

JUDGMENT OF THE COURT (SECOND CHAMBER)  
31 MARCH 1965<sup>1</sup>

**Thérèse Marie-Louise Vandevyvere  
v European Parliament**

**Case 23/64**

**S u m m a r y**

1. *Officials—Recruitment — General competitions — Right of appeal of participants — Candidates from outside the Communities*  
(ECSC, EEC and EAEC Staff Regulations, Articles 27 and 91)
  2. *Officials — Staff Regulations — General provisions for giving effect thereto — Duty to adopt such provisions — Procedure relating to competition*  
(ECSC Staff Regulations, Article 107; EEC and EAEC Staff Regulations, Article 110)
1. Candidates in general competitions, even those from outside the Communities, may institute proceedings before the Court concerning a possible infringement of the rules concerning procedure relating to competitions.
2. Cf. para. 4 of summary in Case 16/64.

**In Case 23/64**

**THÉRÈSE MARIE-LOUISE VANDEVYVERE**, residing at 9, K.L. Ledeganckstraat, Ghent, assisted by Marcel Slusny, Advocate of the Cour d'Appel, Brussels, Lecturer at the Free University of Brussels, with an address for service in Luxembourg at the residence of Bernard Schmitz, 6 rue J.-B. Esch,  
applicant,

**v**

**EUROPEAN PARLIAMENT**, Luxembourg, represented by its Secretary-General Hans Robert Nord, acting as Agent, assisted by Alex Bonn, Advocate at the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte-d'Eich,  
defendant,

Application for annulment of competition No P.E. 1/B and certain measures adopted during the course of the said competition;

<sup>1</sup> - Language of the Case: French.

## THE COURT (Second Chamber)

composed of: A. M. Donner, President of Chamber, W. Strauß (Rapporteur) and R. Monaco (Judges),

Advocate-General: M. Lagrange  
Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts

The facts may be summarized as follows:

1. In the Official Journal of 2 December 1963, pp. 2807 et seq., the defendant published the Notice of General Competition No P.E. 1/B, to be conducted on the basis of qualifications and tests, for the recruitment of an assistant (career bracket B 3-B 2) 'in the Directorate-General of Parliamentary Documentation and Information, Library Service'.
2. Having submitted her application, the applicant received on 27 February 1964 a letter from the Secretary of the Selection Board written in Dutch, and stating that the Selection Board, at its meeting on 25 February 1964, did not consider that it should include the name of the applicant on the list of candidates 'die aan het *examen* kunnen deelnemen' ('who may take part in the *tests*').
3. By letter of 1 March 1964 addressed to the Secretary of the Selection Board the applicant asked whether the letter of 25 February was not based on an error, since her qualifications were of a level higher than those required by the notice of the competition.
4. By letter of 6 March 1964, the Chairman of the Selection Board replied *inter alia*:

'I should like to inform you that . . . the competition is based on qualifications and tests. The Selection Board therefore not only had to eliminate those candidates whose qualifications did not correspond to the requirements laid down in the advertisement of the competition, but was also entitled to make a first choice of candidates who clearly had the highest qualifications.

I informed the Selection Board of your letter at its meeting on Thursday 5 March 1964. After discussion, the Selection Board decided to confirm the choice of candidates selected for admission to the tests made at its meeting on 25 February 1964.'

5. On 26 May 1964 the applicant lodged her application at the Registry.

#### II — Conclusions of the parties

The applicant claims in her application that the Court should:

- '1. Declare null and void the decision taken by the Selection Board set up to decide upon Notice of Competition No P.E. 1/B at its meeting on 25 February 1964, by which the applicant was eliminated from the admission list provided for in the first

paragraph of Article 5 of Annex III to the Staff Regulations;

2. Declare null and void the decision taken either at that meeting or at a later meeting, under which the applicant was eliminated from the list of candidates allowed to take part in the tests;
3. Consequently declare Competition No P.E. 1/B null and void with all the legal consequences concerning the nullity of the list of suitable candidates, the constitution of a reserve for future recruitment and any appointments made following this competition on the basis of the results;
4. So far as necessary, declare null and void the decisions of the European Parliament ratifying the results of the competition;
5. Order the opposing party to pay the costs in full.<sup>2</sup>

