

JUDGMENT OF THE COURT (Grand Chamber)

15 March 2005 *

In Case C-160/03,

APPLICATION for annulment under Article 230 EC, brought on 8 April 2004,

Kingdom of Spain, represented by L. Fraguas Gadea, acting as Agent, with an address for service in Luxembourg,

applicant,

supported by:

Republic of Finland, represented by T. Pynnä, acting as Agent, with an address for service in Luxembourg,

* Language of the case: Spanish.

v

Eurojust, represented by J. Rivas de Andrés, abogado, and D. O'Keeffe, Solicitor,

defendant,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur) and A. Borg Barthet, Presidents of Chambers, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, E. Juhász, G. Arestis, M. Ilešič and J. Malenovský, Judges,

Advocate General: M. Poiares Maduro,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 6 October 2004,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2004,

gives the following

Judgment

- 1 By its application, the Kingdom of Spain seeks the annulment, in seven calls for applications for the recruitment of temporary staff issued by Eurojust ('the contested calls for applications'), of the point concerning documents to be submitted in English by persons submitting their application form in another language, and of the various points in each call for applications concerning candidates' qualifications in respect of knowledge of languages.

Law

- 2 Title VI of the Treaty on European Union contains provisions on police and judicial cooperation in criminal matters, namely Articles 29 EU to 42 EU.
- 3 Article 31 EU describes the objectives of common action on judicial cooperation in criminal matters.

4 Article 34(2) EU provides:

‘The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:

...

(c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;

...’.

5 Article 35 EU relates to the jurisdiction of the Court with regard to the provisions of Title VI of the Treaty on European Union. Paragraphs 6 and 7 of that article are worded as follows:

‘6. The Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or

misuse of powers. The proceedings provided for in this paragraph shall be instituted within two months of the publication of the measure.

7. The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted under Article 34(2) whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions established under Article 34(2)(d).'

6 Article 41(1) EU provides:

'Articles 189, 190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.'

7 Article 46 EU, which forms part of the final provisions of the Treaty on European Union, is worded as follows:

'The provisions of the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of

Justice of the European Communities and the exercise of those powers shall apply only to the following provisions of this Treaty:

...

(b) provisions of Title VI, under the conditions provided for by Article 35;

...’

8 The first paragraph of Article 12 EC provides:

‘Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.’

9 The first paragraph of Article 230 EC is worded as follows:

‘The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.’

10 Article 236 EC provides that the Court of Justice 'shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment'.

11 Article 1 of Regulation No 1 of the Council of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), is worded as follows:

'The official languages and the working languages of the institutions of the Union shall be Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish.'

12 Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ 2002 L 63, p. 1, 'the Decision') is based on the Treaty on European Union, and in particular Articles 31 EU and 34(2) (c) EU. It provides in Article 1 that Eurojust is to be a body of the Union with legal personality.

13 Under Article 2 of that decision, Eurojust is to be composed of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence.

14 The objectives of Eurojust, described in Article 3 of the Decision, are to stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in those States, to improve cooperation between those authorities, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests, and to support those authorities in order to render their investigations and prosecutions more effective. As appropriate, Eurojust may also assist investigations and prosecutions concerning a Member State and a non-member State, or a Member State and the Community.

15 Article 30 of the Decision, headed 'Staff', provides:

'1. Eurojust staff shall be subject to the rules and regulations applicable to the officials and other servants of the European Communities, particularly as regards their recruitment and status.

2. Eurojust staff shall consist of staff recruited according to the rules and regulations referred to in paragraph 1, taking into account all the criteria referred to in Article 27 of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 ... , including their geographical distribution. ...

3. Under the authority of the College, the staff shall carry out its tasks bearing in mind the objectives and mandate of Eurojust ...'.

16 Article 31 of that decision, headed 'Assistance with interpreting and translation', provides:

'1. The official linguistic arrangements of the Union shall apply to Eurojust proceedings [In the Spanish text: 'El régimen lingüístico de las instituciones de la Comunidad Europea será aplicable a Eurojust'].

2. The annual report to the Council, referred to in the second subparagraph of Article 32(1), shall be drawn up in the official languages of the Union institutions.'

