

notice as published in the Official Journal. That applies equally to a selection committee to which the appointing authority has delegated its right of selection.

That applies in particular to the requirement that an age-limit, if there

is one, must be indicated in the vacancy notice. Consequently the appointing authority is not required to refer expressly to that condition in the vacancy notice, nor is it required to fix the age-limit itself, but is entitled to delegate its power in that respect to the selection committee.

In Case 306/81

CONSTANTIN VERROS, Press Attaché at the Greek Embassy, residing at 50 Avenue du Général de Gaulle, 1050 Brussels, represented by Jean-Marie Tavernier, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of J. Hansen, Advocate, 6 Rue Philippe-II,

applicant,

v

EUROPEAN PARLIAMENT, represented by Martin Schmidt, Director of Personnel and Social Affairs, 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,

APPLICATION for the annulment of the decision of the Selection Committee of July 1981 not to accept the applicant's candidature for the post of Head of the Greek Language Division in the Directorate-General for Information and Public Relations, in charge of the Athens Information Office,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: S. Rozès

Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

At the beginning of 1981, the European Parliament decided to recruit an official for the post of Head of the Greek Language Division in the Directorate-General for Information and Public Relations in charge of the Athens Information Office. The President of the European Parliament decided to initiate the procedure for filling that post in the first place by means of promotion or transfer. To that end, Vacancy Notice No 2924 was displayed at the European Parliament on 3 March 1981 and brought to the notice of the officials of other institutions. According to the defendant, that notice failed to achieve the desired result. For that reason and basing its decision on the very specific nature of the post in question, the administration of the European Parliament decided to apply the procedure provided for in Article 29 (2) of the Staff Regulations in order to fill the post. By letter of 6 May 1981, it notified the Joint Committee of its intention and asked the committee for its opinion. In the course of its meeting of 7 May 1981, the Joint Committee gave its approval to the application of the above-mentioned procedure in the circumstances of the case.

As a result, a vacancy notice was published in the Official Journal of the

European Communities, C 148 of 18 July 1981, at p. 3, giving a detailed description of the duties of the official and setting out the conditions of eligibility for the post, namely, in particular, “a university degree or equivalent professional experience, a proven experience of public relations and journalism” and “thorough acquaintance with European problems”. The notice further stated that the vacant post was to be classified in Grade A 3; it did not however include any limit as to the candidates’ age.

A selection committee was therefore appointed. It held its opening meeting on 7 July 1981 and laid down on that occasion the criteria for the selection of candidates. Those criteria included *inter alia* “proven experience of at least 10 years in public relations and journalism” and an age-limit according to which candidates were required to be “between 35 and 50 years of age (in other words, to have been born between 1 August 1931 and 1 August 1946)”. The criteria were not published in the Official Journal; nor were they displayed on notice boards or brought to public attention in any other manner. The applicant, who was born on 15 April 1947, submitted his application for the post in question by an application form dated 17 July 1981 and received by the selection committee on 20 July 1981, that is to say, within the prescribed period.

In the course of its meetings of 23, 27 and 31 July 1981, the selection

committee examined the 146 applications received and decided to regard as valid 16 of that number. It rejected the other 130 including that of the applicant.

By letter of 7 August 1981, the chairman of the selection committee notified Mr Verros that his candidature had not been accepted on the ground that he did not come within "the category of those between 35 and 50 years of age — a limit laid down by the committee itself (more precisely those born between 1 August 1931 and 1 August 1946)". In reply to that letter, on 14 August 1981, the applicant submitted a complaint to the Secretariat-General of the European Parliament, in which he maintained that the age-limit had not been mentioned in the notice of competition published in the Official Journal and that in view of that fact he continued to regard himself as a candidate for the post in question.

That complaint was dismissed by letter of 2 September 1981 from the chairman of the selection committee. The latter referred to Article 29 (2) of the Staff Regulations and explained that "the provisions concerning competitions in Annex III to the above-mentioned Staff Regulations are not of course applicable in this competition and selection committees have a wider and more flexible discretion in laying down criteria considered appropriate."

In the meantime, by decision of the President of the European Parliament, Giorgios Papadopoulos was appointed to the post in question with effect from 1 January 1982.