The defendant, in its statement of defence, contends that the Court should:

- '1. Place it upon record that it requests the Court in its discretion to decide upon the admissibility of the application and the jurisdiction of the Court of Justice of the European Communities;
2. Hold that the mere enumeration of provisions of the Regulations alleged to have been infringed and other reasons for annulment are insufficient within the terms of the Rules of Procedure; hold furthermore that the reservation of the right to put forward further submissions is invalid; and regard as valid only the submission set out in the application;
3. On the substance of the matter, regard the said submissions as inadmissible if not unfounded and reject the application;
4. Make an order as to costs in accordance with the appropriate provisions.'

The applicant in her reply claims that the Court should:

'Place it upon record that the applicant

adheres to her original conclusions as if the same were here repeated as a whole;

*As a subsidiary matter:*

Declare the measures undertaken null and void, by reason of the failure of the other party to produce the documents in the case;

*As a further subsidiary matter:*

In accordance with Article 21 of the Protocol on the Statute of the Court of Justice of the EEC, Article 22 of the Protocol on the Statute of the Court of Justice of the EAEC and Article 24 of the Protocol on the Statute of the Court of Justice of the ECSC, order the other party to produce all its documents and provide all the information decided upon by the Court and in particular to produce all the documents on the file concerning the competition in question; *if necessary* request the various Community institutions not being parties to the case to supply all necessary information, in particular as to the existence of general provisions for giving effect to the requirements of the Regulations concerning competitions and of Annex III to the Regulations.'

The defendant, in its rejoinder, contends that the Court should:

'Reject the submissions and conclusions of the statement in reply and accept the conclusions of the defendant in its statement of defence.'

### III—Submissions and arguments of the parties

The principal submissions and arguments of the parties may be summarized as follows:

The *applicant* refers in a general manner to infringement of the Staff Regulations, lack of competence, infringement of an essential procedural requirement 'and (or)' misuse of powers.

1. *Admissibility*

A — Is Article 91 of the Staff Regulations applicable to candidates for entry to the service of the Communities?

The *defendant* whilst relying on the discretion of the Court considers that the answer is in the negative; it claims in particular:

- that the title and the wording of the Regulations indicate that these refer to *officials and servants* of the Communities;
- that the EEC and EAEC Treaties confer on the Court only jurisdiction in any dispute 'between the Community and its servants';
- that the difference in terminology between Articles 90 and 91 of the Regulations ('any official', 'any person to whom these Staff Regulations apply') is explicable by the fact that the latter provision takes account also of persons such as retired officials;
- that Article 91 gives a right of appeal only against acts 'adversely affecting' a person and Regulations do not create rights in favour of outsiders;
- that the provisions of the Regulations concerning recruitment have not been adopted in the interests of third parties.

The *applicant* for her part states:

- that in view of the provisions of the Regulations concerning recruitment, even outside candidates are certainly persons 'to whom these Staff Regulations apply';
- that these candidates have an obvious interest in the proper conduct of the competition;
- that the difference in terminology between Articles 90 and 91 is significant.

B — Inadequacy of submissions

The *defendant* considers that the general enumeration of the provisions alleged to have been infringed and of reasons for

nullity does not meet the requirements of the Rules of Procedure; these submissions are admissible only to the extent to which they are fully elaborated.

The *applicant* restricts herself to stating that even on the admission of the *defendant* the 'reference to various provisions of the Regulations is accompanied by sufficient explanations in the application'.

C — The inadmissible nature of the reservation allowing fresh issues to be raised in the course of proceedings; the requirement for the applicant to limit her action to acts adversely affecting her

The *applicant* in her application states that she must 'reserve the right to raise other issues relating not only to the regularity of the procedure followed concerning the preparation of the Notice of Competition but also to the regularity of the composition of the Selection Board and the procedure followed by the latter, the regularity and the legality of the decisions taken in respect of her by the Selection Board and ratified by the Secretariat of the European Parliament, until the documents relating to the competition have been produced by the other party'.