17 Articles 12 to 15 of the Conditions of employment of other servants of the European Communities ('the CEOS') concern the conditions of engagement of the latter. Article 12 provides:

'1. The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Communities.

...

2. A member of the temporary staff may be engaged only on condition that:

...

(e) he produces evidence of a thorough knowledge of one of the languages of the Communities and of a satisfactory knowledge of another language of the Communities to the extent necessary for the performance of his duties.’

18 Article 91 of the Staff Regulations of Officials of the European Communities (‘the Staff Regulations’), which is applicable to temporary staff by reason of Article 73 of the CEOS, which refers to the provisions of Title VII of the Staff Regulations relating to appeals, sets out the conditions governing the admissibility of appeals brought by officials before the Court. It is settled case-law that that remedy is available to candidates in open competitions or selection procedures, whether or not they are servants of the Communities (see, to that effect, Case 23/64 *Vandevyvere v Parliament* [1965] ECR 157, 163).

19 On 13 February 2003, the contested calls for applications were published in the *Official Journal of the European Union*. In those calls for applications, the requirements relating to knowledge of languages are the following:

— for the position of Data-protection Officer (OJ 2003 C 34 A, p. 1), ‘excellent knowledge of English and French. Ability to work in other European Community languages would be an asset’;

— for the position of Accounting Officer (OJ 2003 C 34 A, p. 4), ‘thorough knowledge of one official language of the European Union and a satisfactory

knowledge of another language of the Union, including a satisfactory knowledge of English’;

- for the position of IT-informatics expert (webmaster) of the European judicial network (OJ 2003 C 34 A, p. 6), ‘a good knowledge of English is essential. Capacity to communicate in at least two other official languages of the European Communities, including French, will definitely be considered an asset’;

- for the position of Legal Officer (OJ 2003 C 34 A, p. 11), ‘excellent knowledge of English and French. Ability to work in other European Community languages would be an asset’;

- for the position of Librarian/Archivist (OJ 2003 C 34 A, p. 13), no particular requirements;

- for the position of Press Officer (OJ 2003 C 34 A, p. 16), ‘capacity to communicate in at least English and French. Knowledge of other official languages of the European Communities will be an asset’;

- for the position of Secretary to the General Administration (OJ 2003 C 34 A, p. 18), ‘a thorough knowledge of English and French. A satisfactory knowledge of other Community languages would definitely be considered an asset’.

- 20 Those calls for applications state that the application form must be completed by candidates in their own language and in English. In addition, that form must be accompanied by a letter of motivation and a curriculum vitae, drawn up in English only.

Pleas in law

- 21 The Kingdom of Spain puts forward three pleas in law in support of its action.
- 22 The first plea alleges infringement of Article 12(2)(e) of the CEOS, which provides that candidates may be required to have a thorough knowledge only of one language, namely, in principle, their mother tongue, and a satisfactory knowledge of another language, the choice of which is left to candidates.
- 23 The second plea alleges infringement of the rules governing the linguistic arrangements applicable to Eurojust, as laid down in Article 31 of the Decision. Those arrangements are defined by Regulation No 1, Article 1 of which specifies the official languages and the working languages of the institutions. Since no provision of the Decision states that the working languages of Eurojust are to be English and French, all the official languages of the Union may be used by the members of Eurojust and the staff of the secretariat of that body. Consequently, the calls for applications infringe the linguistic arrangements applicable to Eurojust.

24 The third plea alleges breach of the principle of the prohibition of discrimination set out in Article 12 EC and of the obligation to state reasons. The Kingdom of Spain submits in that regard that requiring candidates to complete certain documents in English and the conditions in the calls for applications relating to knowledge of English and French constitute manifest discrimination on grounds of nationality, since it favours candidates whose mother tongue is English or French. The more favourable treatment of those two languages is neither justified nor even explained, which constitutes a breach of the obligation to state reasons referred to in Article 253 EC.

Admissibility of the action

Arguments of the parties

25 Before putting forward its arguments on the substance, Eurojust raises an objection of inadmissibility which must be examined.

26 Eurojust contends that the action is inadmissible because there is no legal basis on which it can be brought.

27 In the first place, the action cannot be brought under Article 230 EC since the list of acts the legality of which may be reviewed by the Court does not mention those adopted by Eurojust, which is a body of the European Union with separate legal personality.

