

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
28 February 1992 *

In Case T-51/90,

Laura Moretti, an official of the Commission of the European Communities, residing in Wezembeek-Oppen (Belgium), represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at SARL Fiduciaire Myson, 1 Rue Glesener,

applicant,

v

Commission of the European Communities, represented by Sean van Raepenbusch, a member of its Legal Service, acting as Agent, assisted by Claude Verbraeken and Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Roberto Hayder, representing its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Commission of 1 January 1988 appointing Mr A. to the post declared vacant under reference no COM/LA/2036/86,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Fourth Chamber),

composed of: R. García Valdecasas, President, D. A. O. Edward and C. P. Briët,
Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 5 December 1991,

gives the following

* Language of the case: French.

Judgment

Facts and procedure

1 The applicant, an official of the Commission, entered into the service of the European Communities on 1 August 1972 as a translator. She is now a principal translator in Grade LA 4 in the Directorate-General for Translation. In reply to a question by the Court, her representative stated at the hearing that she holds a university diploma in political sciences.

2 On 12 December 1986 the Commission published Notice of Vacancy No COM/LA/2036/86 regarding a post of lawyer-reviser of Italian mother-tongue (LA 5/LA 4) in the Legal Service. Under the heading 'Qualifications required', the notice of vacancy stated that the candidates had to be able to show that they had 'a full university legal education for which a final degree has been awarded'. No application under Article 29(1)(a) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') was made following that notice. The vacant post was then filled successively by two members of the temporary staff.

3 On 19 October 1987 the Commission published, within the institutions, Notice of Vacancy No COM/LA/2036/86. The description of the post and the qualifications required were the same as those in the previous notice. The post was classified, however, as being within career bracket LA 7/LA 6. One application under Article 29(1)(a) of the Staff Regulations and two applications under Article 29(1)(c) of the Staff Regulations were received.

4 Since Mr A., an official in Grade LA 6 at the Court of Justice, was considered, by virtue of his education and work experience, to be the candidate best suited to the requirements of the duties to be performed, he was transferred to the Commission on 1 January 1988 and appointed to the post of lawyer-reviser which had been the subject of Notice of Vacancy No COM/LA/2036/86.

- 5 In the meantime, as a result of the general lack of staff with legal skills, the legal service had requested that an open competition be organized to constitute a reserve for the future recruitment of lawyer-revisers (career bracket LA 5/LA 4). On 15 July 1987 Notice of Open Competition No COM/LA/563 was published (Official Journal 1987 C 185, p. 13) to fill four posts of lawyer-reviser of German, French, Italian or Dutch mother-tongue. With regard to the diplomas and other formal qualifications required, the notice of competition stated that 'candidates must have completed full university studies in law or a subject related thereto for which a final degree has been awarded'. The applicant entered herself as a candidate for that competition and on 19 April 1988 was included on the list of suitable candidates drawn up by the Selection Board following the tests.

- 6 On 28 August 1988 the Commission published Notice of Vacancy No COM/LA/1793/88 concerning a post in the Legal Service of lawyer-reviser of Italian mother-tongue. The applicant submitted an application on 16 September 1988. Not having received any information regarding the outcome of her application, she submitted on 1 September 1989 a request under Article 90(1) of the Staff Regulations that the appointing authority take a decision with regard to it.

- 7 Since, in the Commission's view, none of the candidates for the post satisfied the requirements stipulated, the Commission decided to annul Notice of Vacancy No COM/LA/1793/88. That decision was published on 23 October 1989 and the applicant was informed personally by memorandum of 30 October 1989. The post continued to be occupied by a member of the temporary staff.

- 8 On 10 November 1989 the Commission expressly rejected the applicant's request of 1 September 1989. On 24 November 1989 the applicant submitted a complaint under Article 90(2) of the Staff Regulations, first, against the decision to annul Notice of Vacancy No COM/LA/1793/88 and, secondly, against the decision to appoint Mr A. as a lawyer-reviser of Italian mother-tongue in the Legal Service. She stated that she knew neither the details nor the date of that decision. That complaint was received on 1 December 1989. During a meeting of the 'inter-services group' on 14 February 1990, in which the complaint was examined, the applicant learnt that Notice of Vacancy No COM/LA/1793/88 had been annulled

because of a change in the Legal Service's requirements and for reasons of good administration, and that Mr A.'s appointment had not been made to fill the post declared vacant under reference No COM/LA/1793/88 but to fill the post declared vacant under reference No COM/LA/2036/86. By memorandum dated 19 April 1990 the Director-General for Personnel and Administration informed the applicant of the Commission's express decision to reject her complaint of 24 November 1989.