The *defendant* replies that the applicant must limit her action to the acts adversely affecting her. The issues which she reserves the right to raise concern the procedure of the competition as a whole and not only the decisions concerning the applicant individually; furthermore they are not elaborated.

2. *On the substance of the case*

A — Infringement of Articles 110 of the EEC and EAEC Staff Regulations and of 107 of the ECSC Staff Regulations

The *applicant* complains of the fact that the Notice of Competition was published, and the competition organized,

without the prior adoption of general provisions for giving effect to the Staff Regulations; and in particular that such provisions were not adopted after consultation with the Staff Committee and the Staff Regulations Committee or brought to the attention of the staff.

In order that general provisions for giving effect to the Staff Regulations should be adopted, it is not necessary for the Regulations to provide expressly for this; it is enough that the provisions of the Regulations are not sufficiently clear, as is the case in respect of competitions. The Commission of the EEC did in fact adopt provisions concerning the composition of the Selection Board.

In order that the applicant should be in a position to criticize these illegalities, it suffices that the disputed measures should affect her adversely. There can be no necessity for her to prove—as would indeed be impossible—that but for the illegalities in question the measures adopted would have been different.

The *defendant* states, first, that a submission by a person outside an institution that the provisions in question have been infringed is inadmissible for lack of legal interest.

Only the institution is competent to decide upon the advisability of adopting provisions for giving effect to Staff Regulations. In the present case the institution considered it unnecessary as the relevant provisions of the Regulations were sufficiently clear. If the Commission of the EEC thought it necessary to adopt such provisions, that is because its needs were different from those of the defendant which employs appreciably fewer officials and, consequently, needs to arrange fewer competitions.

Lastly the applicant has failed to show that the omission to adopt general provisions has affected her adversely.

#### B — Lack of statement of reasons

The *applicant* points out 'that the decision of the Selection Board not to (put her) on the admission list provided for

in the first paragraph of Article 5 of Annex III to the Staff Regulations and the decision taken either at the time or subsequently not to put her on the list of candidates to be admitted to the tests' should have stated the reasons on which it was based (Article 25 of the Regulations).

The Raponi Judgment (Rec. 1964, pp. 247 et seq.), which dealt with the statement of reasons in connexion with promotion, cannot be relied on to show the opposite. In fact the situation of a rejected candidate, who 'has nothing more to lose', is entirely different.

The fact that the work of the Selection Board is secret does not prevent the latter from informing the candidate 'even if this is done in general terms' of the reason for his rejection.

National and Community case-law show (Mirosevich Case, Rec. 1955-1956, pp. 365 et seq.) that the Court is competent to review the true reasons for the decision of the Selection Board. Consequently, 'in every case reasons must be given in broad terms'.

The *defendant* replies that Article 25 of the Regulations applies only to officials. The argument that the Selection Board need not give reasons for its decisions may be based on Article 5 of Annex III to the Regulations, and is confirmed by Article 6 which states that the proceedings of the Selection Board shall be secret.

Lastly, the submission is not based on fact as the letter of 6 March 1964 informed the applicant of the reasons which led the Selection Board to its decision.

#### C — Errors of fact

The *applicant* claims that the decisions of the Selection Board 'are vitiated by error or were taken on the basis of errors of fact or incorrectly evaluated facts'.

'The decision not to put the applicant on the admission list' is mistaken, since the applicant possessed the qualifications required by the Notice of Competition,

and in part qualifications even higher than those. For the same reasons 'the decision not to put her on the list of candidates admitted to the tests' is vitiated.

The *defendant* replies that this submission is inadmissible as not being based on fact, since the applicant is disputing a decision which was never taken. The Selection Board did not apply the *first* paragraph of Article 5 of Annex III to the Regulations, ('the Selection Board shall draw up a list of candidates who meet the requirements set out in the notice of competition'), but the *fourth* paragraph of this provision (stating which of the candidates 'shall be admitted to the tests').

