JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
11 July 1996 *

In Case T-146/95,

Giorgio Bernardi, residing in Luxembourg, represented by Giancarlo Lattanzi, of the Massa-Carrare Bar, and, at the hearing, by Siegfried Vormann, of the Trier Bar, with an address for service in Luxembourg at the applicant's address, 33 Rue Godchaux,

applicant,

v

European Parliament, represented by Ezio Perillo and Christian Pennera, of its Legal Service, acting as Agents, with an address for service at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the 'Call for nominations for the office of Ombudsman' published on 23 May 1995 (OJ 1995 C 127, p. 4) and all related and consequential acts,

* Language of the case: French.

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

composed of: C. P. Briët, President, B. Vesterdorf and A. Potocki, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 11 June 1996,

gives the following

Judgment

1 Article 138e of the EC Treaty, inserted by Article G(41) of the Treaty on European Union, created the post of Ombudsman. It provides that the European Parliament is to appoint the Ombudsman.

2 Since the first appointment procedure in July 1994 did not result in an appointment, the Parliament initiated a new procedure.

3 To that end, the Parliament, during its plenary session of 16 May 1995, amended Rule 159 of its Rules of Procedure.

4 That article now provides:

'1. ... the President [of the Parliament] shall call for nominations for the office of Ombudsman and set a time limit for submitting nominations. A notice calling for nominations shall be published in the *Official Journal of the European Communities*.

2. Nominations must have the support of a minimum of 29 Members who are nationals of at least two Member States.

Each Member may support only one nomination.

Nominations shall include all the supporting documents needed to show conclusively that the nominee fulfils the conditions required by the Regulations on the Ombudsman.

3. Nominations shall be forwarded to the committee responsible, which may ask to hear the nominees.

...'.

5 On 23 May 1995, the Parliament published a 'call for nominations for the office of Ombudsman' (OJ 1995 C 127, p. 4). The sole article repeated the provisions of Article 159(2) of the Rules of Procedure referred to above. Paragraph 3 thereof requested the candidates to forward their nominations to the President of the Parliament by 16 June 1995.

6 On 9 June 1995 the applicant sent to the President of the Parliament a letter to which he attached his nomination for the post of Ombudsman. At the same time, the applicant raised two sets of objections to the condition requiring that nominations should have the support of 29 Members. First, he submitted objections as to the form, inasmuch as the manner in which such support was to be given, the type of Member whose support was to be sought (whether Members of the European or national parliaments) and the date at which such support had to be given, were unclear. Secondly, he submitted objections as to the substance, inasmuch as the fact of being required to have the support of 29 Members would undermine the Ombudsman's independence which is nevertheless enshrined in Article 138e of the Treaty. In those circumstances, the applicant pointed out that his nomination did not include the names of 29 Members likely to support him. In order to satisfy that requirement, he requested the President of the Parliament, if he considered it appropriate, to distribute his nomination document as a matter of urgency, translated into all the official languages of the Union, among the Parliament's various Members and political groups.

7 On 15 June 1995, the Secretary General of the Parliament informed the applicant by letter sent by facsimile transmission that his nomination had been registered but indicated that the registry 'had no power to intervene in the procedure by distributing nominations among the Members of Parliament in order to seek their support within the meaning of Article 159(2) of the Rules of Procedure'.

8 On 15 June 1995, the applicant sent a letter together with his nomination by means of facsimile transmission to the Chairmen of the political groups of the Parliament and, by mail, to the various Members from the new Member States of the Union.

9 On 23 June 1995, the applicant sent a handwritten letter to the President of the Parliament in which he requested a reply to his letter of 9 June 1995. According to the applicant, only by distributing his nomination document could he fulfil the condition requiring him to have the support of 29 Members without sacrificing the independence of the office of Ombudsman. In the name of that independence, he also challenged the nomination of politicians.

10 By letter of 4 July 1995, the Secretary General of the Parliament confirmed his reply of 15 June 1995.

Procedure

11 By application lodged at the Registry of the Court of Justice on 2 July 1995, the applicant brought the present action under Article 173 of the EC Treaty. The application was registered as Case C-228/95.

12 By a separate document also lodged at the Court Registry on 2 July 1995, the applicant submitted, under Article 186 of the EC Treaty and Article 83 of the Rules of Procedure of the Court of Justice, an application for the adoption of interim measures. The application was registered as Case C-228/95 R.

13 By order of 11 July 1995, the Court of Justice found that the applications fell within the jurisdiction of the Court of First Instance and referred the two cases to that Court pursuant to Article 47 of the EC Statute of the Court of Justice. The applications were registered at the Court of First Instance on 13 July 1995 as Cases T-146/95 and T-146/95 R.