On 26 November 1981, the applicant brought this action, which was lodged at the Court Registry on 1 December 1981, against the selection committee's decision not to accept his candidature.

Upon hearing the report of the Judge-Rapporteur and the views of the

Advocate General, the Court (Second Chamber) decided to open the oral procedure. It requested the European Parliament, the Council and the Commission of the European Communities to explain the normal practice adopted by them for the organization of recruitment procedures such as that in question.

II — Conclusions of the parties

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

Annul the selection committee's decision not to accept the applicant's candidature for the post of Head of the Greek Language Division in charge of the Athens Information Office;

Annul the appointment made or to be made;

Order the defendant to pay the costs.

In his reply, by way of a clarification of the second point listed above, he claims that the Court should:

Annul the President of the European Parliament's appointment of Giorgios Papadopoulos to the post which took effect on 1 January 1982.¹

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

Take formal note that the defendant leaves the question of the admissibility of the application to the Court;

Dismiss the substance of the action;

Order the applicant to pay the costs.

¹ — In the reply the year quoted is 1981 but this is clearly an error.

In its rejoinder, the defendant contends that the Court should:

Dismiss as inadmissible the second and third submissions formulated in the reply relating to the annulment of the disputed decision;

In any event, dismiss the three submissions as unfounded.

III — Submissions and arguments of the parties

A — Admissibility of the action

The *defendant* does not dispute the admissibility of the action as regards the submission put forward in the application. However, in relation to the second and third submissions in the reply, the defendant maintains in its rejoinder that, in view of the fact that they were not advanced in the application, the said submissions constitute fresh issues. Article 38 (1) (c) of the Rules of Procedure provides that the initial application must contain "the subject-matter of the dispute and the grounds on which the application is based"; fresh issues raised in the reply are therefore inadmissible.

B — Substance

As regards the substance, the *applicant* claims that the selection committee of the European Parliament arbitrarily altered the conditions of eligibility for the vacant post in such a way as to introduce a new requirement which was not envisaged in the notice of competition itself and which made his candidature inadmissible. The basic function of a notice of competition is to give those interested the most accurate information possible about the conditions of eligibility for the post to enable them to judge whether they should apply

for it. It follows that if an age-limit is imposed, mention thereof must necessarily be made in the vacancy notice. Laying down criteria for assessment in advance tends to ensure that candidates' qualifications will be considered objectively and that arbitrary decisions will be excluded. The formalities provided for in Article 5 of Annex III should be regarded as essential. In so far as the notice of competition published in the Official Journal makes no mention of any age-limit, the exclusion of a candidate on the ground that he does not satisfy that requirement amounts to an infringement of the first paragraph of Article 5 of Annex III to the Staff Regulations, as may be seen from the case-law of the Court.¹

The *defendant* replies, in its defence, that the selection committee did not fix the age-limit at a late stage, namely after receipt of the applicant's candidature which was submitted on 17 July 1981, but in the course of its opening meeting on 7 July 1981. Furthermore, in fact and in law, the selection committee is authorized to limit the age of candidates.

Indeed, a minimum age is necessary in view of the importance of the vacant post and in accordance with the administrative principle that a head of division should not be younger than his subordinates. In any event, the defendant considers that it is clear that the age-limit was not established with the intention of excluding the applicant.

In law, the imposition of an age-limit is justified on the basis of Article 29 (2) of the Staff Regulations which authorizes, in exceptional cases, a recruitment procedure other than the competition procedure. Consequently, the strict rules

¹ — Judgments of 14 December 1965, Case 21/65 *Morina* [1965] ECR 1033 and of 28 June 1979, Case 255/78 *Anselme and Constant* [1979] ECR 2323.

for competition procedures provided for in Annex III are no longer applicable. In particular, the requirements relating to the drafting of the notice of competition, including the obligation to indicate, where appropriate, any age-limit, need not be observed. The special procedure authorized by Article 29 (2) is not defined or explained in the Staff Regulations and the choice of the most appropriate means is left to the Community authority. Moreover the defendant considers that the references in the application to the decisions of the Court are not relevant in this instance, inasmuch as they concern competitions, which are governed by the provisions of Annex III to the Staff Regulations. In the present case, recourse to Article 29 (2) is not subject to any condition as to publication, as the Court held in its judgment of 29 October 1975.¹ In view of the fact that publication is not compulsory for an exceptional recruitment of that type, it should be acknowledged that *a fortiori*, if there is publication, it may be restricted to such details as appear in the vacancy notice in question and an age-limit may be introduced at a later stage if the selection committee should consider it necessary.