Next, the Selection Board, as appears from the above mentioned letters, had duly taken the qualifications of the applicant into account.

Lastly, the Selection Board was required to exercise its own unfettered judgment regarding the qualities of the candidates.

The *applicant* replies that the question whether she misunderstood the letter of 27 February 1964 'is of no interest now' since she is disputing both the decision not to put her on the admission list provided for in the first paragraph of Article 5, and not to put her on the list of suitable candidates. The Court has the right to review the reasoning adopted by the Selection Board.

'Furthermore, the applicant has every reason to believe—and the production of the file and the minutes would allow the Court also to be convinced in this respect—that she was put on the admission list provided for in Article 5 of Annex III, that she was even placed first and that it was following external intervention that she was finally struck from the list.'

The *defendant* continues to think that the applicant is labouring under a misapprehension. The applicant was not 'eliminated' from the list of suitable candidates, which could not be drawn

up until after the tests in which she was not allowed to take part.

The defendant protests against the assertion that the applicant was the victim of external intervention.

### 3. Production of documents

The *applicant* refers to a letter of 2 July 1964, in which her counsel asked the Secretary-General of the defendant to produce her file, and at least:

- (1) evidence that the consultation provided for in Article 1 (1) of Annex III to the Staff Regulations took place;
- (2) the minutes of the Selection Board;
- (3) the file of his client if she was given a personal file by the European Parliament or by the Selection Board.

By letter of 16 July 1964 addressed to the said counsel, the Secretary-General refused to produce the documents in question.

The applicant wonders whether this refusal—which is contrary to Article 23 of the Protocol on the Statute of the Court of Justice of the ECSC—does not *ipso facto* involve the nullity of the measures adopted, since it allows 'it to be considered that the reasoning is either non-existent, vitiated by error, or vitiated by abuse of power'.

The *defendant* considers that the application is inadmissible and in any case unfounded.

Article 23 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community relates to applications provided for in the ECSC Treaty, which does not refer to applications by natural persons; furthermore the Statutes of the Court of Justice of the European Economic Community and of the European Atomic Energy Community do not contain similar provisions.

Article 26 of the Staff Regulations which requires the production of the personal

file only applies to applications by *officials*. IV—Procedure

The first two documents demanded are unconnected with the applicant. As to the third document, there is no file of the applicant other than the documents produced by one side or the other.

The minutes of the Selection Board are secret (Article 6 of Annex III to the Staff Regulations). As to the report of the Selection Board which is required to accompany the list of suitable candidates, the confidential nature of this document, which includes the marks obtained by the candidates, is obvious.

By Order of 15 November 1964, the Court (Second Chamber) rejected the request of the applicant for legal aid, while reserving the costs.

On the report of the Judge-Rapporteur and after hearing the Advocate-General, the Court (Second Chamber) decided that it was not necessary to hold a preparatory inquiry.

The public hearing took place on 25 January 1965.

The Advocate-General delivered his opinion on 10 February 1965.

## Grounds of judgment

### I—Concerning the object of the proceedings

Under the first head of the conclusions of the application, the applicant asked for the annulment of a decision alleged to have been taken by the Selection Board, by which she was 'eliminated from the list of candidates provided for in the first paragraph of Article 5 of Annex III to the Staff Regulations'.

During the oral procedure the applicant admitted having been the victim of an error of terminology since the only decision actually taken in respect of her was taken under the fourth paragraph of the said Article and consisted of not admitting her *to the tests*.

The applicant having thus abandoned the first head of her conclusions it is unnecessary to decide upon the plea of inadmissibility based upon the non-existence of the decision in question.

The subject of the proceedings therefore consists only of the decision not to admit the applicant to the tests.

### II—As to the admissibility of the application

1. The defendant considers the application inadmissible, for the reason that only servants of the Community have the capacity to make an application under Article 91 of the Staff Regulations.

Article 91 gives the right of appeal to 'any person to whom these Staff Regulations apply'.

Article 27 of the Regulations applies by implication to candidates in general competitions, even those outside the Communities.

