

JUDGMENT OF THE COURT (SECOND CHAMBER)  
OF 5 APRIL 1979<sup>1</sup>

**Dorothea Kobor, née Sonne**  
**v Commission of the European Communities**

Case 112/78

1. *Officials — Recruitment — Competition — Principles for selection — Successive competitions — Objective conditions for entry identical — Different interpretation according to number of candidates — Not acceptable — Different appraisal of same candidate in successive competitions — Permissibility — Conditions*  
(*Staff Regulations of Officials, Annex III, Art. 5*)

2. *Officials — Recruitment — Competition — Selection board — Rejection of candidature — Duty to state reasons — Scope*  
(*Staff Regulations of Officials, Annex III, Art. 5*)

1. Although the fact that a large number of candidates apply to take part in a competition may justify a rigorous selection by means of eliminatory tests it cannot be accepted that the objective requirements for admission to the tests, which are formulated in identical terms, should be given a different interpretation from one competition to another in the light of the number of candidates. In any event, a candidate cannot form the subject of a less favourable appraisal than that made of him in a previous competition, unless the statement of the reasons on which the decision is based clearly justifies such a difference of appraisal.
2. Although it is permissible, having regard to the large number of candidates, to make use of summarized statements of reasons for refusing to admit a candidate to the tests, a mere reference to the condition which was not fulfilled cannot satisfy the requirement to state reasons where such a reference is not capable of providing the person concerned with a sufficient indication to allow him to know whether the refusal is well founded or on the other hand whether it is vitiated by a defect which would make it possible to contest its legality.

In Case 112/78

DOROTHEA KOBOR, née SONNE, an official of the Commission of the European Communities, residing at 9 Rue Principale, Goetzingen (Grand

<sup>1</sup> — Language of the Case: French.

Duchy of Luxembourg), represented by Louis Schiltz, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Schiltz, 83 Boulevard Grande-Duchesse Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its principal Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Selection Board for Competition No COM/B/155 refusing to admit the applicant to the written tests relating to that competition, notice of which was published in Official Journal No C 128 of 1 June 1977, p. 10,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, M. Sørensen and A. Touffait, Judges,

Advocate General: F. Capotorti

Registrar: J. A. Pompe

gives the following

## JUDGMENT

### Facts and Issues

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

## I — Facts and procedure

The applicant, who is an official of the Commission of the European Communities, entered the service of the High Authority of the ECSC in 1964. She was established in 1965 in Category C, Grade 3, and promoted in 1972 to Grade 2 of the same category.

On three occasions she applied to enter open competitions on the basis of tests for the purpose of constituting a reserve of administrative assistants in Category B, Grades 4 and 5, and chose the option "Application of rules of administrative management".

On the first occasion (Competition No COM/B/117), notice of which was published in Official Journal No C 15 of 18 February 1974, p. 25), her name was not entered on the list of suitable candidates, since she did not obtain the minimum marks required in the written and oral tests. On the second occasion (Competition No COM/B/139, Official Journal No C 223 of 30 September 1975, p. 7), she was not admitted to the oral test, since she did not obtain the minimum marks required in the written tests. When she applied to enter the third competition No COM/B/155, Official Journal No C 128 of 1 June 1977, p. 10), which forms the basis of the present action, she was not admitted to the written tests.

As special conditions for admission to the competition Notice of Competition No COM/B/155 stipulated that candidates were required:

"To have completed a course of secondary education and received a final certificate, and

On the closing date for receipt of applications, to have at least one year's practical experience in the field chosen after obtaining their educational qualifications."

The length of the practical experience required by Notices of Competitions Nos COM/B/117 and COM/B/139 was 5 months and 1 year respectively.

The selection board for Competition No COM/B/155 considered the applications of 2 773 candidates who satisfied the general conditions laid down in Article 28 (a), (b) and (c) of the Staff Regulations of Officials. 1 287 of them were admitted to the written tests.

