

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
25 November 2008 *

(Staff cases — Recruitment — Open competition — Conditions for
admission — Rejection of application — Statement of reasons —
Diplomas)

In Case F-50/07,

ACTION under Articles 236 EC and 152 EA,

Valentina Hristova, residing in Pavlikeni (Bulgaria), represented by G. Kerelov,
lawyer,

applicant,

v

Commission of the European Communities, represented by J. Currall and
B. Eggers, acting as Agents,

defendant,

* Language of the case: English.

THE TRIBUNAL (Second Chamber),

composed of S. Van Raepenbusch, President, I. Boruta and H. Kanninen (Rapporteur), Judges,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 25 June 2008,

gives the following

Judgment

- 1 By application lodged at the Registry of the Tribunal by electronic means on 17 December 2007 (the original being lodged on 24 December 2007), Mrs Hristova brought the present action, seeking, first, the annulment of the decision of the selection board in open competition EPSO/AST/14/06 refusing to admit her to the tests in that competition ('the contested decision') and, second, an order that the Commission of the European Communities pay damages to make good the loss allegedly suffered.

Background to the case

- 2 The applicant applied for open competition EPSO/AST/14/06, to constitute a reserve of assistants (AST 1) with Bulgarian citizenship in the secretarial field ('the contested competition').

- 3 The notice of competition, published in the *Official Journal of the European Union* of 21 June 2006 (OJ C 145 A, p. 22), ('the notice of competition') defines, in Section A.I., the duties to be performed as follows:

'The position will entail the following tasks:

- secretarial tasks associated with organising meetings, preparing missions, etc.,
- a range of other standard secretarial tasks: filing documents and mail, sorting post, keeping appointments diaries, etc.,
- word processing in your main language and possibly another official language of the European Union,
- preparing documents using word-processing software (e.g. page layout, formatting, tables),
- various administrative tasks associated with file management using office software packages.

The European institutions place particular importance on the ability of candidates to grasp problems of all kinds, often complex in nature, to react rapidly to changing circumstances and to communicate effectively. You will have to show initiative and imagination and be highly motivated. You should be able to work frequently under pressure, both on your own and in a team, and to adjust to a multicultural working environment. You will also be expected to develop your professional skills throughout your career.'

- 4 According to section II(1) of the notice of competition, concerning qualifications and professional experience:

‘You must

- (i) have completed a course of post-secondary education and obtained the relevant diploma, in a field relevant to the duties described in section A.I.

You must have obtained your qualification by 30 September 2006 at the latest;

or

- (ii) have a level of secondary education attested by a diploma giving access to higher education, followed by at least three years’ full-time professional experience relevant to the duties described in section A.I.

The three years’ professional experience must have been obtained by 30 September 2006 at the latest.

The selection boards will allow for differences between education systems. For examples of the minimum qualifications required, see the tables annexed to the Guide for Applicants ... for each category. Note that these are examples only, more stringent requirements may be set in the notice of competition.’

- 5 The guide mentioned in the preceding paragraph contained the words ‘Specialist po.’ in respect of the Bulgarian post-secondary education diplomas required of candidates for the competitions to fill posts for assistants at Grades AST 3 to AST 11.
- 6 By letter of 3 April 2007, the selection board in the contested competition informed the applicant that her application had not been accepted. That letter stated that, contrary to the conditions laid down in the notice of competition and on the basis of the information provided in her application form, the applicant

did not have, by 30 September 2006 at the latest, at least three years' full-time professional experience in a field relevant to the duties described (see section A.I. of the notice of competition) after having obtained her secondary education diploma.

Procedure and forms of order sought

- 7 By order of 8 November 2007, the President of the Tribunal granted the applicant legal aid.

- 8 By order of 2 June 2008, the present case and Case F-53/07, *Iordanova v Commission*, were joined for the purposes of the oral procedure.