In his reply, the *applicant* claims, in a first submission, that it follows from Article 1 of Annex III to the Staff Regulations that if an age-limit is imposed, it is clear that mention of that fact must be made in the vacancy notice, and that failure to respect that requirement amounts to an infringement of that article. He bases his argument on the judgment of the Court of 22 March 1972 (Case 78/71 *Costacurta* [1972] ECR 163).

In a second submission, the applicant maintains that the rejection of his candi-

date constitutes an infringement of the first paragraph of Article 5 of Annex III to the Staff Regulations. He reiterates the argument advanced in his application, and refers to the case-law of the Court on the point in question.²

In his view the defendant ought in those circumstances to set aside the recruitment procedure which had been initiated and to have withdrawn the original vacancy notice, replacing it with a corrected notice. The rejection of his candidature therefore amounts to an infringement of the first paragraph of Article 5 of Annex III to the Staff Regulations.

In a third submission, the applicant submits that the vacant post was not amongst those for which the appointing authority may apply the provisions of Article 29 (2) of the Staff Regulations, inasmuch as the vacancy notice made no mention of the fact that the post declared vacant required special qualifications or of the possibility that the procedure provided for in Article 29 (2) might be applied.

In his opinion, it is only possible to have recourse to that article if the possibility has been envisaged in the vacancy notice or in any case in a document published at a later stage. Moreover the defendant has failed to justify the reasons for which the vacant post required special qualifications, and to establish the existence of exceptional circumstances. Such a justification is necessary to enable the Court to review the legality of a decision of that nature, especially in view of the fact that the existence of special

1 — Joined Cases 81 to 88/74 *Marengo* [1975] ECR 1247.

2 — See in particular the judgments of 30 October 1974, Case 188/73 *Grassi* [1974] ECR 1099 and of 28 June 1979, Case 255/78 *Anselme and Constant* [1979] ECR 2323.

qualifications is a legal condition for the application of Article 29 (2) of the Staff Regulations. That concept concerns exceptional cases "in which the technical knowledge required or the unusual nature of the post restricts potential candidates to a small number of highly specialized persons with exceptional knowledge and experience". However, the post as described in the vacancy notice does not enter into that category, as may be seen from the judgment of 26 May 1971 (Joined Cases 45 and 49/70 *Bode v Commission* [1971] ECR 465) and the opinion of the Advocate General in the same case.

The *defendant* replies to those submissions only in the alternative. As regards the submission relating to the infringement of Article 29 (2) of the Staff Regulations, it contends, in its rejoinder, that the conditions required for the application of the exceptional recruitment procedure provided for in that article are present in this case. The post in question is one in a new Member State where European questions are particularly sensitive. It is therefore a delicate task to establish and subsequently develop contacts with the press and other Greek media of information and to disseminate information on the activities of the European Parliament in specialized sectors such as, for example, the universities and trade unions. In carrying out such a task regard must be had to both the balance and the political peculiarities of the various sectors and this requires an exceptional aptitude in making extremely varied contacts together with thorough knowledge and experience of the political circles in Greece. It is therefore necessary for the person appointed to possess, in addition to the qualities normally required, special qualifications such as long and proven experience of journalism on the one hand and of public relations on the other. It is therefore clearly necessary to

fix a minimum age-limit. The defendant also refers to the fact that careful study of the vacancy notice reveals the special nature of the qualifications required.

Moreover, it adds that all the procedural conditions were fulfilled. The other possibilities of filling the post were exhausted, the general competition procedure was excluded and the procedure at issue was initiated only after a favourable opinion had been obtained from the Joint Committee.

As regards the failure to respect the spirit of Article 27 of the Staff Regulations, the European Parliament reminds the Court that, in its view, recourse to Article 29 (2) is not subject to any condition as to publication. It follows that the Staff Regulations do not provide for the vacancy notice to mention the possibility that the article may be applied and the Court in the above-mentioned decisions has not held that it must include such a mention.

