

JUDGMENT OF THE COURT (SECOND CHAMBER)
8 MAY 1973 ¹

Anna Maria Campogrande
v Commission of the European Communities

Case 60/72

Officials — Disputes with the administration — Complaint — Meaning
(Staff Regulations, Art. 90 (2)).

A letter based on unofficial information, addressed to the Commission several weeks before the notification of the contested decision, does not constitute a

complaint against an act adversely affecting an official within the meaning of Article 90 (2) of the Staff Regulations.

In Case 60/72

ANNA MARIA CAMPOGRANDE, official of the Commission of the European Communities, living at 19, Avenue de l'Orée, Brussels, represented by Marcel Slusny, advocate at the Cour d'appel of Brussels, having chosen her address for service in Luxembourg at the chambers of Me Ernest Arendt, 34 B/4 rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its legal adviser, Pierre Lamoureux, acting as agent, having chosen its address for service in Luxembourg at the offices of its legal adviser Emile Reuter, 4 boulevard Royal,

defendant,

In the matter, at the present stage of the proceedings, of the admissibility of the application for the annulment of the procedure of competition COM/A/264, including the notice of competition, and also of the procedures of competitions COM/A/265, COM/A/266, COM/A/267, COM/A/268, including the notices of competition,

¹ — Language of the Case: French.

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, H. Kutscher and M. Sørensen (Rapporteur), Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts in the present case may be summarized as follows:

Miss Anna Maria Campogrande entered the Commission's service as a member of the auxiliary staff on 1 August 1965. She became established on 1 April 1967 in grade B 3.

In September 1971, a series of notices of internal competitions to be based on both qualifications and tests was published (COM/A/264-268) with a view to filling vacant posts for administrators in career bracket A 7/A 6. A further communication divided the options into groups and stated that: 'The Selection Boards for these competitions are required to inform the candidates admitted to the tests of the exact documentation with which they should acquaint themselves in order to prepare for the specific oral tests.'

Miss Campogrande submitted her application for competition COM/A/264.

The Selection Board decided at first not to admit her to the competition, but after several complaints she was informed, on 22 March 1972, that she would be allowed to present herself at the tests arranged for the following day.

Miss Campogrande was informed by letter of 15 June that, on account of her marks, she had not been included in the list of suitable candidates.

However, before the result of the competition was thus communicated to her, she had on 18 May 1972 addressed a letter to Mr Coppé, the member of the Commission responsible for questions of administration. In this letter, she referred to the conditions stated in the competition notice, according to which every candidate obtaining a total of 48 points or more was to be included on the reserve list which it was the purpose of the competition to establish. She then quoted certain information which had reached her — without indicating the source — according to which the total had been raised to 53 points. Assuming that this alteration accounted for her failure, she pointed out that a retrospective change in the conditions of the competition was inadmissible and could lead to the annulment of the reserve list following an application before the Court of Justice. She recalled, in addition, the special circumstances in which she had been admitted, and which had created in her case 'a psychological handicap'. She finally requested that in drawing up the reserve list allowance should be made for these circumstances.

By letter of 11 July 1972, Mr Coppé replied that having been informed of the Selection Boards' decisions on 31 May, he was able to state that the conditions in the competition notices had been observed. Only candidates obtaining the minimum 48 points were included on the lists of suitable candidates drawn up by the Boards; this figure had not been changed.

II — Procedure

By application commencing the proceedings lodged at the Court Registry on 28 August 1972, Miss Campogrande requested the annulment of competition COM/A/264, including the competition notice, as well as the annulment of the procedures of competitions COM/A/265-268, including the competition notices. She alleges, chiefly, that 'there was manipulation of the marks' and, more particularly, that she had originally obtained 52 points, but that her score was subsequently reduced to 47, so that she failed to attain the minimum 48 points. She maintains that there has been a breach of the principle of equality between candidates: she was only informed of her admission to the tests by letter of 22 March 1972, whereas the other candidates were informed on 10 March of the documentation to which they should refer.

