

JUDGMENT OF THE COURT (SECOND CHAMBER)

14 DECEMBER 1965<sup>1</sup>

**Domenico Morina**  
**v European Parliament**

**Case 11/65**

**S u m m a r y**

1. *Officials — Recruitment — Competition — Appeal against a decision of appointment — Admissibility of conclusions seeking the annulment of a competition (Staff Regulations of officials of the European Communities, Articles 29 and 91)*
  2. *Officials — Recruitment — Competition — Holding or reholding of a competition — Exclusive powers of the administration — Limit of the jurisdiction of the Court (Staff Regulations of officials of the European Communities, Articles 29 and 91)*
1. Conclusions seeking the annulment of a competition are admissible only in so far as they support the application which is directed against the decision of appointment following upon the competition.
  2. Assessment of the expediency or necessity of organizing a competition lies within the exclusive domain of the appointing authority. In these circumstances, the Court cannot order a competition to be held or reheld without encroaching upon the prerogatives of the administrative authority.

**In Case 11/65**

**DOMENICO MORINA**, Doctor of Law, an official of the European Parliament, residing at 4 rue Théodore-Eberhard, Luxembourg, represented and assisted by Camille Linden of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of his said counsel, 1 rue Schiller,

applicant,

v

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

defendant,

1 — Language of the Case: French.

**Application :**

- for the annulment of Internal Competition No B10 for the post of administrative assistant in the Directorate-General of Administration;
- for the annulment of the two decisions of the Secretary-General of the European Parliament appointing Mrs Marie-Thérèse Louwage to Grades B5 and B4 respectively,

**THE COURT (Second Chamber)**

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

Advocate-General: J. Gand

Registrar: A. Van Houtte

gives the following

**JUDGMENT**

**Issues of fact and of law**

**I — Facts**

The facts may be summarized as follows:

1. The applicant was engaged by the European Parliament on 17 November 1958 under a so-called Brussels contract at a salary corresponding, by assimilation to the Staff Regulations of the ECSC, to Grade C12 (now C3).

On 1 June 1959 he was promoted to Grade C11 and in March 1962 to Grade C10 (Grades C2 and C1 respectively, according to the present Staff Regulations of officials).

On 13 December 1962 he was integrated under the new Staff Regulations in Grade C3, Step 2, with effect from 1 January 1962. By a decision of the Secretary-General of the same date he was promoted to Grade C1, Step 1, with effect from 1 March 1962.

2. By notice of 1 October 1964 Internal Competition No B 10 on the basis of

qualifications was announced to fill a vacant post of administrative assistant (career bracket B5-B4) in the Directorate-General of Administration (Personnel Division). The vacancy notice was worded as follows:

'Post: administrative assistant (career bracket B5-B4) in the Directorate-General of Administration (Personnel Division). This post is to be filled at Grade 5.

**I — Nature of duties**

- Keeping up to date applicants' files and correspondence relating thereto;
- preparing recruitment procedures (vacancy notices, transfers, competitions, examinations and tests);
- keeping up to date statistical information of the staff.

**II — Competition**

This competition will be held on the basis of qualifications.

### III — *Qualifications required*

- Good, general, secondary education or experience in employment of an equivalent level;
- methodical character and good drafting abilities.

### IV — *Knowledge of languages*

A very extensive knowledge of one of the official languages of the European Communities and a good knowledge of another official language. For administrative reasons, a good knowledge, at least, of French is required.'

The applicant submitted his application and was informed on 2 December 1964 that his name had been included in the list of suitable candidates drawn up by the Selection Board.

By a decision of 19 November 1964 the appointing authority appointed Mrs Marie-Thérèse Louwage to the vacant post with effect from 1 December 1964. At the date of her appointment to Grade B5 Mrs Louwage was classified in Grade C1.

3. In February 1965 Mrs Louwage was appointed to Grade B4 with effect from 1 December 1964.

On 17 February 1965 the applicant lodged the present application.