14 By order of 18 August 1995 (Case T-146/85 R *Giorgio Bernardi* v *Parliament* [1995] ECR II-2255), the President of the Court of First Instance dismissed the application for interim measures.

15 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

16 At the hearing on 11 June 1996, the parties presented oral argument and gave their replies to questions put to them by the Court.

Forms of order sought by the parties

17 In his application, the applicant claims that the Court should:

'find and declare the present action to be admissible and well founded;

declare that:

— no Parliamentary committee was expressly and formally declared "competent" with regard to Article 159 of the Rules of Procedure of the European Parliament;

— no official or Member was expressly or formally assigned to consider the nominations;

— no time-limit was prescribed for bringing an action challenging decisions as to the admissibility or otherwise of the nominations;

— the requirement that the Ombudsman be independent is in principle incompatible with being a politician, subscribing to and active in a political party and subject to party discipline and to various existing political commitments;

— the Ombudsman's monitoring role is complementary to the role of the European Parliament (EP) (and of its committee on petitions) regarding political control;

annul the notice entitled "Call for nominations for the office of Ombudsman", published on 23 May 1995 (OJ 1995 C 127, p. 4), and all related and consequential acts, in particular:

— Decision No 019473 of the Secretary General of 15 June 1995, in particular in so far as it refuses to distribute the applicant's nomination document among the Members of Parliament;

— the acts, written or otherwise, relating to the admissibility of the nominations of the persons concerned, particularly of politicians;

— the administrative acts following the public hearing of 28-29 June 1995;

find at the same time that the applicant's nomination document was in fact received by the Parliament, but that no clear, written and reasoned decision regarding him was made known to him personally; that he was given no opportunity either to establish whether his exclusion was irregular or to challenge it;

in any event, in view of the urgency of the matter:

— suspend the administrative procedure for the appointment of the Ombudsman until after the vote due to take place on 12 July 1995 in Strasbourg;

— rule that the applicant is entitled to have his nomination document and supporting documents, including copies of the application in the main proceedings and the application for interim relief, made known to every Member of Parliament; or

— rule that the applicant is entitled to be heard before (or during) the vote of the Parliament due to be held on 12 July 1995 in Strasbourg;

reopen the period for the submission of nominations for the office of Ombudsman; in the meantime, have the nomination document of the applicant (and of the other candidates) and related documents — duly translated either into the main or into all the official languages — made known in their entirety to the various Members of Parliament;

make any other appropriate orders;

make an interim order that the applicant is entitled to have copies of the application in the main proceedings and the application for interim relief and of the interim order itself forwarded by the Parliament, at its own cost, to the 626 Members (appearing in the EP Directory of March 1995, or in a more up-to-date EP Directory) of the fifteen countries of the European Union (EU) and translated into the eleven official languages;

order the defendant to pay all the costs of the proceedings;

expressly reserve all other rights, pleas in law and actions'.

18 In his reply, the applicant claims that the Court should:

'find that the applicant had been "denied justice" as a result of the non-application of Article 36 of the EC Statute (of the Court of Justice);

find that the application for interim relief submitted on 26 June 1995 (and again in the afternoon of 26 June, on 28 June and on 2 July 1995) was not finally considered (and partially at that) until 11 July 1995 by an order referring the case to the Court of First Instance, and on 18 August 1995 when it was dismissed;

find, on that point, that the principle of a "reasonable period" has been infringed, in particular in the present application for interim relief;

find that the fundamental rights of the defence, embodied in Articles 6, 13 and 14 of the Strasbourg Convention, have been generally infringed;

declare the action admissible in form and justified in substance;

grant the form of order already set out;

reserve all other rights, pleas in law and actions'.

19 The defendant contends that the Court should:

— declare the action inadmissible;

— in the alternative, dismiss the action as unfounded;

— make an appropriate order as to costs.

Admissibility

20 The Parliament maintains that the claims for annulment are inadmissible inasmuch as the applicant has no interest in bringing proceedings since the contested acts are not of direct and individual concern to him, within the meaning of Article 173 of the Treaty. It defers to the Court of First Instance for the examination, of its own motion, of the admissibility of the other claims.

21 The applicant considers that he has a direct and immediate interest as a citizen of the Union and independent nominee.

22 The Court observes that, where there is an absolute bar to proceeding with a case, it may, by virtue of Article 113 of the Rules of Procedure, of its own motion consider every aspect of the admissibility of the action.

23 In the present case, the Court finds first of all that, in the context of an action for annulment, claims which only seek declarations in respect of matters of fact or matters of law cannot, of themselves, be considered valid.

