



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Third Chamber)
24 April 2013

Case F-96/12

Laurent Demeneix
v
European Commission

(Civil service — Open competition — Not included on the reserve list — Condition relating to experience — Criterion related to professional experience — Scope of discretion)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which Mr Demeneix seeks annulment of the decision of the selection board for open competitions EPSO/AD/207/11(AD 5) and EPSO/AD/207/11 (AD 7) not to include him on the reserve list for recruitment of Administrators (grade A7), for posts in the auditing sector, and compensation for the non-material damage suffered as a result of the unlawful act committed.

Held: The action is dismissed. Mr Demeneix is to bear his own costs and is ordered to pay those incurred by the European Commission.

Summary

*1. Officials — Competitions — Competition based on qualifications and tests — Conditions for admission — Definition in notice of competition — Selection board's assessment of the professional experience of candidates — Judicial review — Limits
(Staff Regulations, Annex III, Art. 2)*

*2. Actions brought by officials — Action brought against a decision not to include a candidate on the reserve list for a competition — Whether unlawfulness of the competition notice may be relied upon to challenge the non-inclusion of a candidate — Conditions
(Staff Regulations, Art. 91)*

1. It is for the selection board in a competition to assess in each case whether the professional experience stated by each candidate corresponds to the level required by the notice of competition. The selection board enjoys broad discretion in that regard, under the provisions of the Staff Regulations concerning competition procedures, when assessing the nature and duration of the previous experience of candidates and its relevance to the post to be filled. In its review of legality, therefore, the Tribunal must confine itself to ascertaining whether the exercise of that discretion was free from manifest errors. In the context of that review, the EU Court must take account of the fact that it is for the candidate in a competition to provide the selection board with all the information and documents which he regards as necessary for the purposes of examining his application in order

to enable the selection board to determine whether he fulfils the conditions laid down by the competition notice, all the more so if he has been expressly and formally requested to do so. The selection board, when giving its decision on the admission or exclusion of candidates from a competition is therefore entitled to limit its examination to the application forms and the documents annexed thereto.

Furthermore, in view of the broad discretion granted to the selection board, in order to establish that it committed a manifest error in assessing the facts such as to justify the annulment of the decision taken, the evidence, which it is for the applicant to adduce, must be sufficient to make the findings of the administration implausible.

(see paras 42-45)

See:

12 July 1989, 225/87 *Belardinelli and Others v Court of Justice*, paras 13 and 24

20 June 1990, T-133/89 *Burban v Parliament*, paras 31 and 34; 12 December 1996, T-380/94 *AIUFFASS and AKT v Commission*, para. 59; 13 March 2002, T-357/00, T-361/00, T-363/00 and T-364/00 *Martínez Alarcón v Commission*; 25 March 2004, T-145/02 *Petrich v Commission*, para. 37; 12 February 2008, T-289/03 *BUPA and Others v Commission*, para. 221

25 November 2008, F-53/07 *Iordanova v Commission*, para. 34 and the case-law cited; 13 June 2012, F-63/11 *Macchia v Commission*, para. 49, on appeal to the General Court in Case T-368/12 P

2. Although an applicant is entitled to lodge a direct action, within the prescribed period, against a notice of competition where it constitutes a decision by the appointing authority which adversely affects him within the meaning of Articles 90 and 91 of the Staff Regulations, he is not barred from bringing an action directed against the decision not to admit him to the competition solely on the grounds that he did not challenge the notice of competition in good time. 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. An applicant may therefore, in the event of an action against subsequent acts, plead the irregularity of previous acts that are closely connected with them.

However, where there is no close connection between the statement of reasons for the challenged decision and the plea alleging irregularities in the notice of competition, which has not been challenged in good time, the action must be declared inadmissible, in accordance with the mandatory rules governing time-limits for bringing proceedings, which cannot be derogated from in such a case as this without offending against the principle of legal certainty.

(see paras 59-60)

See:

11 March 1986, 294/84 *Adams and Others v Commission*, para. 17; 11 August 1995, C-448/93 P *Commission v Noonan*, para. 17 and the case-law cited

16 September 1993, T-60/92 *Noonan v Commission*, paras 21 and 23 and the case-law cited; 15 February 2005, T-256/01 *Pyres v Commission*, para. 19; 31 January 2006, T-293/03 *Giulietti v Commission*, para. 42