### II — *Conclusions of the parties*

The *applicant* claims in his application that the Court should:

'declare that this application is admissible;

declare that it has jurisdiction to entertain it;

in so far as is necessary, order the lodging, by the departments of the Assembly concerned, of the administrative documents relating to this case which may be important in settling the application, in particular those relating

to the qualifications and appointments of Mrs Louwage;

rule that the application is well founded and, consequently, annul the classification arising from Internal Competition No B 10 and the decision of the Secretary-General of the European Parliament resulting therefrom promoting Mrs Marie-Thérèse Louwage to the post of administrative assistant (career bracket B5-B4) in Grade B5, with effect from 1 December 1964 and also her promotion to Grade B4, with retro-active effect to 1 December 1964;

order Internal Competition No B 10 on the basis of qualifications to be reheld, under the conditions previously laid down and between the same candidates validly admitted to the competition, in accordance with the communication sent to the candidates by letter of 2 December 1964;

order the defendant to pay all costs and expenses;

*alternatively*:

allow the applicant to prove to the extent necessary and by any means whatever and by the production of other documents that his qualifications are superior to those of Mrs Louwage'.

He adds the following conclusions in his reply:

'admit also the offer of proof made under I, 3, above consisting of proving by any means whatever: "that the work which he has carried out, as evidenced by his immediate superiors, is in fact of a higher level than that of Grade B5-B4".'

The *defendant* contends that the Court should:

'declare that the application is inadmissible under all its different heads;

*alternatively*, rule that it is unfounded;

reject the applicant's offer of proof, in particular with regard to the production of documents concerning Mrs Louwage; dismiss the application;

order the applicant to pay the costs with the exception of those incurred by the defendant Parliament, in accordance with the provisions applicable'.

The defendant contends in addition, in its rejoinder, that the offer of proof made by the applicant in his reply should be rejected.

### III — Submissions and arguments of the parties

The application is directed against:

- (a) Internal Competition No B 10;
- (b) The decision of 19 November 1964, by virtue of which Mrs Marie-Thérèse Louwage was appointed to Grade B5 in the vacant post with effect from 1 December 1964.
- (c) The decision of 5 February 1965, by virtue of which Mrs Marie-Thérèse Louwage was appointed to Grade B4, again with effect from 1 December 1964.

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

1. The *defendant* claims first of all that the application is inadmissible in so far as it seeks the annulment of Internal Competition No B 10, as the applicant cannot impugn a collection of measures but may only request the annulment of an individual measure the legality of which is called into question.

The *applicant* points out that this objection is based on no criterion enabling the concept of a 'collection of measures' to be defined and enabling that collection to be distinguished from an 'individual measure'. Furthermore the objection does not specify the provisions by virtue of which an application directed against a 'collection of measures' is inadmissible. In any event, the present application seeks the annulment of specific measures by which the vacant post was awarded to Mrs Louwage, despite

the fact that her qualifications were inferior to those of the applicant.

The *defendant* emphasizes that under the terms of Article 91 of the Staff Regulations disputes between officials and their institutions must concern the legality of an act adversely affecting them, that is to say, a decision of the appointing authority prejudicing the applicant. A competition procedure cannot be regarded as such, all the more so as the Court has on many occasions asserted that only acts capable of directly affecting a specific situation can be considered as having an adverse effect.

2. The *defendant* observes that the application is in principle admissible inasmuch as it is directed against the decision appointing Mrs Louwage to Grade B5. However, no actual submission of annulment is put forward against that decision. The applicant's arguments, namely that that decision did not take into account the fact that his qualifications are superior to those of Mrs Louwage and that the illegal nature of the measure stems from the irregularity of the competition, are not supported by any specific submission.

In the *applicant's* opinion, on the other hand, the fact that Mrs Louwage was appointed to the vacant post while possessing qualifications inferior to his own and that that appointment is based on the result of a competition which is criticized as being irregular clearly brings out the submissions forming the basis of the application in so far as it is directed against the said appointment.

3. The *defendant* maintains that the application is inadmissible in so far as it impugns the list of suitable candidates drawn up by the Selection Board, which has an unfettered discretion in the matter. Consequently, it is irrelevant to discuss the value of the applicant's qualifications and his offer of proof should be rejected as being inadmissible.

