

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)  
6 November 1997

Case T-101/96

**Maria Elisabeth Wolf**  
v  
**Commission of the European Communities**

(Officials – Open competition – Refusal to admit to tests – Requisite professional experience)

Full text in French . . . . . II - 949

**Application for:** annulment of the decision of the selection board in competition COM/A/955 not to admit the applicant to that competition, and for compensation for the non-material damage suffered by her as a result of that decision.

**Decision:** Application dismissed.

### **Abstract of the Judgment**

On 4 October 1995 the Commission published open competition notice COM/A/955 with a view to recruiting principal administrators (A 5/A 4) of Austrian nationality (OJ 1995 C 259 A, p. 9, in German only).

Point III.B.3 of the notice lays down a condition for admission of 12 years' experience as follows:

‘Requisite professional experience

Candidates must show that since obtaining the university degree qualifying them to enter the present competition they have had professional experience (in a post commensurate with their training) of at least 12 years, at least 6 of which bearing a relationship to the duties relevant to the present competition.

Such professional experience must be set out in detail in the application.’

The applicant lodged her application form for the competition on 16 November 1995.

Under heading 8 ‘Bildungsweg’ (Education) of the application form she referred to a ‘Magister der Naturwissenschaften (Lehramt Biologie)’, awarded on 21 October 1982 by the University of Vienna, and a ‘Dr. phil. Hauptfach: Zoologie, Nebenfach Botanik’, awarded on 28 April 1987 by the same University following a course of study between October 1982 and April 1987.

The applicant appended to her application form of 16 November 1995 supporting documents in respect of each of the five activities referred to under the heading 'Berufserfahrung' (Professional experience). So far as concerns her employment at ÖSTAT, the Austrian central statistical office, the applicant provided *inter alia* her contract of employment, dated 26 June 1991, and an agreement supplementary to that contract, dated 12 January 1993. Her 'Vorrückungssichttag' (reference date for reckoning her period of service) was set first of all at 14 September 1982 and, subsequently, at 26 February 1980.

The applicant also appended to her application form a curriculum vitae in English which included four annexes. Her doctoral studies were listed in the annex entitled 'Education' rather than in that entitled 'Employment'.

On 6 December 1995 the applicant lodged an additional form in English setting out her curriculum vitae as previously lodged. Under the title 'Educational Background', she indicated in particular 'October 1982: Degree "Magister der Naturwissenschaften" from the University of Vienna. April 1987: "Dr. philosophiae" from the University of Vienna'. Under the title 'Professional Background' she mentioned the same activities as those indicated under heading 10 'Berufserfahrung' of the application form.

By letter of 15 February 1996, the Head of Unit 7 'Recruitment' of Directorate A 'Personnel' of Commission Directorate-General IX Personnel and Administration (Unit IX.A.7) informed the applicant that the selection board had not admitted her to the competition. On the form appended to that letter, which included the list of all the possible grounds for refusing candidatures, a tick had been placed in the box indicating that the candidate had not produced documentary evidence of his or her professional experience before the deadline of 8 December 1995.

By letter of 4 March 1996 to the Head of Unit IX.A.7 the applicant requested that her application be reconsidered.

By letter of 26 March 1996 the Head of Unit IX.A.7 informed the applicant that the selection board had decided to adhere to its decision not to admit her to the competition on the ground that she did not have the requisite 12 years' professional experience.

On 28 March 1996, although she had not yet received the letter of 26 March 1996, the applicant wrote to the Head of Unit IX.A.7 requesting to be admitted to the competition. With regard to her doctoral studies, the applicant explained, in particular, that the subject of her thesis was the assessment of bird populations by means of a method used under the Common Fisheries Policy and that, at first, half and, subsequently, the whole of that period of study was recognized as professional experience by ÖSTAT, as attested by the agreement supplementary to that contract of 12 January 1993.