- 28 In the second place, the action cannot be brought under Article 35(6) EU since the contested acts are neither a framework decision nor one of the acts referred to in that provision.
- 29 In the third place, the action cannot be brought under Article 91 of the Staff Regulations in so far as, although that provision allows a candidate to file an appeal against the call for applications, it does not permit a Member State to bring an action to challenge acts alleged to affect adversely persons to whom the Staff Regulations apply.
- 30 In the fourth place, the action cannot be brought under the Decision, since the latter does not give the Court jurisdiction to rule on acts adopted by Eurojust.
- 31 Finally, the action cannot be brought under Article 35(7) EU since it is not an action regarding the interpretation of Article 31(1) of the Decision brought in accordance with the procedure referred to in Article 35(7) EU.
- 32 The Kingdom of Spain recalls that the Community is a community based on the rule of law whose acts are subject to judicial review (Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 38) and submits that no act emanating from a body with legal personality which is subject to Community law can be exempt from judicial review.

- 33 It acknowledges that, pursuant to Articles 35 EU and 46 EU, the jurisdiction of the Court in the context of the third pillar is limited. However, the contested calls for applications cannot be considered to be acts adopted in that context and the Court's review of those acts can likewise not be made subject to conditions.
- 34 The Kingdom of Spain nevertheless leaves to the discretion of the Court the choice of the most appropriate legal basis for its action, claiming that, in any event, any error which it may have made in that choice should not result in a declaration of inadmissibility or in no decision being given on the substance in this case.

Findings of the Court

- 35 First of all, it must be pointed out that it is for the applicant to choose the legal basis of its action and not for the Community judicature itself to choose the most appropriate legal basis (see, to that effect, Case 175/73 *Union syndicale and Others v Council* [1974] ECR 917, and the order of the Court of First Instance in Case T-148/97 *Keeling v OHIM* [1998] ECR II-2217). It is clear from the examination of the action that the applicant brought it under Article 230 EC. The admissibility of that action must therefore be examined in the light of that provision.
- 36 As is clear from Article 230 EC, the Court 'shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties'.

37 Clearly, the acts contested in the present action are not included in the list of acts the legality of which the Court may review under that article.

38 Moreover, Article 41 EU does not provide that Article 230 EC is to apply to the provisions on police and judicial cooperation in criminal matters in Title VI of the Treaty on European Union, the jurisdiction of the Court in such matters being defined in Article 35 EU, to which Article 46(b) EU refers.

39 In any event, the Kingdom of Spain has not denied that the contested calls for applications are to be regarded as acts adopted under Title VI of the Treaty on European Union.

40 It follows that the action brought under Article 230 EC cannot be declared admissible.

41 As regards the right to effective judicial protection in a community based on the rule of law which, in the view of the Kingdom of Spain, requires that all decisions of a body with legal personality subject to Community law be amenable to judicial review, it must be observed that the acts contested in this case are not exempt from judicial review.

- 42 As is clear from Article 30 of the Decision, Eurojust staff are to be subject to the rules and regulations applicable to officials and other servants of the European Communities. It follows that, in accordance with the consistent case-law, the main parties concerned, namely the candidates for the various positions in the contested calls for applications, had access to the Community Courts under the conditions laid down in Article 91 of the Staff Regulations (to that effect, see *Vandevyvere v European Parliament*, cited above, 163).
- 43 In the event of such an action, Member States would be entitled to intervene in the proceedings in accordance with Article 40 of the Statute of the Court of Justice and could, where appropriate, as is clear from the second and third paragraphs of Article 56 of that Statute, appeal against the judgment of the Court of First Instance.
- 44 It follows from all those considerations that the application is inadmissible.

Costs

- 45 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Eurojust has applied for costs and the Kingdom of Spain has been unsuccessful, the Kingdom of Spain must be ordered to pay the costs. In accordance with the first subparagraph of Article 69(4) of the Rules of Procedure, the Republic of Finland, which has intervened in the proceedings, must bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Declares that the application is inadmissible;**

- 2. Orders the Kingdom of Spain to pay the costs;**

- 3. Orders the Republic of Finland to bear its own costs.**

[Signatures]