- 9 By way of measures of organisation of the procedure, the Tribunal requested the Commission, under Article 55(2)(d) of the Rules of Procedure, to produce the guide mentioned in paragraphs 4 and 5 above. By letter received at the Registry of the Tribunal on 13 May 2008, the Commission complied with that request.

- 10 The applicant claims that the Tribunal should:
 - annul the contested decision;
 - order the Commission to pay her fixed damages assessed on equitable principles at EUR 28 718 (one year's salary) in respect of the material and non-material damage suffered as a result of the contested decision, with statutory interest from the date on which the application was lodged;
 - order the Commission to pay the costs.

- 11 The Commission contends that the Tribunal should:
- dismiss the action;
 - order the applicant to pay the costs.
- 12 In her application, the applicant asked the Tribunal to request from the European Personnel Selection Office (EPSO) all the documentation concerning her application for the competition and the proceedings of the selection board.
- 13 The Commission annexed to its defence a translation into English of the bachelor's degree certificate obtained by the applicant and the list of subject areas studied. The Tribunal took the view it was not necessary to add further documents to the case-file.

Law

The application for annulment

Arguments of the parties

- 14 In support of her application for annulment, the applicant relies on a single plea of breach of the notice of competition. She accepts that at 30 September 2006 she did not have the required secondary education diploma, followed by at least three years' full-time professional experience relevant to the duties specified in section A.I. of the notice of competition. However, she points out that this was not the only condition laid down in the notice of competition. The other, alternative, condition was the possession of a post-secondary education diploma in a field relevant to the duties specified in section A.I. of the notice of competition.

- 15 The applicant states that she clearly pointed out in her application that she had a post-secondary diploma (for higher education) for 'a Teacher in Bulgarian Language and Literature and in English Language and Literature'. She enclosed a copy of that diploma and of the certificate joined to that diploma attesting the duration of the course, the subjects studied, the hours' teaching for each subject and the marks she received. The documents sent to the selection board also attested that that education was in a field relevant to the duties specified in section A.I. of the notice of competition.

- 16 The Commission counters this by saying that the selection board in the contested competition did not commit any manifest error of assessment in determining that the applicant's qualifications did not fulfil the conditions laid down by the competition notice.

- 17 At the hearing the Judge-Rapporteur pointed out that the decision rejecting the applicant's application gave no indication whether or not the applicant fulfilled the condition laid down in section A.I.(1)(i) of the notice of competition.

- 18 The Commission replied that the notice of competition stipulated that the selection board in the contested competition would examine all the conditions laid down in the notice of competition. It must be inferred from this, according to the Commission, that the selection board did examine all the conditions in the notice of competition.

- 19 The Commission added that it was clear from the applicant's file that she did not fulfil the condition laid down in section A.I.(1)(i) of the notice of competition. Thus, the selection board in the contested competition concentrated its examination on analysing the applicant's professional experience with regard to the condition of the notice of competition laid down in section A.I.(1)(ii).

- 20 Lastly, the Commission also pointed out at the hearing that the applicant had not pleaded any error in the statement of reasons of the contested decision.

Findings of the Tribunal

- 21 According to case-law, the plea alleging absence of reasons or inadequacy of the reasons stated involves a matter of public policy which must be raised by the Community judicature of its own motion (Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67; Case T-153/95 *Kaps v Court of Justice* [1996] ECR-SC I-A-233 and II-663, paragraph 75, and Case T-376/03 *Hendrickx v Council* [2005] ECR-SC I-A-83 and II-379, paragraph 62). It is therefore necessary to consider first of all whether the board gave adequate reasons for the contested decision.
- 22 It is settled case-law that the requirement that a decision adversely affecting a person should state the reasons on which it is based is intended to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision is well founded and make it possible for the decision to be the subject of judicial review (Case 69/83 *Lux v Court of Auditors* [1984] ECR 2447, paragraph 36; Case T-145/02 *Petrich v Commission* [2004] ECR-SC I-A-101 and II-447, paragraph 54, and *Hendrickx v Council*, paragraph 68). As regards more particularly decisions of refusal of admission to a competition it is necessary for the selection board to state clearly the conditions in the notice of competition which it considers the candidate has not satisfied (Case T-55/91 *Fascilla v Parliament* [1992] ECR II-1757, paragraph 32, and *Petrich v Commission*, paragraph 54).
- 23 In the present case, the selection board in the contested competition informed the applicant, by letter of 3 April 2007, that her application had not been accepted. That letter stated that, contrary to the conditions laid down in the notice of competition and on the basis of the information provided in her application form, the applicant did not have, by 30 September 2006 at the latest, at least