The applicant was not among the candidates admitted. The refusal of the selection board, of which she was informed by letter of 23 September 1977, was based on the insufficiency of her practical experience in the field chosen. In reply to a letter from the applicant the chairman of the selection board confirmed the decision adopted on 7 October 1977. On 11 October 1977 the applicant submitted to the Commission a complaint under Article 90 (2) of the Staff Regulations. By letter of 7 June 1978 she was informed that her complaint was rejected, as the chairman of the selection board to whom it had been sent had upheld the decision of the selection board.

The application lodged at the Court on 8 May 1978 seeks the annulment of the decision by which the selection board refused to allow the applicant to take part in the competition.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without holding any preparatory inquiry.

## II — Conclusions of the parties

The *applicant* claims that the Court should:

Declare that the application is admissible as to form;

Declare that it is well founded as regards the substance;

Consequently annul the decision of the selection board for Competition No COM/B/155 refusing to admit her to the said competition;

Order the Commission to pay the costs.

The *Commission* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

## III — Submissions and arguments of the parties

### *Observations of the applicant*

In support of her application the applicant points out that on the occasion of the 1974 and 1975 competitions, the conditions for admission to which were substantially the same as those stipulated in the notice of competition in question, her practical experience had been judged sufficient, whereas the same qualification was not accepted in 1977 despite the additional practical experience which she had acquired in the meantime. In the applicant's opinion it is arbitrary to make the appraisal of that qualification fluctuate on the basis of the number of applications received.

Secondly, the applicant observes that in the event of her admission to the tests the contested decision prejudged their outcome. In her opinion the wording of the notice of competition did not empower the selection board to express an opinion as regards the quality of the

candidates' practical experience at the first stage of the competition but only as regards the length of that experience.

To support her argument that the selection board wrongly decided that she did not have the necessary practical experience the applicant also refers to the laudatory assessments of her made in her most recent periodic reports, in particular in that relating to the period from 1 July 1975 to 30 June 1977. She also refers to the list of the tasks which she performed at the Commission contained in her complaint through official channels and to two memoranda concerning her promotion to Grade C 1, which, in her opinion, show that she performed the duties of a senior administrative assistant.

Finally, the applicant recalls that in 1970 she successfully took part in Competition No 47 at the Council for the purpose of constituting a reserve of administrative assistants.

In the applicant's view it is clear from the foregoing observations that the refusal of the selection board is either the result of manifest error or of an erroneous assessment as regards her practical experience.

In her reply the applicant relies on a fresh submission to the effect that the statement of reasons for the refusal of the selection board is insufficient, inasmuch as it merely refers to the condition for admission which was not fulfilled.

### *Observations of the Commission*

In its defence the Commission maintains that although it is true that the selection board makes its appraisal on the basis of the file of each candidate, the severity of that appraisal inevitably varies according to the quantity and quality of the applications, both of which are increasing year by year. As each competition constitutes a separate procedure the favourable appraisal made

in 1974 and 1975 cannot constitute a precedent for the selection board in 1977. By performing the duties of a secretary/shorthand-typist the applicant has not necessarily acquired the practical experience required to perform the duties of an administrative assistant in the field of administrative management.

decisions when it has indicated the condition for admission which is not fulfilled by the candidate.

#### IV — Oral procedure

As regards the allegedly insufficient statement of reasons, the Commission refers to the judgment of the Court of Justice of 16 March 1978 in Case 7/77, *von Wüllerstorff und Urbair v Commission of the European Communities*, ([1978] ECR 769), from which it is clear that the selection board has given sufficient reasons for its

Mrs Kobor, represented by L. Schiltz, and the Commission, represented by its Principal Legal Adviser, R. Baeyens, acting as Agent, presented oral argument at the hearing on 25 January 1979.

The Advocate General delivered his opinion at the hearing on 15 March 1979.

