

JUDGMENT OF THE COURT (Fifth Chamber)  
11 August 1995 \*

In Case C-448/93 P,

**Commission of the European Communities**, represented by John Forman, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) in Case T-60/92 of 16 September 1993 between *Muireann Noonan* and the *Commission* [1993] ECR II-911, seeking to have that judgment set aside,

the other party to the proceedings being:

**Muireann Noonan**, represented by James O'Reilly, Senior Counsel, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 1 Rue Glesener,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), acting for the President of the Chamber, D. A. O. Edward and J.-P. Puissochet, Judges,

\* Language of the case: English.

Advocate General: P. Léger,  
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 January 1995,

gives the following

### Judgment

1 By application lodged at the Court Registry on 19 November 1993 the Commission of the European Communities appealed, in accordance with Article 49 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice, against the judgment of the Court of First Instance in Case T-60/92 *Noonan v Commission* [1993] ECR II-911, in so far as it declared admissible the action brought by Muireann Noonan for the annulment of the decision communicated to her on 9 June 1992 not to admit her to Open Competition COM/C/741, which had been organized by the Commission in order to constitute a reserve of C 5/C 4 English-language typists (OJ 1991 C 333 A, p. 11).

2 In that judgment the facts of the case are described as follows:

‘1. Mrs Noonan, a member of the auxiliary staff of the Court of Justice of the European Communities, applied to take part in Open Competition COM/C/741, which was organized by the Commission of the European Communities in order to constitute a reserve of English-language typists (C 5/C 4) (OJ 1991 C 333 A, p. 11, Annex A to the application).

2. By letter dated 9 June 1992 (Annex C to the application) Mrs Noonan was informed of the Selection Board's decision to reject her application in accordance with point II (Eligibility for Admission to the Competition) B (Special Conditions) 2 (Certificates and Diplomas required) of the competition notice on the ground that she had completed a university course and obtained an honours degree in French and Italian literature at University College, Dublin.

3. The abovementioned provisions in the competition notice were worded as follows:

"The following are not eligible, under penalty of exclusion from the competition and/or subsequent disciplinary measures under the Staff Regulations:

- (i) candidates with a degree or diploma qualifying them to enter an A or LA competition (see table attached to the Guide);
- (ii) candidates who are in the final year of such a course."

As regards degrees and diplomas awarded in Ireland, the abovementioned table attached to the Guide to Candidates Taking Part in Interinstitutional Competitions or in Open Competitions Organized by the Commission (hereinafter "the Guide"), which was also published in OJ 1991 C 333 A, just before the competition notice in question, required a university degree for admission to A and LA competitions.'

3 It was in those circumstances that by application lodged at the Registry of the Court of First Instance on 21 August 1992 Muireann Noonan brought an action for the annulment of the Selection Board's decision not to admit her to the competition, which had been communicated to her in the letter of 9 June 1992 referred to above.

4 The Commission raised an objection as to the admissibility of the action on 23 September 1992, claiming that an official may not, in an action challenging a selection board's decision, rely on the alleged irregularity of the competition notice if he has not challenged in due time the provisions of that notice which, in his view, adversely affect him.

5 In the judgment which is the subject of this appeal the Court of First Instance dismissed the objection and declared the application admissible in its entirety.

6 The Court of First Instance considered (paragraph 21) that the fact that the applicant could have brought an action against the competition notice itself within the appropriate time-limits did not mean that her action against the individual decision not to admit her to the competition was barred because she had failed to challenge the competition notice in due time.

7 In that context it stated first (paragraph 23) that a candidate in a competition must not be deprived of the right to challenge all the elements, including those defined in the competition notice, comprising the justification for the individual decision concerning him taken on the basis of the conditions laid down in the notice, inasmuch as only the decision applying them affects his legal position individually and enables him to ascertain with certainty how and to what extent his personal interests are affected. The Court of First Instance stated that that principle applied in the same terms where, as in this case, the conditions for admission set out in the notice left no margin of discretion to the selection board and posed no problems of interpretation as regards their application, having regard to the circumstances of the case.

8 The Court of First Instance went on to state (paragraphs 24, 25 and 26) that that approach emerged from the case-law of the Court of Justice to the effect that pleas based on the unlawfulness of a competition notice which was not challenged in due time were admissible if they concerned the statement of the reasons for the

implementing decision which was being challenged. In that context the Court of First Instance cited especially the judgments of the Court of Justice in *Adams v Commission* (Case 294/84 [1986] ECR 977), *Sergio and Others v Commission* (Cases 64/86, 71/86, 72/86, 73/86 and 78/86 [1988] ECR 1399) and *Simonella v Commission* (Case 164/87 [1988] ECR 3807), as well as that of the Court of First Instance in *De Persio v Commission* (Case T-50/91 [1992] ECR II-2365).