three years' full-time professional experience in a field relevant to the duties described (see section A.I. of the notice of competition) after having obtained her secondary education diploma.

- 24 Thus, it appears from the letter from the selection board in the contested competition that only the condition stipulated in section A.I.(1)(ii) of the notice of competition, namely, at least three years' full-time professional experience relevant to the duties described in section A.I. of the notice of competition after obtaining a diploma giving access to higher education, was not met by the applicant.
- 25 However, the selection board in the contested competition did not provide any explanation concerning the applicant's failure to meet the condition laid down in section A.II.(1)(i) of the notice of competition, enabling, on the one hand, the applicant to assess the merits of the rejection of her application and, on the other hand, the Tribunal to exercise its power of judicial review.
- 26 In that regard, it should be noted that it is not possible for the Tribunal to exercise judicial review of the contested decision solely on the basis of the letter of 3 April 2007 from the selection board in the contested competition, in particular with regard to the applicant's plea that the notice of competition was infringed (see, to that effect, Case T-22/91 *Raiola-Denti and Others v Council* [1993] ECR II-69, paragraph 37). It is impossible for the Tribunal to know whether the selection board actually examined whether the applicant fulfilled the condition laid down in section A.I.(1)(i) of the notice of competition.
- 27 That finding is not invalidated by the Commission's assertion that it was clear from the applicant's file that she did not fulfil the condition laid down in section A.I.(1)(i) of the notice of competition. The Commission's argument in that respect is based on mere suppositions, not on concrete factual evidence. Also,

it cannot be inferred merely from rejection of the candidate's application that the selection board actually examined whether she fulfilled that condition of the notice of competition.

28 Moreover, even if the selection board in the contested competition did examine whether or not the applicant fulfilled the alternative condition laid down in section A.I.(1)(i) of the notice of competition, suffice it to say that the contested decision does not contain any ground for refusal to that effect.

29 In those circumstances, there is no need, even in the alternative, to consider the plea alleging breach of the notice of competition relied upon by the applicant.

30 It follows from all the foregoing that the contested decision must be annulled for failure to state reasons.

The claim for compensation

Arguments of the parties

31 The applicant seeks payment of damages of EUR 28 718, corresponding to one year's salary, in respect of the material and non-material damage suffered as a result of the contested decision, with statutory interest from the date on which the application was lodged.

- 32 The Commission notes that the applicant does not submit any arguments in support of her claim for damages. That claim should therefore be regarded as inadmissible for failure to comply with Article 35 of the Rules of Procedure.
- 33 In any event, the applicant did not demonstrate that the conditions are fulfilled for the Community to incur extra-contractual liability.
- 34 The Commission adds that the contested decision is lawful. Moreover, there can be no sufficient certainty that the applicant would have passed the competition and would have been recruited by the Commission.
- 35 At the hearing the applicant argued that the Tribunal's decision will not affect the situation of the parties in any way since the tests in the contested competition are over and all the posts are now filled. Therefore, the applicant claimed that if the Tribunal were to accept her claim for annulment the only adequate penalty for the Commission would be to pay her damages.