By letter of 1 April 1996, in reply to the letter from the Head of Unit IX.A.7 of 26 March 1996, the applicant pointed out that the professional experience she had acquired after her doctorate began on 12 July 1987 rather than in February 1988. She stated that her period of doctoral studies should be recognized as being part of her 'professional experience' and again requested that her application be reconsidered.

By letter of 31 May 1996, the Head of Unit IX.A.7 informed the applicant that the selection board had reconsidered her file and decided to adhere to its original decision.

**Admissibility of the action in so far as it is directed against the selection board's decision of 31 May 1996**

It is apparent from the Commission's letter of 31 May 1996 that reconsideration of the file did in fact take place after receipt of the letters of 28 March and 1 April 1996, so that the selection board's decision contained in the letter of 31 May 1996 cannot be considered to be a purely confirmatory act (paragraph 30).

See: T-82/92 *Cortes Jimenez and Others v Commission* [1994] ECR-SC II-237, paras 14 to 17

Moreover, where a confirmed decision has not become final, the person concerned is entitled to challenge either the confirmed decision, the confirmatory decision or both. In the present case, the time-limit within which an action could be brought against the decision of 26 March 1996, notified to the applicant after 28 March 1996, had not expired on the date when the action was brought (27 June 1996), so that the applicant was entitled to challenge both decisions of 26 March and 31 May 1996 (paragraph 31).

See: T-64/92 *Chavanne de Dalmassy and Others v Commission* [1994] ECR-SC II-723, para. 25

Accordingly, the plea that the action is inadmissible in so far as it is directed against the decision of 31 May 1996 must be rejected.

## Substance

The applicant puts forward two sets of pleas in law. The first set of pleas, relied upon in support of her application for the award of ECU 1 by way of token damages, is based, essentially, on the alleged error committed by the selection board in its first decision of 15 February 1996 in rejecting her candidature on the basis of the absence of documentary evidence of her professional experience, whereas the selection board subsequently adhered to its original decision on another basis, namely that she had not provided proof of 12 years' professional experience. In the second set of pleas in law the applicant claims, essentially, that the selection board committed a manifest error of assessment in failing to take her doctoral studies into consideration as 'professional experience'. In her reply, she claims that that error also constitutes a wrongful act on the part of the administration in the performance of its duties conferring entitlement to token damages of ECU 1. The second set of pleas in law should be examined first (paragraphs 33 and 34).

*The second set of pleas in law alleging, in particular, a manifest error of assessment in the selection board's decisions contained in the letters of 26 March and 31 May 1996*

It is apparent from points III.B.3, IV.C.1 and X.1 of competition notice COM/A/955 that the applicant was required to specify on the application form the nature and duration of the activities by reference to which she sought to meet the criteria of 12 years' professional experience provided for in point III.B.3 of the competition notice, and to produce photocopies of supporting documents (paragraph 57).

It is not for a selection board, faced with incomplete or ambiguous documents, to contact the candidate for the purpose of clarifying omissions or ambiguities. *A fortiori*, it is not for a selection board, when dealing with an application form and a curriculum vitae containing a list of specific activities that the candidate would like to have considered as professional experience for admission to the competition to

investigate whether the candidate could have put forward other activities and to ask the candidate to provide documentary evidence to that end (paragraph 64).

See: T-54/91 *Almeida Antunes v Parliament* [1992] ECR II-1739 para. 36; T-80/96 *Fernandes Leite Mateus v Council* [1997] ECR-SC II-259, para. 30

Even if the selection board had been entitled to reconsider the applicant's candidature on the basis of a question which did not appear in the application form, contrary to points III.B.3, IV.C.1 and X.1 of the competition notice, a selection board in a competition on the basis of qualifications and tests has a broad discretion when assessing the qualifications and relevant experience of the candidates and the Court of First Instance must confine itself to examining whether the exercise of that discretion was vitiated by a manifest error (paragraph 68).