- 9 The Court of First Instance also pointed out (paragraph 27) that those decisions were in accordance with that of the Court of Justice in *Alfieri v Parliament* (Case 35/64 [1965] ECR 261, third paragraph), decided before *Adams*, cited above. In *Alfieri* it was held that 'having regard to the close connection between the different measures comprising the recruitment procedure, it must be accepted that in an action contesting the later steps in such a procedure the applicant may contest the legality of earlier steps which are closely linked to them'. The Court of First Instance took the view that it was clear from the judgment in *Adams*, construed in the light of the subsequent judgments of the Court of Justice, cited above, that it is only where there is no close connection between the statement of reasons for the challenged decision and the plea at issue that the latter must be declared inadmissible, in accordance with the mandatory rules governing time-limits for bringing actions, which cannot be derogated from in such a case as this without offending against the principle of legal certainty.
- 10 Finally, the Court of First Instance stated (paragraph 28) that it would be incompatible with the principle of legal certainty and the legal remedies which must be available to the candidates concerned to make the admissibility of such pleas subject to the requirement that there be ambiguity or uncertainty inherent in either the conditions set out in the notice or their application, having regard to the circumstances of the individual case.
- 11 In this appeal the Commission relies on three pleas in law.
- 12 In the first place, in cases decided by the Court of Justice after *Adams* (cited above), it was held that candidates who had not challenged a competition notice in due time could nevertheless rely on irregularities occurring in the course of the

competition, even if the origin of those irregularities was to be found in the wording of the competition notice (*Sergio and Others v Commission*, cited above). However, that principle should not be extended to a situation where the contested condition for admission to the competition laid down in the competition notice — in this case, the provision excluding candidates with a degree or diploma qualifying them to enter an A or LA competition — is clear and precise, so that the selection board has no discretion whatsoever in applying that condition.

13 Secondly, to permit candidates to rely on the irregularity of clear and unambiguous conditions laid down in the competition notice at any time up to completion of the final stages of the competition would be incompatible with the principles of legal certainty and sound administration, on which the Court of Justice based its decision in *Adams* to the effect that the applicants ought to have challenged in due time the provisions of the competition notice which they alleged to have adversely affected them.

14 In the third place, the Commission maintains that the rule contained in Article 91 of the Staff Regulations of Officials of the European Communities (hereinafter ‘the Staff Regulations’), which imposes a three-month time-limit for bringing actions, would be weakened by the interpretation placed by the Court of First Instance on the case-law of the Court of Justice.

15 All three of those pleas concern the alleged breach by the judgment contested in this appeal of Article 91 of the Staff Regulations so that that is, in fact, the sole ground of the appeal.

16 That ground must be rejected.

17 According to the case-law of the Court of Justice, in the context of a recruitment procedure an applicant may, in an action challenging steps in such procedure, con-

test the legality of earlier steps which are closely linked to them (see in particular *Ley v Commission*, Joined Cases 12/64 and 29/64 [1965] ECR 107, and *Sergio and Others*, cited above, paragraph 15). As the Court of Justice stated, in such a procedure applicants cannot be expected to bring as many actions as the number of acts which may have affected them adversely (see in particular *Ley*, cited above).

18 The Commission's argument, based on the principles of legal certainty and sound administration, to the effect that that case-law does not apply in cases such as this cannot be accepted.

19 The line of decisions referred to above is founded upon an analysis of the special nature of the recruitment procedure, which is a complex administrative operation composed of a series of closely-linked decisions. That foundation is entirely apt where, as in this case, the contested condition in the competition notice is clear and precise. Consequently, there is no need to draw distinctions based on the degree of clarity and precision of the competition notice.

20 Accordingly, the appeal must be dismissed.

### Costs

21 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the Commission has been unsuccessful in the appeal, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

- 1. Dismisses the appeal;**
- 2. Orders the Commission to pay the costs.**

Moitinho de Almeida

Edward

Puissochet

Delivered in open court in Luxembourg on 11 August 1995.

R. Grass

J. C. Moitinho de Almeida

Registrar

For the President of the Fifth Chamber