The *applicant* objects to this claiming that it cannot be admitted that the Selection Board for a competition has unfettered discretion and that its decisions cannot be challenged, without thereby taking away an essential matter from the jurisdiction of the Court and thus depriving officials of all possibility of appeal, as in the case of a flagrant act of injustice by the Selection Board. Further, such an argument is in contradiction with Article 91 of the Staff Regulations which recognizes the Court's unlimited jurisdiction in appeals by officials and which applies necessarily to the provisions of the Staff Regulations (Article 30) instituting the Selection Board.

Finally the request for the applicant's qualifications to be examined and his offer of proof are in complete conformity with the case-law of the Court (Cases 10/55, 1/56 and 27/63).

The *defendant* replies, on the one hand, that Article 91 of the Staff Regulations provides for applications for annulment and not applications in respect of unlimited jurisdiction and, on the other hand, claims that the case-law cited by the applicant is not relevant to this case, or in no way justifies his arguments.

4. The *defendant* claims, finally, that the application is inadmissible in so far as it concerns the alleged promotion of Mrs Louwage to Grade B4. The applicant is in fact classified in Category C and, as he is not eligible for promotion within Category B, has no legal interest in seeking the annulment of that appointment.

The *applicant* maintains, on the other hand, that his legal interest is well founded in this case. In fact:

— either that appointment was made by way of promotion, in which case, if it is ruled that the application is well founded, the applicant would be classified in Category B within which category he would be eligible for promotion,

— or—as the defendant claims—the

appointment of Mrs Louwage to Grade B4 was made with retroactive effect as if it had occurred as a result of the disputed competition, in which case the applicant's interest in challenging it stems from the fact that the notice of competition referred to a post in Grade B5 and not Grade B4.

The *defendant* insists that the subsequent promotion of Mrs Louwage, supposing it to have occurred, does not constitute an act adversely affecting the applicant.

In fact, supposing that the Court were to rule in favour of the applicant, he would not find himself classified in Category B simply for that reason. The Parliament would be obliged to rehold the internal competition, in which event, even if the applicant appeared better placed than Mrs Louwage in the new list of suitable candidates drawn up by the Selection Board, his appointment in Category B would only be ensured by a discretionary decision of the appointing authority.

#### *The substance of the case*

1. The irregularity of Internal Competition No B 10 and the appointment of Mrs Louwage to the vacant post

The *applicant* emphasizes that the disputed competition was a competition on the basis of qualifications and that, consequently, the essential criterion for classification of the candidates was that of the value of their qualifications. As this criterion was not applied, the competition and Mrs Louwage's appointment which followed are irregular.

In support of this conclusion the applicant gives a detailed enumeration of his qualifications, abilities, conduct in the service and the assessments made of him in carrying out the duties with which he was entrusted, at the same time comparing them with the wording of the notice of the disputed competition (application, pp. 3 and 4). He re-

fers, *inter alia*, to a report from the Assistant Director of Parliamentary Documentation and Information which describes him as an 'intelligent and assiduous colleague who deserves promotion'.

Taking these factors into account, he claims that his qualifications were better than those of Mrs Louwage and that in order to be convinced of this it is enough to compare them with hers; but Mrs Louwage's personal file must be produced. The defendant's refusal to produce this file, even though the applicant has voluntarily produced his own, is contrary to the principle that there is a right to the production of any document having a bearing on the case.

Having taken note of the report of the Selection Board, which was lodged by the defendant shortly before the opening of the oral procedure, the applicant attempted at the hearing to demonstrate the allegedly contradictory or arbitrary nature of that report.

The *defendant* states that the applicant wrongly relies on two reports, the first from his Director dated 5 November 1962 and the second from the Assistant Director dated 22 November 1961. It is this second report which contains the words 'deserves promotion', whilst the other merely asserts that 'for these reasons he was promoted in 1962'.