### Decision

- 1 The application, lodged on 8 May 1978, seeks the annulment of the decision of the selection board for Competition No COM/B/155, communicated to the applicant on 23 September 1977, by which the board refused to allow her to take part in the tests relating to the competition.
- 2 The competition was organized by the Commission for the purpose of constituting a reserve of administrative assistants in Grades 5 and 4 of Category B.
- 3 The duties attaching to the posts to be filled were defined in relation to four different areas, one of which was the application of rules of administrative management, from amongst which the candidates had to indicate their choice.
- 4 Under the special conditions for admission the notice of competition provided the candidates had, first, to have completed a course of secondary

education and received a final certificate and, secondly, to have at least one year's practical experience in the field chosen after obtaining their educational qualifications.

- 5 The applicant, who, in applying for the post, selected the field relating to the application of rules of administrative management, was refused admission to the competition on the ground that her practical experience was insufficient.
- 6 In support of her application the applicant claims that the refusal of the selection board is either the result of manifest error or of an erroneous assessment as regards her practical experience.
- 7 In that regard she recalls, first, that when she took part in earlier competitions, in particular, in Competition No COM/B/139 in 1975, whose requirements in that respect were the same as those laid down for the competition in question, her practical experience had been considered to be sufficient and, secondly, that the periodic reports drawn up with regard to her since then stated that she had performed certain duties which testify to such experience.
- 8 Furthermore, she claims that the statement of reasons given for the selection board's refusal was insufficient.
- 9 In its defence the Commission states that since each competition constitutes a separate procedure there is no reason to compare the appraisals made of a single candidate by different selection boards in the context of successive competitions.
- 10 Furthermore, it is claimed that the severity of the appraisal is dependent upon the quantity and quality of the applications, which increase greatly year by year.
- 11 Although the fact that a large number of candidates apply to take part in a competition may justify a rigorous selection by means of eliminatory tests it cannot be accepted that the objective requirements for admission to the tests, which are formulated in identical terms, should be given a different interpretation from one competition to another in the light of the number of candidates.

- 12 In any event, a candidate cannot form the subject of a less favourable appraisal than that made of him in a previous competition, unless the statement of the reasons on which the decision is based clearly justifies such a difference of appraisal.
- 13 In that respect there is no sufficient statement of reasons for the refusal to admit the applicant to the tests relating to the competition in question.
- 14 In fact, the only statement of reasons contained in the standard letter in which the selection board's refusal was communicated to the applicant was a reference to the condition which was not fulfilled.
- 15 The condition laid down by the notice of competition, which related to the need for candidates "to have at least one year's practical experience in the field chosen after having obtained their educational qualifications" was composed of several elements, so that a reference to the condition as a whole was not of such a nature as to indicate which of the factors had been found to be lacking.
- 16 Although it is permissible, having regard to the large number of candidates, to make use of summarized statements of reasons, a mere reference to the condition which was not fulfilled cannot however satisfy the requirement to state reasons where such a reference is not capable of providing the person concerned with a sufficient indication to allow him to know whether the refusal is well founded or on the other hand whether it is vitiated by a defect which would make it possible to contest its legality.
- 17 The selection board's refusal must therefore be annulled.

#### Costs

- 18 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.
- 19 As the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Annuls the decision communicated to Mrs Kobor by letter of 23 September 1977 by which the Selection Board for Competition No COM/B/155 refused to allow her to take part in the tests relating to that competition;
2. Orders the Commission to pay the costs.

Mackenzie Stuart

Sørensen

Touffait

Delivered in open court in Luxembourg on 5 April 1979.

A. Van Houtte  
Registrar

A. J. Mackenzie Stuart  
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI  
DELIVERED ON 15 MARCH 1979 <sup>1</sup>

*Mr President,  
Members of the Court,*

competition refuses to admit one of the candidates to the written tests.

1. The application with which we are concerned raises once again the question of the requirements for the validity in form and substance of a decision by which the selection board for a

The applicant, Mrs Kobor, applied in 1977 to enter Open Competition No COM/B/155 to constitute a reserve for future recruitment of administrative assistants in Category B. She was not admitted to the written tests because the

<sup>1</sup> — Translated from the Italian.