Findings of the Tribunal

- 36 With regard to the non-material damage claimed by the applicant, it should be pointed out that, according to settled case-law, the annulment of an administrative act challenged by an official constitutes appropriate and, in principle, sufficient reparation for any non-material harm he may have suffered (see Joined Cases 44/85, 77/85, 294/85 and 295/85 *Hochbaum and Rawes v Commission* [1987] ECR 3259, paragraph 22; Case T-37/89 *Hanning v Parliament* [1990] ECR II-463, paragraph 83, and Case T-368/04 *Verheyden v Commission* [2007] ECR-SC I-A-2-93 and II-A-2-665, paragraph 107).

- 37 The applicant does not establish the existence of non-material damage apart from that resulting from the illegality of the contested decision. Therefore, annulment of the contested decision constitutes appropriate reparation for the non-material damage the applicant suffered.
- 38 As regards the material damage allegedly suffered by the applicant, it should be borne in mind that the Community can only be held liable for damages if a number of conditions are satisfied as regards the illegality of the allegedly wrongful act committed by the institutions, the actual harm suffered, and the existence of a causal link between the act and the damage alleged to have been suffered (Case 111/86 *Delauche v Commission* [1987] ECR 5345, paragraph 30; Case T-3/92 *Latham v Commission* [1994] ECR-SC I-A-23 and II-83, paragraph 63, and Case T-589/93 *Ryan-Sheridan v EFILWC* [1996] ECR-SC I-A-27 and II-77, paragraph 141).
- 39 In the present case, the applicant merely claims payment of the sum of EUR 28 718, corresponding to one year's salary. It is necessary to examine whether there is a causal link between rejection of the applicant's application and the alleged material damage.
- 40 In order to establish such a link, evidence must be adduced that there is a direct causal nexus between the fault committed by the institution concerned and the injury pleaded (Case T-45/01 *Sanders and Others v Commission* [2004] ECR II-3315, paragraph 149; Case T-250/04 *Combescot v Commission* [2007] ECR-SC I-A-2-191 and II-A-2-1251, paragraph 95, and Case F-46/07 *Tzirani v Commission* [2008] ECR-SC I-A-1-323 and II-A-1-1773, paragraph 215).
- 41 The degree of certainty of the causal link required by the case-law is attained where the unlawful act committed by a Community institution has definitely deprived a person, not necessarily of appointment to the post in question, to which the person concerned could never prove he had a right, but of a genuine chance of being appointed, resulting in material damage for the person

concerned in the form of loss of income (*Sanders and Others v Commission*, paragraph 150, and *Combescot v Commission*, paragraph 96).

42 In the present case, there is nothing to show that the unlawful act committed by the Commission, constituted by the failure to state the reasons for the contested decision, caused the applicant to lose a genuine chance of being allowed to enter the contested competition and of being appointed to the post of assistant (AST 1) with Bulgarian citizenship in the secretarial field.

43 It follows from all the foregoing that the claim for damages must be dismissed as unfounded, without there being any need to rule on the objection of inadmissibility raised by the Commission.

Costs

44 The Rules of Procedure, adopted on 25 July 2007 (OJ 2007 L 225, p. 1), entered into force on 1 November 2007 under Article 121 thereof. The first paragraph of Article 122 of the Rules of Procedure provides that the provisions of Title 2, Chapter 8, on costs are to apply to this case as it was brought before the Tribunal after 1 November 2007.

45 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Title 2, Chapter 8, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.

- ⁴⁶ It should be noted that the Commission is the unsuccessful party. Moreover, in her pleadings, the applicant applied for the Commission to bear the costs.
- ⁴⁷ Since the circumstances of the present case do not justify application of the provisions of Article 87(2) of the Rules of Procedure, the Commission must be ordered to pay the costs.

On those grounds,

THE TRIBUNAL (Second Chamber)

hereby:

- 1. Annuls the decision of the selection board in open competition EPSO/AST/14/06 refusing to admit Mrs Hristova to the tests in that competition;**
- 2. Dismisses the remainder of the action;**

3. Orders the Commission of the European Communities to pay all the costs.

Van Raepenbusch

Boruta

Kanninen

Delivered in open court in Luxembourg on 25 November 2008.

W. Hakenberg
Registrar

H. Kanninen
President