On 9 May 1990, the applicant submitted a second complaint. In that complaint, she requested:

- the annulment of the decision taken on 1 January 1988 to appoint Mr A. to the post declared vacant under reference No COM/LA/2036/86;
- that the post of lawyer-reviser of Italian mother-tongue be filled by appointing candidates successful in Competition No COM/LA/563, which was organized for that purpose.

The Commission did not reply to the second complaint.

The applicant then commenced the present action by an application lodged at the Registry of the Court of First Instance on 11 December 1990.

The written procedure followed the normal course.

- 12 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry. At the request of the Court, the defendant produced the decision appointing Mr A. to the Legal Service.
- 13 The parties presented oral argument and their replies to questions put by the Court at the hearing on 5 December 1991.
- 14 During the hearing the Court asked the Commission to produce the text of Notice of Vacancy No COM/LA/2036/86 as published on 12 December 1986. The Commission submitted that document on 11 December 1991 together with a photocopy of the memorandum of 28 November 1986 from its Legal Service to the Directorate-General for Personnel and Administration requesting publication of that notice. On 17 December 1991 the applicant submitted her written observations on the text of the vacancy notice produced by the Commission.
- 15 The applicant claims that the Court should:
- (i) annul the decision by the Commission of 1 January 1988 to appoint Mr A. to the post declared vacant under reference No COM/LA/2036/86 without waiting for the outcome of Competition No COM/LA/563;
 - (ii) order the Commission to bear the costs.
- 16 The Commission contends that the Court should:

- (i) dismiss the action as unfounded;
- (ii) make an appropriate order as to costs.

In its rejoinder, the Commission raised an objection of inadmissibility based on the delay in bringing the action and claimed that the Court should:

- (i) dismiss the application as inadmissible or, in any event, unfounded;
- (ii) make an appropriate order as to costs.

Admissibility

First of all, the Court notes that it is apparent from the applicant's submissions that the sole purpose of the action is to bring about the annulment of the Commission's decision of 1 January 1988 appointing Mr A. to the post declared vacant under reference No COM/LA/2036/86.

In its rejoinder the Commission challenges the admissibility of the action. It states that the applicant submitted on 24 November 1989 an initial complaint against, first, the decision to annul the Notice of Vacancy No COM/LA/1793/88 and, secondly, the decision to appoint Mr A. and that that complaint was rejected on 19 April 1990. The Commission also states that the applicant submitted a new complaint on 9 May 1990 contesting Mr A.'s appointment to the post declared vacant under reference No COM/LA/2036/86 and requesting that the post of lawyer-reviser of Italian mother-tongue be filled by appointing candidates successful in Competition No COM/LA/563, and that no reply had been made to that second complaint. Since the present action was started eight months after the rejection of the first complaint, it is, in the Commission's view, inadmissible.

The Commission admits that, at the time she submitted her first complaint, the applicant did not know that Mr A. had been appointed to the post that had been declared vacant not by Notice No COM/LA/1793/88, but by Notice No COM/LA/2036/86, a fact which led to the rejection of that complaint. However, the Commission considers that that clarification does not constitute a substantial new fact which would justify extending the period for commencing the action, since both the first and the second complaints were directed against the appointment of Mr A. to a post as lawyer-reviser of Italian mother-tongue. The fact that Mr A. was appointed to post No COM/LA/2036/86 and not to post No COM/LA/1793/88 would therefore not have caused the applicant to alter her arguments in her second complaint.

- 20 During the hearing, the applicant stated, in reply to the objection of inadmissibility, that an official has a period of three months from the moment when he is notified of the decision adversely affecting him and that, if that decision does not directly concern him, the period of three months commences to run from the day on which he receives notification thereof. Until she took part in the meeting of the inter-services group on 14 February 1990 the applicant could justifiably have believed that a post was vacant and that a competition had been organized to fill it. It was only during that meeting that she learnt that Mr A. had been appointed to a post which had been declared vacant while the competition procedure was taking place. The applicant is of the opinion that she was therefore informed of the act adversely affecting her during the meeting of the inter-services group and that, by submitting a complaint within three months thereof, she has complied with the procedure laid down by Articles 90 and 91 of the Staff Regulations.
- 21 Before examining the objection of inadmissibility raised by the Commission, the Court of First Instance considers it appropriate to establish whether the applicant has an interest in the annulment of the Commission's decision of 1 January 1988 appointing Mr A. to the post declared vacant under reference No COM/LA/2036/86.
- 22 The Court draws attention to the fact that an official must have a personal interest in the annulment of the disputed act in order to bring proceedings pursuant to Articles 90 and 91 of the Staff Regulations against a decision of the appointing authority (judgment in Case 111/83 *Picciolo v Parliament* [1984] ECR 2323). An official who cannot validly lay claim to a vacant post has no legitimate interest in seeing the appointment of another candidate to that post annulled.