In those circumstances, the defendant takes the view that the application of the special recruitment procedure provided for in Article 29 (2) of the Staff Regulations is "fully detailed and sufficiently substantiated, objectively justified and in total conformity as regards the procedural conditions". The submission advanced by the applicant is unjustified and is unfounded in fact and in law.

In respect of the alleged infringement of Article 1 (g) and the first paragraph of Article 5 of Annex III to the Staff Regulations the European Parliament notes that the provisions of Annex III which govern competition procedures do not apply to the procedure provided for in Article 29 (2). Even if they did apply,

there would still be some doubt as to whether there is an obligation to mention in the notice of competition any age-limit which may be imposed. According to the wording of the above-mentioned provision and in particular the inclusion of the expression "where appropriate", the mention of an age-limit is optional, as may be seen from the opinion of Mr Advocate General Roemer in Case 78/71 (*Costacurta* [1972] ECR 163 at p. 170). The defendant concludes that, *a fortiori*, in cases such as this, where the provisions of Annex III are not applicable, it was not necessary to mention the age-limit in the vacancy notice. Consequently, the applicant's submission is not founded in law. The same considerations apply to the submission regarding the first paragraph of Article 5 of Annex III.

The questions put by the Court

In reply to the first question put by the Court, namely whether vacant posts which are the subject of a recruitment procedure on the basis of Article 29 (2) of the Staff Regulations are systematically published in the Official Journal or in the general press, the Council replied that with a few exceptions such posts have never been

published in the Official Journal or the press. The Commission replies that its vacant posts are not normally advertised at all. The European Parliament replies that it does not publish them systematically, but that in the majority of cases, recruitment procedures are published according to the specific requirements of the posts to be filled.

To the second question, namely whether the details published mention whether the recruitment procedure in question is based on Article 29 (2), the Council and the European Parliament reply in the negative.

To the third question, namely whether the published notices specify an age-limit if one is imposed, the Council replies in the affirmative, whilst the European Parliament replies in the negative.

IV — Oral procedure

At the sitting on 3 February 1983, the applicant, represented by J. M. Tavernier, and the European Parliament, represented by A. Bonn and M. Peter presented oral argument.

The Advocate General delivered her opinion at the sitting on 17 March 1983.

Decision

- 1 By application lodged at the Court Registry on 1 December 1981, Constantin Verros, Press Attaché at the Greek Embassy in Brussels, brought an action for the annulment of the decision of the selection committee of the European Parliament of 7 August 1981 refusing to consider his candidature for the post of Head of the Greek Language Division of the Directorate-General for Information and Public Relations of the European Parliament, in

charge of the Athens Information Office, and, in addition, for the annulment of the appointment of the successful candidate, which took effect on 1 January 1982.

- 2 By vacancy notice published in the Official Journal of 18 June 1981, the Parliament announced its intention of recruiting a Head of the Greek Language Division in charge of the Athens Information Office.
- 3 The vacancy notice included a detailed description of the duties of head of division and the conditions of eligibility for the vacant post. It should be noted that the legal basis for the procedure adopted was not indicated and no mention was made of any age-limit.
- 4 In the course of its opening meeting, the selection committee fixed the criteria for the selection of the candidates and decided, in particular, that candidates must be "between 35 and 50 years of age (in other words have been born between 1 August 1931 and 1 August 1946)".
- 5 The applicant, who was born on 15 April 1947, submitted his candidature together with 145 other candidates. As a result of the age-limit imposed, the chairman of the selection committee notified the applicant by letter of 7 August 1981 that it had decided that his candidature was unacceptable.
- 6 The applicant submitted a complaint against that decision under Article 90 (2) of the Staff Regulations, which was rejected. The applicant then brought this action.
- 7 In support of his action, the applicant relies on three submissions, the first of which alleges an infringement of the first paragraph of Article 5 of Annex III to the Staff Regulations on the ground that the selection committee had added the condition as to age to the conditions set out in the vacancy notice.

The second submission alleges an infringement of Article 1 (1). (g) of Annex III to the Staff Regulations in view of the fact that the age-limit was not listed as a condition for possible admission in the vacancy notice issued by the administration of the Parliament. The third submission alleges an infringement of Article 29 (2) of the Staff Regulations, on the ground that the substantive conditions for the application of that article were lacking.