She further impugns the competition notice for lack of a specified age limit, and the procedure of the whole group of five competitions for discrimination between candidates, the Selection Board for competition 268 having been far more lenient than the others, and having allowed candidates the option of English, although this was not one of the official languages of the Communities. Of the 51 candidates admitted to the tests, 28 were included in the list of suitable candidates, whereas the figures for the whole group of five competitions were 75 out of 253, and for competition 264 by itself 17 out of 55.

By memorandum lodged on 6 October 1972, the Commission, in conformity with Article 91 of the Rules of Procedure, requested the Court to give a ruling as to the admissibility of the application without going into the merits, and to declare the application inadmissible.

The applicant, in her observations on the objection of inadmissibility, lodged on 1 December 1972, requested the Court primarily to dismiss the objection, and alternatively to join it to the merits. As a further alternative the applicant requested the Court to order the defendant to produce circulars 1462/IX/69-F, 3069/IX/71-F and 2035/IX/72-F, and to give full explanations of its practice regarding requests and complaints misdirected or not submitted through an immediate superior.

On the report of the Judge-Rapporteur and after hearing the Advocate-General, the Court (Second Chamber) decided to open the oral procedure on the objection without any preparatory inquiry.

The parties submitted their oral observations at the hearing on 22 March 1973. The Advocate-General presented his opinion at the hearing on 5 April 1973.

III — Pleas and arguments of the parties on the admissibility of the action

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

The *defendant*, applicant on the preliminary issue, maintains that the application is inadmissible because the application does not comply with the conditions of admissibility prescribed in Article 91 of the Staff Regulations, as amended by Regulation of Council No 1473/72, which came into force in July 1972. This new Article 91 requires, in its second paragraph, as a condition precedent to the introduction of an

application before the Court, that the interested party must have submitted a complaint through an immediate superior and that this complaint must have been expressly or impliedly rejected.

The applicant's letter to Mr Coppé, written on 18 May 1972, did not constitute, either in form or in substance, a complaint within the meaning of Article 90, as it stood at the date of the letter.

As to form, it was not submitted through the applicant's immediate superior and it contained no indication that any reference to Article 90 was intended.

As to substance, the letter did not contain the substance of a complaint within the meaning of Article 90. It was not directed against a decision: indeed it could not have been so directed, since at this date the Selection Board's decision had not yet been reached. It simply requested Mr Coppé's personal intervention with the Selection Board, before the end of its tasks, in order to have the applicant included on the list of suitable candidates to be drawn up by the Board.

Thus, not only can this letter not be considered as a complaint within Article 90, but it is also open to doubt whether it even constitutes a request within the meaning of the same Article, its basically unlawful object, combined with the total lack of the required formalities, tending to class it as mere private solicitation of personal intervention.

The application ought accordingly to be dismissed as inadmissible.

The *applicant*, defendant on the preliminary issue, replies to the Commission's objections as to form that the administrative appeal provided for by Article 90 is not a formal act, accompanied by essential procedural requirements neglect of which necessarily entails the inadmissibility of the application. Further, in his reply of 11 July 1972, Mr Coppé did not raise the

inadmissibility of the administrative appeal.

As to substance, the applicant maintains that by her letter complaining of 'a retrospective change in the conditions of the competition', and expressly referring to the possibility of the reserve list being annulled following an application to the Court of Justice, she clearly questioned the legality of the procedure followed. She further observes that when Mr Coppé replied to her on 11 July 1972, he had at his disposal all the material necessary to do this.

The applicant is astonished that her approach to Mr Coppé could be interpreted as private solicitation. A request or complaint addressed by an official as such, concerning his or her administrative position, to an authority as such, constitutes an application and not a private approach.

The applicant points out that she did not ask Mr Coppé to intervene in the Selection Board's work, which in so far as concerned drawing up the list of suitable candidates, was completed on 15 May 1972, that is to say three days before her letter of 18 May 1972.