The Court notes, moreover, that Notice of Vacancy No COM/LA/2036/86 stipulated, under the heading 'Qualifications required', a 'full university legal education for which a final degree has been awarded', and, secondly, that the applicant did not submit an application for the post declared vacant under reference No COM/LA/2036/86. The applicant expressly acknowledged at the hearing that she has not had training or education specifically in law and does not have a degree in law, but that she has a university degree in political sciences, a degree which cannot be considered as a 'full university legal education for which a final degree has been awarded' as stipulated by Notice of Vacancy No COM/LA/2036/86. In those circumstances, the Court is of the opinion that, since the applicant neither submitted an application for the post declared vacant under reference No COM/LA/2036/86 nor satisfied the requirements stipulated in Notice of Vacancy No COM/LA/2036/86, she could not validly lay claim to the post declared vacant under that reference and cannot therefore show any personal interest in the annulment of the decision appointing Mr A. to that post.

In support of her action the applicant argued, however, that after the first publication of Notice of Vacancy No COM/LA/2036/86 the Commission decided to alter the admission requirements for the post declared vacant by publishing Notice of Open Competition No COM/LA/563. She contended that that competition was organized for the purpose, amongst others, of filling the post previously declared vacant under reference No COM/LA/2036/86, and that the Commission was obliged to fill that post by appointing candidates successful in that competition, of which she is one. She draws attention to the fact that Competition No COM/LA/563 was published in the *Official Journal of the European Communities* as a competition to fill particular posts and not to constitute a reserve for future recruitment. In view of the long and detailed procedure following publication of Notice of Competition No COM/LA/563, she denies that there could have been an administrative error. The applicant contends that the exceptional procedure of organizing an open competition to fill specific vacant posts without previously going through the different stages laid down by Article 29 of the Staff Regulations can be explained by the serious absence of internal candidates.

In this regard, the Commission contends that the publication of Notice of Competition No COM/LA/563 as a competition to fill posts and not to constitute a reserve, as the Legal Service had requested, was due to an administrative error.

The Commission adds that it was not authorized to open such a general competition to fill certain specific posts before exhausting the possibilities laid down in Article 29(1)(a) to (c) of the Staff Regulations.

- 26 The Court considers that nothing submitted during the present proceedings indicates that the procedure to fill the post declared vacant under reference No COM/LA/2036/86 was improper. After having published notice of that vacancy in December 1986 pursuant to Article 29(a) of the Staff Regulations, the Commission proceeded, in the absence of any candidates, to publish it within the institutions, as provided for by Article 29(1)(c) of the Staff Regulations, in October 1987. Mr A.'s application, submitted following that latter publication, was accepted.
- 27 The Court considers that the fact that Competition No COM/LA/563 was advertised as being for the purpose of filling four posts of lawyer-reviser of German, French, Italian or Dutch mother-tongue in no way proves that the purpose of that competition was to fill the post referred to in Notice of Vacancy No COM/LA/2036/86. On the contrary, the Commission has proved that the procedure for filling that post was carried out in conformity with the requirements of the Staff Regulations and, in particular, in the order of preference laid down in Article 29.
- 28 The Court considers that the existence of a link between Notice of Vacancy No COM/LA/2036/86 and Open Competition No COM/LA/563 has not been established, and that, consequently, the Commission was not required to suspend the procedure to fill the post referred to in Notice of Vacancy No COM/LA/2036/86 from the date of publication of Notice of Competition No COM/LA/563.
- 29 In the light of those considerations the application must be dismissed as inadmissible without it being necessary to consider the objection of inadmissibility raised by the Commission or the other arguments advanced by the applicant concerning the substance of the case.

Costs

Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- 1. Dismisses the application as inadmissible;**
- 2. Orders the parties to bear their own costs.**

García-Valdecasas

Edward

Briët

Delivered in open court in Luxembourg on 28 February 1992.

H. Jung
Registrar

R. García-Valdecasas
President