

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
20 July 1998

Case T-61/96

José Francisco Meoro Avilés
v
Commission of the European Communities

(Notice of competition – Non-submission of application – Action for annulment
– Inadmissibility)

Full text in Spanish II - 1289

Application for: annulment, under the fourth paragraph of Article 173 of the EC Treaty, of competition notices EUR/LA/97 and EUR/LA/98 of 1 March 1996 (OJ 1996 C 62 A, p. 9, Spanish version only), and an order requiring the Commission to modify any publication relating to access to the Community public service, in such a way as to include 'Ingeniería Técnica' (technical engineering) amongst the 'national educational qualifications required for admission to open competitions'.

Decision: Application inadmissible.

Abstract of the Order

On 1 March 1996 two notices of competitions (EUR/LA/97 and EUR/LA/98) were published in order to establish reserves for the recruitment of Spanish-language translators and assistant translators. Those notices of competitions required, as regards university qualifications obtained in Spain, completion of higher studies at degree ('licenciatura') level. That requirement was repeated in the guide to candidates (guide) accompanying the notices of competition.

The university qualification held by the applicant, an industrial technician of Spanish nationality, is a 'diplomatura'. That qualification, awarded following a short period of study, is not of the level required to participate in the competitions. The applicant did not apply to take part in either of the competitions.

By application lodged at the Registry of the Court of First Instance on 30 April 1996 the applicant brought the present action.

Admissibility

Under Article 111 of the Rules of Procedure, where an application is manifestly inadmissible the Court may, without following the procedure, determine the matter by reasoned order. In the present case the Court considers that it is sufficiently enlightened by the documents in the file and decides that there is no need to open the oral procedure (paragraph 26).

The fourth paragraph of Article 173 of the EC Treaty empowers every natural or legal person to institute proceedings in respect of a decision which, although apparently taken in the form of a regulation, is of direct and individual concern to him. The test for distinguishing between a decision and a regulation is whether or not the contested measure has general application. Thus a regulation is defined as a measure of an essentially legislative nature, applicable not to a limited number of persons, defined or identifiable, to whom it is addressed but to categories of persons viewed abstractly and in their entirety. A measure does not lose its character as a regulation simply because it may be possible to ascertain the number or even the identity of the persons to which it applies at any given time, provided that there is no doubt that the measure is applicable as the result of an objective situation of law or of fact which it specifies and which is in harmony with its ultimate objective (paragraphs 27 and 28).

See: 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others v Council* [1962] ECR 471, 478; 6/68 *Zuckerfabrik Watenstedt v Council* [1968] ECR 409, 415; 64/69 *Compagnie Française Commerciale et Financière v Commission* [1970] ECR 221, para. 11; 101/76 *Koninklijke Scholten Honig v Council and Commission* [1977] ECR 797, para. 23; 26/86 *Deutz und Geldermann v Council* [1987] ECR 941, para. 8; T-183/94 *Cantina Cooperative fra Produttori Vitivinicoli di Torre di Mosto and Others v Commission* [1995] ECR II-1941, para. 48

In the present case the contested notices are presented as measures having general application, within the meaning of Article 189 of the Treaty. The requirement that applicants have a university degree covers a situation which is objectively defined according to the purpose of the impugned acts. Accordingly, their nature and their scope are such that they assume a legislative character and are not decisions within the meaning of Article 189 of the Treaty (paragraphs 29 and 30).

In certain circumstances, however, a legislative act may be of individual concern to certain of the persons to whom it is potentially addressed. In those circumstances, a Community measure could be of a legislative nature and, at the same time, *vis-à-vis* certain individuals, in the nature of a decision (paragraph 31).

See: C-309/89 *Codorniu v Council* [1994] ECR I-1853, para. 19; T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others v Commission* [1995] ECR II-2941, para. 50; T-122/96 *Federolio v Commission* [1997] ECR II-1559, para. 58

Natural or legal persons may claim that a contested measure is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (paragraph 32).

See: 25/62 *Plaumann v Commission* [1963] ECR 95, 107; *Codorniu v Council*, cited above, para. 20; T-12/93 *Comité Central de l'Entreprise de la Société Anonyme de Vittel and Others v Commission* [1995] ECR II-1247, para. 36; *Federolio v Commission*, cited above, para. 59

From that point of view the applicant cannot claim to be entitled to seek the annulment of the notices purely because it is possible to identify the persons concerned on the basis of the university qualification which they hold, a factor which he associates with a manifest intention on the part of the appointing authority to exclude those holding a diplomatura. The notices of competition in issue only affect the applicant in his objective capacity as a person who does not hold a licenciatura in the same way as any other person not holding that diploma. In those circumstances the applicant cannot claim that the notices of competition are of individual concern to him by virtue of attributes which are peculiar to him or by reason of circumstances in which he is differentiated from all other potential candidates (paragraph 33).

It follows from the foregoing that the applicant is not individually concerned by the notices of competition. Consequently, the action must be declared inadmissible (paragraph 34).

Furthermore, in order to challenge the legality of the notices of competition the applicant could have submitted his candidature for the competitions in issue in order to bring an action under Article 179 of the Treaty for annulment of the administrative decision rejecting his candidature (paragraph 35).

See: T-60/92 *Noonan v Commission* [1993] ECR II-911, para. 21; C-448/93 P *Commission v Noonan* [1995] ECR I-2321, para. 6, and Opinion of Advocate General Léger, ECR I-2323, points 17 and 21 to 23

As regards the claim that the Commission be ordered to alter the guide, it is not the role of the Community judicature, in judicial review proceedings, to make orders directed at the Community authorities (paragraphs 36 and 37).

See: 15/85 *Consorzio Cooperative d'Abruzzo v Commission* [1987] ECR 1005, para. 18; T-22/92 *Weißenfels v Parliament* [1993] ECR II-1095, para. 23

The Court considers, however, that it is also appropriate, in the interests of completeness, to consider whether the applicant's action might have been declared admissible had it been brought under Article 179 of the Treaty (paragraph 39).

In that regard, Article 179 of the Treaty, which confers jurisdiction on the Community judicature to resolve any dispute between the Community and its servants, and Articles 90 and 91 of the Staff Regulations on remedies, are aimed not only at persons who have the status of official or servant other than local staff, but also at those claiming that capacity, in particular candidates for the service (paragraph 40).

See: T-177/94 *Altmann and Others v Commission* [1994] ECR II-1245, paras 34 and 35; T-30/96 *Gomes de Sá Pereira v Council* [1996] ECR II-785, para. 24; 23/64 *Vandevyvere v Parliament* [1965] ECR 157, 164; 130/86 *Du Besset v Council* [1986] ECR 2619, para. 7; C-126/90 *Bocos Viciano v Commission* [1991] ECR I-781, para. 13

However, that remedy is not available to a person who has not submitted his candidature for a competition and who therefore does not meet the condition of being a candidate for the Community public service (paragraph 41).

Operative part:

The application is dismissed as inadmissible.