Further, the applicant points out that if the letter of 18 May 1972 constitutes a complaint, the express reply of 11 July opens the way for an application to the Court, and that if, contrary to her contention, this letter only constitutes a simple request, the reply to this request was given on 11 July, that is to say before the publication of Regulation 1473/72 on 16 July. Since an application to the Court could have been submitted up to 16 July 1972, the applicant can see no logical reason why the period of three months fixed by the new paragraph 2 of Article 90 of the Staff Regulations must be allowed to run in order to allow her to submit a complaint. This complaint would have been quite pointless, as Mr Coppé, in his letter of 11 July 1972, pointed out the Commission's lack of competence, and seemingly referred to the Court's judgment in the Marcato case 44/71 (14 June 1972, Rec. 1972, p. 427).

Realizing the difficulty caused by the coming into force of Regulation No 1473/72, at the same time as submitting the present application to the Court, the applicant submitted a complaint to Mr Coppé containing a copy of the application to the Court. She acted in this way because she could not prejudge the decision of the Court on admissibility, having regard to the judgment in Case 44/71. She has in this way retained the right to submit a second application to the Court relating to the same facts as the present application (see application 112/73 lodged at the Registry 22 March 1973).

Grounds of judgment

- 1 The applicant, by application lodged in the Court Registry on 28 August 1972, requests the annulment of a series of internal competitions, together with the competition notices relative thereto, instituted by the Commission in 1971 with a view to filling vacant posts for administrators in career bracket A 7/A 6.
- 2 The Commission, defendant in the main action, has raised an objection of inadmissibility based on non-observance of Article 91 of the Staff Regulations.
- 3 Paragraph 2 of this Article, as amended by Regulation No 1473/72 of 1 July 1972, published in the Official Journal of the European Communities on 16 July 1972, makes the admissibility of an application to the Court of Justice dependent upon the prior submission by the applicant to the appointing authority of a complaint within the meaning of Article 90 (2) against an act adversely affecting him.
- 4 The question of admissibility must be resolved on the basis of the rules in force at the date on which the application was submitted.
- 5 The first step is accordingly to consider whether the applicant has submitted to the Commission a prior complaint against an act adversely affecting her.
- 6 On this point the applicant relies upon a letter which she addressed on 18 May 1972 to the member of the Commission responsible for administrative matters.

- 7 This letter was based, according to the applicant's own statements, on certain information which had come to her, but of which she does not give the source.
- 8 The result of her performance in the competition was not, however, notified to the applicant until 15 June, that is several weeks after the dispatch of the abovementioned letter.
- 9 Under these circumstances, this letter cannot be considered as a complaint against an act adversely affecting the applicant.
- 10 The application is accordingly inadmissible under the terms of Article 91 (2) of the Staff Regulations.

C o s t s

- 11 The applicant has failed in her application.
- 12 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.
- 13 However, under the terms of Article 70 of the Rules of Procedure, the costs incurred by the institutions in applications by servants of the Communities are borne by the institutions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Protocols on the Statute of the Court of Justice;

Having regard to the Staff Regulations of Officials of the European Communities, especially Articles 90 and 91;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69, 70 and 91;

THE COURT (Second Chamber)

hereby:

1. Dismisses the action as inadmissible;
2. Orders each party to bear its own costs.

Pescatore

Kutscher

Sørensen

Delivered in open court in Luxembourg on 8 May 1973.

A. Van Houtte

P. Pescatore

Registrar

President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI
DELIVERED ON 5 APRIL 1973 ¹

*Mr President,
Members of the Court,*

The introduction into the system for the protection of officials' rights and interests provided by the Regulations, of a preliminary requirement to be complied with before judicial proceedings can be begun, must necessarily occasion discussion and argument as to the criteria for applying the new rule, and especially for establishing the minimum condition for such requirement to be considered discharged.

The present case, at the current stage of argument as to the admissibility of the proceedings introducing the action, offers a typical case for your judgment;

its solution will undoubtedly constitute an important precedent for the clarification of the problems arising in relation to the definition of the requirement now imposed of an administrative appeal, which henceforth constitutes a condition of admissibility of an application before this Court, in conformity with the new text of Article 91 of the Staff Regulations resulting from the amendment brought about by Regulation No 1473/72 of the Council of 30 June 1972.

The interest of the parties in obtaining your judgment on the admissibility of the present application is, however, only relative. Since there is no doubt as to the admissibility of the new application,

¹ — Translated from the Italian.