

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
12 March 1992*

In Case T-73/91,

Mariana Gavilan, a member of the temporary staff of the European Parliament, residing in Imbringen (Luxembourg), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and Johann Schoo, a member of the Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for annulment of two decisions of the Parliament of 8 February 1991 and 12 July 1991,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

composed of: K. Lenaerts, President of the Chamber, D. Barrington and H. Kirschner, Judges,

Registrar: H. Jung,

makes the following

* Language of the case: French.

Order

Facts

- 1 The applicant was born physically handicapped. She has a degree in sociology and worked from 1978 to 1985 as a freelance teacher of Spanish for various Community institutions.

- 2 Implementing a specific procedure designed to encourage the recruitment of physically handicapped persons, the European Parliament adopted in 1983 an initial reserve list of nine handicapped members of the temporary staff for whose benefit an internal competition was organized which led to their appointment as officials in category C.

- 3 The applicant claims that her name was not included in that initial list because her file was lost by the members of Staff Committee dealing with the matter.

- 4 In implementation of the specific procedure referred to above, the Parliament adopted in 1984 a second list of two handicapped members of the temporary staff, including the applicant, with a view to organizing a specific internal competition. Such a competition was in fact organized for the other candidate concerned, who was subsequently appointed an official in category C.

- 5 On 1 April 1985, the Parliament engaged the applicant as a member of the temporary staff in Grade C 4 and appointed her to the Staff Regulations and Staff Management Division. The Parliament justified the applicant's classification in category C on the ground that only posts in that category were available. Ever since that date the applicant's contract of temporary employment has always been renewed for successive periods of six or twelve months.

- 6 In August 1987 the applicant drew the Parliament's attention to the fact that she was the only handicapped person whose name was included on one of the two lists referred to and who had not yet been established by means of a specific internal examination. At the same time she alleged that her classification in Grade C 4 was arbitrary in view of her university education.

- 7 Following that approach by the applicant, the Parliament assigned her on 1 October 1987 to a post in Grade B 5 and invited her to take part in the Internal Competition B/164.

The Parliament adds that it had been decided at the same time that a specific internal competition would be organized for the applicant's benefit if she was not successful in competition B/164.

- 8 A letter from Lord Plumb, the President of the Parliament, of 21 June 1988 confirmed that undertaking.

- 9 In May 1989, after being unsuccessful in competition B/164, the applicant approached the Secretary-General and the Director-General for Staff, Budget and Finances in order to request the organization of a specific internal competition with a view to her establishment.

- 10 In the absence of any reply from the Parliament, the applicant once again approached the Director-General in November 1989. He asked her to be patient until April 1990 in order to enable a specific internal competition to be organized.

- 11 After vainly re-contacting the Secretary-General of the Parliament in April and August 1990 the applicant, on 10 October 1990, sent to the President of the Parliament a request within the meaning of Article 90(1) of the Staff Regulations of Officials of the European Communities, applicable by analogy to members of the temporary staff pursuant to Article 46 of the Conditions of Employment of Other Servants, for a specific competition to be organized. In the letter which he sent to her on 8 February 1991 President Crespo confirmed the undertaking which his predecessor had given to the applicant in his letter of 21 June 1988 but requested her 'to allow a certain time to elapse after the end of competition B/164 before the organization of a specific internal competition, which would not fail to give rise to similar requests by other officials'.
- 12 On 8 May 1991 the applicant submitted a complaint against that reply by the President of the Parliament while repeating her request for the organization of a specific internal competition.
- 13 In his reply of 12 July 1991 the Secretary-General of the Parliament again confirmed the undertakings given previously by the Presidents of the Parliament but stated that he was unable to give a precise date for the publication of the notice concerning the competitions the organization of which she was requesting.
- 14 The applicant states that in October 1991 a draft notice of competition had still not been submitted to the Joint Committee, this being the first stage in the organization of a specific internal competition.