As for the production of Mrs Louwage's personal file, the applicant's request is unfounded. On the one hand, the assessment of qualifications is within the exclusive domain of the Selection Board and, on the other hand, the official's personal file referred to in the last paragraph of Article 26 of the Staff Regulations is in this case quite clearly the applicant's file.

Finally, with regard to the applicant's criticisms of the report of the Selection Board, the defendant maintains that the Selection Board's assessment is based on correct findings of fact and on logical considerations and that, in any event, those criticisms are inadmissible, since

they were made for the first time during the oral procedure.

The *applicant* objects to this, stating that the reason why it was impossible to make the criticisms earlier was simply that the defendant refused to produce during the written procedure all the documents requested by the applicant in his application and reply.

## 2. The irregularity of the appointment of Mrs Louwage to Grade B4

The *applicant* states that he learnt on 5 February 1965 of Mrs Louwage's promotion to Grade B4 with retroactive effect to 1 December 1964, the date of her appointment to Grade B5. If that appointment is to be considered as following upon the competition in dispute, it is contrary to the conditions of the competition which expressly stipulated that the post to be filled was a post in Grade B5. If, on the other hand, it is to be considered as a promotion, it is contrary to the second subparagraph of Article 45(1) of the Staff Regulations, since it occurred less than six months after the date of Mrs Louwage's establishment in Grade B5.

The *defendant*, after admitting that the competition in dispute was announced to be for career bracket B5-B4, explains that, before her appointment to the vacant post, Mrs Louwage was classified in Grade C1 which, at each step, provides for a salary equal to that of Grade B4. In order to avoid her 'financial demotion', it was necessary, after appointing her to Category B, to place her in Grade 4. The Official Journal of the European Communities published the detailed list of posts for 1964 only on 1 December 1964 and it was at that date in fact that a post in Grade B4, which was not then available at the time of Mrs Louwage's appointment to Grade B5, was allocated to the Parliament. Since that appointment to Grade B5, although having been decided upon in November, took effect only from 1 December 1964, it was logical and not

irregular to grant Mrs Louwage, also from that date, the B4 post which had just been allocated to the Parliament.

The applicant contests this, stating that, if it was a question of avoiding the 'financial demotion' of Mrs Louwage, the Parliament could and should have had recourse to a perfectly legal method, conforming to the administrative practice of the institutions and consisting of granting Mrs Louwage a compensatory allowance '*ad personam*' for the six months for which she should have waited before being able to be promoted to Grade B4 in accordance with Article 45 of the Staff Regulations.

In its rejoinder the *defendant* merely insists upon the inadmissibility of the conclusions seeking the annulment of that appointment.

Although the defendant complied on 10 July 1965 with the Court's request to produce all the documents relating to the appointment of Mrs Louwage to Grade B4, the *applicant* maintains that the documents so produced are incomplete and that the decisive documents are not before the Court.

The *defendant* asserts on the contrary that it has produced all the required documents and declares that it remains entirely at the Court's disposal as regards the execution of its orders.

#### IV — Procedure

The procedure followed the normal course.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General the Second Chamber of the Court requested the defendant to produce all the administrative documents relating to the appointment of Mrs Marie-Thérèse Louwage to Grade B4.

The defendant complied with this request on 10 July 1965.

On 8 October 1965 it produced the report of the Selection Board of the disputed competition.

The parties presented oral argument at the hearing on 13 October 1965.

The Advocate-General delivered his opinion at the hearing on 10 November 1965.

### Grounds of judgment

#### Admissibility

1. The defendant raises the objection of inadmissibility against the conclusions concerning Internal Competition No B 10, on the ground that the applicant cannot request the annulment of a competition, that is to say, of a collection of measures, but only of an individual act adversely affecting him.

The applicant has directed his application principally against the decision of appointment following upon the competition in dispute.

The conclusions concerning the competition are admissible only in so far as they support the application directed against the abovementioned decision.

2. The applicant challenges the decision of the Secretary-General of 19 November 1964 by virtue of which Mrs Marie-Thérèse Louwage was appointed to the vacant post and was classified in Grade B5 with effect from 1 December 1964.