In mentioning 'candidates', Annex III to the Regulations clearly applies to all the candidates taking part in the general competitions provided for in Article 1 (1) (a) of the said Annex, whether or not they are servants of the Community.

Furthermore, since the rules relating to general competitions were drawn up for the protection of all candidates, these candidates are to be considered as persons to whom these rules apply and, consequently, being competent to bring a case before the Court, in accordance with the procedure in Article 91, for a possible infringement of the said rules.

This plea of inadmissibility must therefore be rejected.

2. The defendant contends that the Court should hold 'the mere enumeration of provisions of the Regulations alleged to have been infringed and other reasons for annulment . . . insufficient' and, holding 'furthermore that the reservation of the right to put forward further submissions is invalid', to regard 'as valid only the submissions set out in the application'.

In respect of the first of these objections, it appears on reading the application that in enumerating the provisions which she considers to have been infringed, as well as the reasons for annulment of the disputed decision, the applicant did not intend to put forward distinct submissions, but only to present the three submissions actually made. The objections in question are thus irrelevant on this point.

As to the second of the said objections, it is equally irrelevant as the applicant did not put forward any new submissions during the proceedings.

It follows from all the preceding considerations that the application is admissible.

### III—On the substance of the case

#### 1. *The first submission*

The applicant points out that contrary to Articles 107 of the ECSC Staff Regulations and 110 of the EEC and EAEC Staff Regulations, the defendant has failed to lay down general provisions for giving effect to the Staff Regula-



tions in respect of competitions, or alternatively has made such provisions without consulting the Staff Committee or the Staff Regulations Committee and without bringing the said provisions to the attentions of the staff.

The defendant asserts that this submission is inadmissible as a candidate who is not in the service of the Community has no interest in asserting the possible infringement of the provisions in question.

This plea must be rejected; in fact 'external' candidates have, to the same extent as candidates from within the Community, a clear interest in having the provisions of the Regulations correctly applied to them.

The expression '*The* general provisions for giving effect to these Staff Regulations' appearing in Articles 107 and 110 mentioned above refers in the first instance to the provisions which each institution is *obliged* to make in execution of certain mandatory provisions of the Regulations, such as the first paragraph of Article 2 and the second subparagraph of Article 5 (4). In the absence of such rules, the obligation to adopt 'general provisions for giving effect' to the Staff Regulations can be recognized only in the cases in which the provisions of the Regulations are not sufficiently explicit by themselves.

The provisions of the Regulations concerning the procedure for competitions nowhere provide that the institutions shall adopt general provisions for giving effect to them. Moreover the said provisions are sufficient in themselves.

Thus in relation to competitions, the defendant was not obliged to adopt 'general provisions for giving effect' to the relevant Regulations within the meaning of Articles 107 and 110 mentioned above. Furthermore the Court sees no reason to doubt the statement of the defendant to the effect that it did not in fact take such measures and the applicant has not alleged facts capable of proving the contrary; this submission is therefore unfounded.

## 2. *The second submission*

The applicant points out that the decision not to admit her to the tests affects her adversely and that the reasons on which it was based should have been stated in accordance with Article 25 of the Staff Regulations.

Under Article 6 of Annex III to the Regulations the proceedings of the Selection Board shall be secret. By mentioning that the Selection Board proceeded 'to a first choice of candidates who clearly had the highest qualifications', the disputed decision indicates the reasons upon which it is based with as much clarity as the said Article 6 will permit.

Consequently this submission lacks a basis of fact.

### 3. *The third submission*

(a) The applicant alleges that the disputed decision lacks a basis of fact and that indeed she had the qualifications required by the Notice of Competition, and to some extent even superior qualifications.

According to the wording of the fourth paragraph of Article 5 of Annex III to the Regulations, the Selection Board shall state which of the candidates 'on' the list, who meet the requirements set out in the Notice of Competition, shall be admitted to the tests. Therefore the Selection Board is entitled to allow only a limited number of the candidates admitted to the competition to take the tests.

