

Joined Cases T-17/90, T-28/91 and T-17/92

Erminia Camara Alloisio and Others

v

Commission of the European Communities

(Officials — Inadmissibility — Act adversely affecting an official —
Composition of the selection board)

Judgment of the Court of First Instance (Third Chamber), 15 July 1993 II - 843

Summary of the Judgment

1. *Actions for annulment of measures — Actionable measures — Definition — Measures having a binding legal effect — Preparatory acts — Excluded*
(EEC Treaty, Art. 173)
2. *Officials — Actions — Act adversely affecting an official — Preparatory act — Reopening of a competition procedure following the annulment of certain decisions of the selection board — Inadmissibility*
(Staff Regulations, Arts 90 and 91)
3. *Officials — Actions — Action for damages brought in the absence of a pre-litigation procedure in accordance with the Staff Regulations — Inadmissibility*
(Staff Regulations, Arts 90 and 91)
4. *Officials — Actions — Judgment annulling a measure — Effects — Annulment of a decision of a selection board — Obligations of the administration — Changes to the composition of the selection board — Permissible — Conditions*
(EEC Treaty, Art. 176; Staff Regulations, Annex III)
5. *Officials — Competitions — Assessment of candidates' abilities — Power of assessment of the selection board — Review by the Court — Limits*
(Staff Regulations, Annex III)

1. Only measures producing binding legal effects of such a kind as to affect the applicant's interests by bringing about a distinct change in his legal position constitute acts against which an action for annulment may be brought. In the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, an act is in principle open to review only if it is a measure definitively laying down the position of an institution on the conclusion of that procedure, and not a provisional measure intended to pave the way for the final decision.
2. Acts preparatory to a decision do not adversely affect an official within the meaning of Article 90(2) of the Staff Regulations and therefore can be contested only incidentally in an action against a measure capable of being annulled. Such is the case as regards a decision of the administration to reopen a competition procedure following the annulment by the Court of certain decisions of the selection board. It is possible to deduce directly from Article 176 of the Treaty in conjunction with Annex III of the Staff Regulations that such a decision, which does not contain any matter of a decisional nature separable from the competition procedure, is a necessary result, essential for allowing the procedure to be continued after the judgment of annulment. The effects of that measure do not go beyond those intrinsic to an intermediate procedural act and do not affect the candidates' legal position or their position under the Staff Regulations. It therefore constitutes a preparatory act whose lawfulness could be open to challenge only in the context of an action against the decision taken on completion of the competition procedure.
3. In the absence of an act having an adverse effect, the pre-litigation procedure, the purpose of which is to permit and encourage the amicable settlement of differences which have arisen between an official and the administration is, in principle, a two-stage procedure. Under Article 90(1) of the Staff Regulations, any official may submit to the appointing authority a request that it take a decision relating to him. In the event of an unfavourable reply or in the absence of a reply, the person concerned may submit a complaint challenging the express or implied rejection of his request in accordance with Article 90(2) of the Staff Regulations in order to compel the administration to reconsider its decision in the light of the objections made in the complaint.

As regards the admissibility of a claim for compensation, it is only where there is a direct link between an action for annulment and such a claim that the latter is admissible as ancillary to the action for annulment, without necessarily having to be preceded both by a request from the person concerned to the appointing authority for compensation for the damage allegedly suffered and by a complaint challenging the validity of the implied or express rejection of that request. However, where the damage alleged does not stem from an act whose annulment is sought, but from several wrongful acts or omissions alleged against the administration, it is imperative that the pre-litigation procedure should be initiated by a request that the appointing authority compensate for that damage and continued, where appropriate, by a complaint made against the decision to reject the request.

4. In the event of an act of an institution being annulled by one of the Community courts, it is for the institution, pursuant to Article 176 of the Treaty, to take the necessary measures to comply with the judgment. Where a decision of a selection board has been annulled, for failure to give a statement of reasons and for procedural irregularity, compliance with the judgment involves restoring the situation prevailing prior to the occurrence of the facts found unlawful by the Court. However, where, for reasons which are beyond its control, it is impossible for the administration to reconstitute the selection board as originally composed, it may, for the sole purpose of ensuring the continuity of the Community civil service, replace certain members, while in so doing maintaining a situation which is as close as possible to the original situation.
5. The assessments made by a selection board when appraising candidates' abilities may be subject to review by the Court only where there is a flagrant breach of the rules governing the selection board's work.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
15 July 1993

In Joined Cases T-17/90,

Erminia Camara Alloisio and Others

T-28/91,

Erminia Camara Alloisio and Others

and T-17/92,

Heidrun Blieschies and Others,

* Language of the case: French