Procedure

- 15 It was in those circumstances that the applicant, by application lodged at the Court Registry on 14 October 1991, brought an action for the annulment both of the

letter of the President of the Parliament dated 8 February 1991 and of the letter of the Secretary-General dated 12 July 1991, which she described respectively as a 'decision of rejection' and an 'express decision of rejection'.

- 16 By a document lodged at the Court Registry on 18 November 1991, the Parliament raised an objection of inadmissibility against the application on the grounds that, on the one hand, the contested measures in no way adversely affected the applicant inasmuch as, on the contrary, they acceded to her request and that, on the other hand, the action was premature inasmuch as the procedure for organizing the competition requested had in the meantime been initiated.
- 17 On 19 December 1991 the applicant lodged at the Registry her observations in which she requested that the objection of inadmissibility be dismissed.

In another letter, also lodged at the Registry on 19 December 1991, the applicant requested that the proceedings be stayed until 1 February 1992 since she had found that a draft notice for a specific competition had in fact been put before the Joint Committee.

- 18 By order of 10 January 1992 the Court (Fifth Chamber) ordered that the proceedings be stayed until 1 February 1992.
- 19 By letter dated 30 January 1992 the Parliament forwarded to the Court a copy of the notice of a specific internal competition, No B/169, for the recruitment of physically handicapped persons. In the Parliament's view the initiation of that competition procedure rendered the action devoid of all purpose. In the same letter the Parliament requested the Court of First Instance to inquire of the

applicant whether she wished to discontinue the proceedings in accordance with Article 99 of the Rules of Procedure.

20 By letter dated 19 February 1992 the applicant informed the Court that she would discontinue her action provided that the Parliament bore the costs.

21 By letter dated 27 February 1992 the Parliament informed the Court that it was not prepared to bear the costs of the proceedings and requested the Court to make an order for costs in accordance with Articles 87(5) and 88 of its Rules of Procedure.

The lack of purpose of the proceedings and the question of costs

22 The Court finds that by publishing on 3 February 1992 a notice of internal competition relating to the Grade B 5 intended 'to fill vacancies by the appointment of physically handicapped persons' the Parliament had acceded to the request repeatedly made by the applicant.

23 While recognizing that that publication satisfied her, the applicant informed the Court that she intended to discontinue the proceedings pursuant to Article 99 of the Rules of Procedure only if the Parliament agreed to bear the costs.

24 In its letter of 27 February 1992 the Parliament refused to agree to bear the costs and requested that the provisions of Articles 87(5) and 88 of the Rules of Procedure be applied in order to settle the question of costs.

25 In view of those facts the Court finds, first, that the publication of Notice of Competition B/169 rendered proceedings between the applicant and the Parliament devoid of all purpose. It follows from this that there is no need to give a decision.

26 Similarly, the Court observes that, in the absence of a clear and unconditional discontinuance on the part of the applicant, costs cannot be dealt with in accordance with Article 87(5) of the Rules of Procedure but in accordance with Article 87(6).

27 According to Article 87(6) the costs are in the discretion of the Court.

28 In the present case the Court observes, on the one hand, that the applicant found herself obliged for more than seven years to take steps on countless occasions before the Parliament organized in 1992 a specific internal competition such as she had requested. As a handicapped person, the applicant thus found herself in a position of unjustified uncertainty with regard to her career prospects.

29 On the other hand, it is to be observed that in spite of the delay which occurred the Parliament has always maintained, even during the proceedings before the Court, that the applicant would obtain satisfaction.

- 30 In view of the fact that the proceedings have become devoid of all purpose the Court decides that there is no need to consider to what extent the application was admissible.
- 31 In any event, and even if the application were to be considered inadmissible, the Court decides that the Parliament should bear its own costs and one-half of the applicant's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **There is no need to give a decision;**
2. **The Parliament shall bear its own costs and one-half of the applicant's costs.**

Luxembourg, 12 March 1992.

H. Jung

Registrar

K. Lenaerts

President