That decision was rescinded with retroactive effect by the Secretary-General and replaced by a subsequent decision taken before the application was lodged.

By reason of that fact, it must be concluded that the application is without purpose in so far as it is directed against the said decision.

The conclusions seeking the annulment of that decision are therefore inadmissible.

3. Further, the applicant requests the annulment of the decision of the Secretary-General of 5 February 1965 which 'rescinds and replaces' the prior decision of 19 November 1964 by appointing Mrs Marie-Thérèse Louwage to Grade B4.

That decision took effect retroactively from the date on which the prior appointment to Grade B5 had taken effect, namely 1 December 1964.

Article 2 of the decision provides for the transfer of Mrs Marie-Thérèse Louwage from the Directorate-General of General Affairs to the Directorate-General of Administration and thus brings about the change from the original department of the person concerned to that of the post which was the subject of the competition.

This transfer is one of the basic effects of the decision of appointment adopted following the competition.

For all these reasons, the disputed decision of 5 February 1965 in reality constitutes the measure which, as opposed to the decision of appointment to Grade B5, put an end to the recruitment procedure set in motion by the disputed competition.

As the applicant participated in that competition, his request for the annulment of that decision is therefore admissible.

4. The applicant claims finally that the Court should order Internal Competition No B 10 to be reheld on the conditions previously laid down and between the same persons who appeared in the list of suitable candidates.

Assessment of the expediency or necessity of organizing a competition lies within the exclusive domain of the appointing authority.



In these circumstances, the Court cannot order a competition to be held or reheld without encroaching upon the prerogatives of the administrative authority.

For this reason, these conclusions are not admissible.

#### The substance of the case

For the reasons set out above, the decision of 5 February 1965 constitutes the measure by which the administrative authority put an end to the disputed competition procedure and filled the vacant post.

That decision appointed Mrs Marie-Thérèse Louwage to Grade B4, in the career bracket of administrative assistant, in the Directorate-General of Administration, whereas the notice of the disputed competition expressly stated that the vacant post, within the framework of that career bracket, was classified at Grade B5.

Further, the Selection Board responsible for assessing the qualifications of each candidate drew up its list of suitable candidates with a view to filling that post.

In these circumstances, it must be concluded that the decision impugned, by appointing Mrs Louwage to Grade B4, does not conform to certain essential conditions of the competition.

It must therefore be considered as being irregular.

#### Costs

Under the terms of the first subparagraph of Article 69(2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

As the defendant has failed in its defence, it must be ordered to pay the costs.

On those 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 Protocol on the Statute of the Court of Justice of the European Economic Community and the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community;

Having regard to the Staff Regulations of officials of the European Economic Community and of the European Atomic Energy Community, especially Articles, 29, 30, 31, 90 and 91 as well as Annex III thereto;  
 Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

THE COURT (Second Chamber)

hereby:

1. Annuls the decision of 5 February 1965 appointing Mrs Marie-Thérèse Louwage to Grade B4;
2. Orders the defendant to pay the costs of the action.

Strauß

Donner

Monaco

Delivered in open court in Luxembourg on 14 December 1965.

A. Van Houtte  
 Registrar

W. Strauß  
 President of the Second Chamber

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

*Mr President,  
 Members of the Court,*

Mr Domenico Morina was engaged by the European Parliament on 17 November 1958 under a so-called Brussels contract, at a salary corresponding to that of the present Grade C3, and was subsequently integrated by a decision of 13 December 1962 and promoted to Grade C1, Step 1, with effect from 1 March 1962.

He applied to participate in Internal Competition No B 10, notice of which was given on 1 October 1962, to fill a vacant post of administrative assistant (career bracket B5-B4) in the Director-

ate-General of Administration. The notice specified that the post was to be filled at Grade 5 and that the competition was to be on the basis of qualifications; it mentioned as qualifications required a good, general, secondary education or experience of an equivalent level in employment. In addition, candidates were required to have a very extensive knowledge of one of the official languages of the Communities and a good knowledge of another official language and, for administrative reasons, a good knowledge at least of French was required.

Mr Morina was informed that his name was included in the list of suitable

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