See: T-115/89 *González Holguera v Parliament* [1990] ECR II-831, para. 54

The selection board did not commit a manifest error of judgment in considering that the applicant's doctoral studies between 1982 and 1987, undertaken immediately after she had obtained her Magister diploma and at the same university, did not constitute 'professional' experience. The preparation of her thesis should be regarded in principle as a purely academic activity (paragraph 70).

The fact that, when preparing her thesis, the applicant may have acquired or extended her knowledge in the field of statistics referred to in the competition notice does not in itself prove that such experience should be considered *professional* experience within the meaning of that notice. A purely academic activity does not afford the person concerned the same kind of experience as that acquired in the

context of employment, whether gainful or not, or as a self-employed person (paragraph 71).

So far as concerns the alleged practice of the Commission and other Community institutions of treating training following the degree qualifying a candidate for a competition as professional experience, the applicant has adduced no evidence to prove the existence of such a practice in the context of competitions in respect of which there is no express provision to that effect. Likewise, a candidate for a particular competition who has not been admitted to take part in it cannot properly rely upon the conditions of admission to other competitions which were organized by different institutions according to different procedures and which pursued a different aim (paragraph 73).

See: T-82/92 *Cortes Jimenez v Commission*, cited above, para. 44

Finally, with regard to the applicant's argument that the Austrian authorities would have treated her doctoral studies as professional experience for the purposes of determining the reference date for calculating length of service in accordance to the *Vertragsbedienstetengesetz* 1948 (Law on contract workers, VBG), the concept of professional experience must be interpreted exclusively in the light of the aims of the competition in question, in particular since an interpretation on the basis of the national law of each candidate would inevitably lead to differences in treatment (paragraph 74).

See: T-50/89 *Sparr v Commission* [1990] ECR II-207, para. 18

In its decision of 31 May 1996 the selection board did not commit a manifest error of assessment nor did it disregard the competition notice and the guide to candidates or breach the principles of sound administration by not recognizing as professional experience the period from October 1982 to April 1987 in which the applicant was



preparing her doctoral thesis. In that decision the selection board also complied with its obligation to provide a statement of reasons by stating that, when calculating professional experience, it had taken into consideration, in respect of all the candidates, only actual practical work alone and that it had taken no account of additional or postgraduate studies (paragraphs 81 and 82).

*The first group of pleas in law alleging, in particular, breach of the obligation to provide a statement of reasons and a manifest error of assessment vitiating the selection board's decision contained in the letter of 15 February 1996*

Officials may choose to challenge a decision adversely affecting them by either an action for annulment or an action for damages or even both. Where a selection board decides to refuse to admit a candidate to a competition, the person concerned may either lodge a complaint within the period prescribed by Article 90(2) of the Staff Regulations or bring an action directly before the Court of First Instance within the period prescribed by Article 91(3) of the Staff Regulations (paragraph 92).

See: 264/88 and 264/88 R *Valle Fernandez v Commission* [1988] ECR 6341, paras 11 to 13;  
T-59/96 *Burban v Parliament* [1997] ECR-SC II-331, para. 25

In the present case, the applicant did not lodge a complaint against the decision of 15 February 1996. Since that decision was notified before 4 March 1996, the action, dated 27 June 1996, was thus commenced outwith the period of three months prescribed by Article 91(3) of the Staff Regulations (paragraph 93).

The first group of pleas in law submitted by the applicant with regard to the decision of 15 February 1996 is accordingly inadmissible (paragraph 94).

In any event, in so far as the decision of 15 February 1996 was inaccurate in stating that the applicant had not produced any documents as evidence of the professional experience, that inaccuracy was corrected by the subsequent decision of 26 March 1996 in response to the applicant's request of 4 March 1996 (paragraph 95).

Accordingly, in any event, the applicant has not suffered any non-material damage such as to justify even token damages (paragraph 96).

**Operative part:**

**The application is dismissed.**