Admissibility of the second and third submissions

- 8 The Parliament contends that the second and third submissions which were formulated for the first time in the reply must be regarded as fresh issues and cannot therefore be considered by the Court.
- 9 Article 42 (2) of the Rules of Procedure of the Court provides that no fresh issue may be raised in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the written procedure. However, the Court observed in its judgment of 30 September (Case 108/81 *Amylum v Council* [1982] ECR 3107), that a submission which may be regarded as “amplifying a submission made previously”, directly or by implication in the original application, must be considered admissible.
- 10 The Court notes that the second submission is closely connected with the first submission alleging an infringement of the first paragraph of Article 5 of Annex III to the Staff Regulations, which is cited in the application. In those circumstances, that second submission constitutes by implication a branch of the first submission, and must therefore be regarded as admissible.
- 11 The third submission however appears for the first time in the reply. The infringement of Article 29 (2) of the Staff Regulations which it alleges does not appear either expressly or by implication in the application.
- 12 That submission is therefore entirely new and in consequence inadmissible.

Substance

- 13 In support of his first two submissions, the applicant claims that the disputed decision cannot have been based on the criterion of an age-limit inasmuch as that criterion was not mentioned in the vacancy notice and was added subsequently by the selection committee, which thus arbitrarily altered the conditions of eligibility for the vacant post.
- 14 The Parliament raises the objection that the above-mentioned provisions of Annex III to the Staff Regulations relate to notices of competition and are therefore not applicable, since this case concerns the exceptional recruitment procedure provided for in Article 29 (2) and not that of Article 29 (1) of the Staff Regulations. That article, the Parliament states, neither defines nor explains the special procedure which it authorizes and leaves the choice of the most appropriate means for filling the vacant post to the appointing authority. In those circumstances, the procedure applied was not subject to any obligation as to prior publication either of all or any of the criteria applicable.
- 15 It appears from the file that the recruitment procedure applied in this case is indeed the selection procedure provided for in Article 29 (2) and not the competition procedure provided for in Article 27 or 29 (1) and governed by Annex III to the Staff Regulations. There are no grounds on which the Court may question the Parliament's right to apply the procedure selected in this case.
- 16 Within the framework of that special procedure, the appointing authority is not required to apply the provisions of Annex III to the Staff Regulations relating to notices of competition. It may therefore apply in the course of the procedure criteria which are not set out in the vacancy notice and such criteria need not be published in the Official Journal. That applies equally to a selection committee to which the appointing authority has delegated its right of selection.
- 17 Moreover, as regards the applicant's argument to the effect that the appointing authority is required to observe all the rules of Annex III in

connection with the competition because, in applying the special procedure of Article 29 (2) of the Staff Regulations, it relied heavily on those rules, it should be observed that in this case such an argument is not valid, principally because, under that procedure, there is no obligation to observe the rules relating to competitions, and because the fact that the appointing authority referred to part of those rules can in no circumstances be regarded as creating an obligation on its part.

- 18 That applies in particular to the requirement that an age-limit, if there is one, must be indicated in the vacancy notice. Consequently the appointing authority was not required to refer expressly to that condition in the vacancy notice; nor was it required to fix the age-limit itself but was entitled to delegate its power in that respect to the selection committee.
- 19 It follows that neither of the submissions is well founded and that the application must be dismissed.

Costs

- 20 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, according to the second subparagraph of Article 69 (3), the Court may order even a successful party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.
- 21 It should be noted that this action results from the fact that the Parliament failed to indicate in the notice of competition that in the case in question the special recruitment procedure provided for in Article 29 (2) of the Staff Regulations was to be applied.
- 22 In proceeding as it did, it provoked an understandable error on the part of the applicant and caused him to incur the expense of an action to no avail. It must therefore be ordered to pay the applicant's costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application:
2. Orders the Parliament to pay the costs of the proceedings including those of the applicant.

Pescatore

Due

Bahlmann

Delivered in open court in Luxembourg on 19 May 1983.

For the Registrar

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS

(see Case 289/81, p. 1746)