The statement of the applicant in respect of her qualifications is perfectly consistent with the communication which she received and from which it appears that a number of candidates regarded as sufficient by the Selection Board had qualifications superior to hers.

Consequently this statement is not an indication that the Selection Board based its decision on reasons which were incorrect in law.

(b) The applicant claims in addition that 'according to certain information', the Selection Board first placed her at the head of the abovementioned list and that her name disappeared from it 'following external intervention'. However, the applicant has not indicated precise facts in support of this assertion and has thus not furnished initial evidence sufficient to lead the Court to order a preparatory inquiry in this respect.

It follows from all the preceding considerations that the present submission is unfounded.

### 4. *Concerning the preparatory inquiry requested by the applicant*

The applicant claims as a subsidiary matter that the Court should declare 'the measures undertaken null and void by reason of the failure of the other party to produce the documents in the case'. She claims, as a further subsidiary matter, that the Court should order the defendant 'to produce all its documents and provide all the information decided upon by the Court and in particular to produce all the documents on the file concerning the competition in question', and 'if necessary' that the Court should request 'the

various Community institutions, not being parties to the case, to supply all necessary information, in particular as to the existence of general provisions for giving effect to the requirements of the Regulations concerning competitions and of Annex III to the Regulations.'

The proceedings of the Selection Board are secret under Article 6 of Annex III and the minutes of the Selection Board must therefore not be produced except in accordance with an express request from the Court. The defendant has stated that it does not possess any personal file for the applicant as she is not in its service. This statement is in conformity with Article 26 of the Staff Regulations. Consequently the present submission is unfounded.

Furthermore the Court considers it unnecessary to carry out the preparatory inquiry requested by the applicant as the information already at its disposal allows it to give judgment upon the present application.

It follows from all the preceding considerations that the present application is unfounded.

#### IV — Costs

The applicant has failed in her application. Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However under Article 70 of the said Rules, institutions shall bear their own costs in cases of applications by servants of the Communities. By order of 15 November 1964 the Court (Second Chamber) rejected the request of the applicant for legal aid, reserving the costs.

On these grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the respective Protocols on the Statutes of the Court of Justice of the ECSC, the EEC and the EAEC;

Having regard to the Staff Regulations of the ECSC, the EEC and the EAEC;

Having regard to the relevant Regulations applicable to the other servants of those Communities;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby :

1. **Rejects Application No 23/64 as unfounded;**
2. **Orders the applicant to pay the costs, including those concerning the application for legal aid, with the exception of the costs of the defendant.**

Donner

Strauß

Monaco

Delivered in open court in Luxembourg on 31 March 1965.

A. Van Houtte  
Registrar

A. M. Donner  
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND  
DELIVERED ON 10 FEBRUARY 1965<sup>1</sup>

*Mr President,  
Members of the Court,*

On 2 December 1963, the Official Journal of the European Communities published a notice of a general competition based on qualifications and tests for recruitment by the European Parliament of an assistant in the Directorate-General of Parliamentary Documentation and Information, Library Service (Grades B 3-B 2).

Miss Vandevyvere, a Belgian national, who until then had had no connexion with the Parliament or any other Community institution, submitted her candidature. She was informed on 27 February 1964, in terms of whose meaning I shall have occasion to return, that the Selection Board did not consider that it should put her name on the list of candidates allowed to participate in the tests. Following her request which was made with a view to finding

whether this letter was not based on an error, the Chairman of the Selection Board replied that the latter had, after discussion, confirmed on 5 March 1964 the selection of candidates made on the previous 25 February.

These are the decisions which Miss Vandevyvere disputes before you. But before discussing her conclusions and the submissions by which she supports them in more detail, it is appropriate to decide upon the most delicate question involved in her application, that is to say its admissibility.

**I — Admissibility**

While accepting that this is a matter for the Court, the defendant institution argues in favour of a negative reply to this question. The defendant relies first on the fact that your jurisdiction is specific and is exercised under Article 179 of the EEC Treaty (or 152 of the

<sup>1</sup> — Translated from the French.