24 All claims of that kind must therefore be dismissed as inadmissible.

25 Secondly, according to Article 44(1)(c) of the Rules of Procedure, the applicant is required to state in his application the subject-matter of the proceedings. This means that the subject-matter of the proceedings should be sufficiently precise to enable the defendant to prepare its defence in that regard and the Court to understand the purpose of the applicant's claims.

26 The Court finds that the claim for the annulment of 'all related and consequential acts', and in particular of 'acts, written or otherwise, relating to the admissibility of the nominations of the persons concerned, particularly of politicians' and of the 'administrative acts following the public hearing of 28-29 June 1995', which cannot be identified from the content of the application, moreover, is not sufficiently precise (see the order of the Court of First Instance in Case T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, paragraph 19).

27 Nor is the claim that the Court should make 'any other appropriate orders' sufficiently precise. Furthermore, even if that claim were to be interpreted as an application for a direction to be issued to the Parliament, it must be borne in mind that, in the context of an action based on Article 173 of the Treaty, the Court has no power to issue directions to the institutions (*Koelman* v *Commission*, referred to above, paragraph 18).

28 All of those claims must therefore be rejected as inadmissible.

29 Thirdly, the Court observes that, under Article 104(3) of the Rules of Procedure, an application for interim measures must be submitted by a separate document.

30 Accordingly, the applications for interim measures included in the main application must be declared inadmissible (Case T-140/94 *Enrique Gutiérrez de Quijano y Llorens* v *Parliament* [1996] ECR II-689, paragraph 32). Moreover, the Court finds that identical applications were submitted by the applicant, by a separate document, on 2 July 1995, and dismissed by order of the President of the Court of First Instance of 18 August 1995, referred to above, so that in any event there is no need to give a decision on the applications for interim measures included in the main application.

31 Fourthly, the Court recalls that it follows from Article 19 of the EC Statute of the Court of Justice and Article 44 of the Rules of Procedure that an applicant may not introduce new claims at the reply stage (Case T-22/92 *Weißenfels* v *Parliament* [1993] ECR II-1095, paragraph 27).

32 In the present case, with the exception of the claims seeking a declaration that the action is admissible and well founded and those referring to the claims in the application, the claims put forward in the reply bear no relation to those set out in the application. They must therefore be dismissed as inadmissible.

33 Fifthly, as regards the claim seeking the annulment of the 'Call for nominations', the Court observes that under the fourth paragraph of Article 173 of the Treaty the admissibility of an action for annulment instituted by a natural person against a decision of which he is not the addressee is subject to the condition that the contested decision is of direct and individual concern to him. In this respect, it is settled case-law that an applicant may only claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty if the contested decision affects him by reason of certain attributes which are peculiar to him or by reason of circumstances in which he is differentiated from all other persons and by virtue of these factors distinguishes him individually just as in the case of the person addressed (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at p. 107).

34 In the present case, it is sufficient to state that the contested act is a call for nominations which, by its nature, is addressed to an unspecified number of persons. The applicant is therefore concerned only to the same extent as any potential candidate. Thus, without there being any need to consider the question whether the contested act constitutes an act of the Parliament intended to produce legal effects vis-à-vis third parties, within the meaning of the first paragraph of Article 173 of the Treaty, the claim seeking the annulment of the call for nominations must be rejected as inadmissible.

Substance

35 The Court finds *in limine* that, in the light of the foregoing considerations (paragraphs 22 to 34), only the claim seeking the annulment of the letter of the Secretary General of the Parliament sent to the applicant on 15 June 1995 (see paragraph 7, above), other than the claim relating to the costs of the proceedings, remains admissible.

36 In his action, in so far as it may be understood, the applicant puts forward a single plea in law in support of his claim for the annulment of that decision alleging breach of the principle of non-discrimination, on the ground that he was not in fact able to submit his nomination for the post of Ombudsman.

37 In that regard, it has been consistently held that, according to the principle of non-discrimination, comparable situations are not to be treated differently unless such treatment is objectively justified (Joined Cases T-551/93, T-231/94, T-232/94, T-233/94 and T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, paragraph 164).

38 In this case, the applicant has not adduced any evidence that other nominees were treated differently. In particular, he has not shown that the registry of the Parliament agreed to distribute the nomination documents of other candidates submitted under the same conditions as those of the applicant.

39 Accordingly, the single plea in law must be dismissed.

Costs

40 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the Parliament has asked for them, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the action as unfounded in so far as it seeks the annulment of the letter of the Secretary General of the European Parliament of 15 June 1995;**

2. **For the rest, dismisses the action as inadmissible;**

3. **Orders the applicant to pay the costs.**

Briët Vesterdorf Potocki

Delivered in open court in Luxembourg on 11 July 1996.

H. Jung C. P. Briët

Registrar President