a reserve list from which to recruit assistants in fields of audit, finance/accounting and economics/statistics (OJ 2012 C 394A, p. 1), Notice of open competition to constitute a reserve from which to recruit assistants in the fields of biology, life and health sciences, chemistry, physics and materials science, nuclear research, civil and mechanical engineering, electrical engineering and electronics (OJ 2012 C 394A, p. 11), and Notice of open competition EPSO/AD/24/13 to constitute a reserve from which to recruit administrators (AD 6) in the fields of security of buildings and building services engineering (OJ 2013 C 29A, p. 1).

[2] Council Regulation No 1 of 15 April 1958 determining procedures for effecting the communications prescribed under Article 41 of the Treaty (English special edition: Series I Volume 1952-1958 p. 74), as amended.

[3] Case: C-566/10 P; Italy v Commission see Press Release No 153//12.

the relations between the Institutions and their officials and agents fall within the scope of Regulation No 1. The same is true as regards relations between the Institutions and candidates for an external competition who are not, in principle, either officials or agents. The General Court adds that, unlike the Office for Harmonisation in the Internal Market (OHIM), the Institutions concerned by the contested notices are not subject to a specific language regime. **The General Court concludes that the contested notices infringe Regulation No 1 on the ground that they limit correspondence with EPSO to the three languages mentioned above. That ground is sufficient in itself to justify the annulment of the three notices, without there being any need to examine whether they give rise to unlawful discrimination on grounds of language**. Thus, the General Court explains that **candidates are entitled to choose the language in which to draft the application form from any of the official languages** and that correspondence from EPSO must also be written in the language chosen by candidates. The use of one of the three languages by a candidate who would have preferred to communicate with EPSO in another official language does not, contrary to the Commission's arguments, ensure clarity and understanding of communications between EPSO and the candidates.

As to the obligation for the candidates to choose English, French or German as a second language for the competition, the General Court again refers to the case-law of the Court of Justice, according to which limiting choice to a small number of languages constitutes discrimination on grounds of language. It is clear that such a requirement favours certain potential candidates (namely those who have a satisfactory knowledge of at least one of the designated languages), since they may participate in the competition and thus be recruited as officials or agents of the EU, whereas the others who do not have such knowledge are excluded. The General Court examines the reasoning for the limitation in the contested notices in order to determine whether it may be justified.

According to the General Court, the claim that English, French or German remain the most widely used languages, taking account in particular of the longstanding practice in the EU with regard to internal communications, is a vague statement which is not supported by any specific evidence. **It cannot be presumed that a newly recruited official who does not master one of the working languages or languages of deliberation in an Institution is incapable of immediately carrying out useful work in the institution concerned**.

The General Court observes that the statistics produced by the Commission do not support its assertions regarding the use of languages within the European Institutions. With regard to the statistics concerning the learning of foreign languages in the Member States of the EU, also produced by the Commission, the General Court considers that they do not rule out the existence of discrimination. **The General Court concludes that the Commission has not established that the limitation concerned is in the interests of the service. In its view the obligation for candidates to choose English, French or German as a second language is not objectively justified or proportionate to the objective pursued by the Commission, namely to recruit officials and agents who are immediately operational**.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

The full texts T-124/13 & T-191/13 of the judgments are published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355