

qualifications of the reasons for that decision, at least in summarized form. That requirement to give a statement of reasons must however be evaluated having regard to the different levels and types of competition and, more particularly, to the number of candidates competing in each of them. In the case of competitions where the candidates are more numerous, the statement of the reasons for the rejection of applications must not be so voluminous as to place an intolerable burden on the proceedings of the selection boards and the work of the personnel administration.

In order to make allowance for the practical difficulties confronting a selection board for a competition for which there is a very large number of applications, it may be accepted that the selection board may initially send to candidates merely information on the criteria for selection and the result thereof and not give individual explanations until later and to those candidates who expressly request them, on condition, however, that those individual details are sent by the selection board before the expiry of the period laid down by Articles 90 and 91 of the Staff Regulations, so that the recipients may, if they think fit, avail themselves of their rights.

In Case 195/80

BERNARD MICHEL, an official of the Commission of the European Communities, residing at 95/45 Boulevard Mettewis, Brussels, represented by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18a Rue des Glacis,

applicant,

v

EUROPEAN PARLIAMENT, represented by F. Pasetti-Bombardella, acting as Agent, Kirchberg, Luxembourg, assisted by A. Bonn of the Luxembourg Bar,

defendant,

APPLICATION for the annulment of a decision not to admit the applicant to the tests for an open competition,

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments put forward by the parties during the written procedure may be summarized as follows:

bracket which become vacant or are created and cannot be filled by promotion, transfer, internal competition or transfer from another institution”.

I — Summary of the facts

Under Heading III of the Notice of Competition, the procedure and conditions of eligibility for the competition were stated to be as follows:

1. In the Official Journal of the European Communities of 6 June 1979 (C 141, p. 10), the European Parliament, the defendant, published Notice of Open Competition No PE/21/A for an “open competition based on qualifications and tests for the purpose of drawing up a reserve list for the recruitment of French-language administrators and Dutch-language administrators in Grades 7 and 6 of Category A”. The Notice of Competition stated that the competition was being held “to fill vacancies in the institution’s departments and to establish a reserve list with a view to filling any posts in the abovementioned career

“The competition will be based on qualifications and tests.

Candidates who meet the following requirements and whose applications are accepted by the Selection Board will be admitted. Only those who have been invited to attend may take part”.

The Notice of Competition then stated that a university degree was required in one of a number of specified subjects, including economics, and added:

“or equivalent professional experience”.

Heading IV entitled “Selection on the basis of qualifications” read as follows:

“Marking: Out of 40

After deciding the criteria for assessing the candidates’ qualifications, the Selection Board will examine the qualifications of each candidate. To be admitted to the tests each candidate must obtain an overall mark of at least 60 % of the possible total.”

2. By 23 June 1979, the closing date for applications, 2 140 applications had been submitted including that of the applicant, Bernard Michel.

Since 1975 the applicant has been an official of the Commission of the European Communities, where he initially held a post of administrative assistant in Grade B 4 in the Directorate-General for Transport. By decision of 14 September 1979 he was promoted to senior administrative assistant in Grade B 3 and works at present in the Individual Rights and Privileges Division of the Commission’s Directorate-General for Personnel. Before entering the service of the Commission the applicant had worked for nine years in the private sector, including six years as an assistant in the export department of a large pharmaceutical undertaking.

In addition to his practical experience, the applicant had attended courses at the Institut d’Enseignement Supérieur Lucien Cooremans, in Brussels, which in 1977

awarded him a degree in commercial and consular sciences and a qualification as Agrégé de l’Enseignement Secondaire Supérieur pour les Sciences Commerciales [higher secondary teaching certificate for commercial sciences]. His application form also stated that in addition to his practical work he had attended courses at the Institut d’Études Européennes (Université Libre de Bruxelles) in 1978 and 1979 but had not obtained a certificate. Moreover, the applicant referred in his application form to two published works, including his final course paper and, under the heading entitled “Social Activities”, to his teaching activities as a lecturer at evening classes for higher level economics.

3. The Selection Board for the European Parliament’s competition placed the applicant on the list of 1 740 candidates who fulfilled the conditions for admission to the competition.

The Selection Board then proceeded to make a selection on the basis of qualifications. It emerges from the reasoned report drawn up by the Selection Board on the progress of its work, which the Parliament submitted as an annex to its defence, that the Selection Board decided as a general principle to admit to the stage of the tests only those candidates who could demonstrate that they had “the record of an ‘outstanding young university graduate’ and in addition a certain minimum of specialization, work or practical experience” and that the Selection Board adopted for that purpose a number of criteria, awarding a maximum of 22 marks for the university first degree, depending on its source and the class obtained, between 1 and 3 marks for further university qualifications, between 1 and 3 marks for

special post-graduate courses, periods of practical training, similar experience with a European aspect or having been placed on the list of suitable candidates in competitions for Category A officials organized by the Communities and between 1 and 12 marks for practical experience. With regard to practical experience, the Selection Board's report states that it was assessed in accordance with the following criteria:

- “— Experience at executive level (junior administrator) in the public or private sector, similar experience or teaching experience at university level only (in the service of the Communities: Grade B 1 and above and all L/A grades);

- Experience in a field related to the work of the institution.

Marking will be at the rate of 2 marks for each of the first two years and 1 mark for each additional year, to a maximum of 12 marks.

Aggregation with any practical experience proffered as an alternative to a degree in order to gain admission to the competition will not be acceptable.”

When the marking took place, the Selection Board awarded the applicant 22 marks for his university first degrees but no marks for the other criteria. Since the applicant had not attained the minimum of 24 marks, he was placed by the Selection Board amongst the 1 455 candidates who were not admitted to the stage of the tests.

The tests for the competition took place on 7 March 1980.

4. By a letter dated 21 February 1980 from the Chairman of the Selection Board the applicant was informed of the Board's decision not to admit him to the tests in the following terms:

“With reference to your application, I am writing to let you know that the Selection Board of which I am Chairman decided to admit you to the above-mentioned competition. Consequently, in accordance with the provisions of Heading IV of the Notice of Competition, it proceeded to award marks for your qualifications on the basis of the supporting documents which you were good enough to supply.

That selection on the basis of qualifications takes account of university qualifications obtained, of their nature and level, of periods of post-graduate training and of suitable practical experience acquired by candidates. After the marks had been awarded you had not obtained 60 % of the marks (24 out of 40) as required by the Notice of Competition. Under those circumstances, the Selection Board was obliged to decide not to admit you to the next stage of the competition, that is to say to the tests.”

The form of letter was identical to those sent to all the candidates who were not admitted to the tests. It contained the following postscript:

“The Selection Board will answer any requests for further explanation of the points set out above.”

On 4 March 1980 the applicant, referring to that letter, requested the Selection Board to inform him of the criteria on which the Board had based its assessment of the candidates' quali-

fications and of the results which he personally had obtained for each of those criteria.

In Brussels on Monday, 2 June 1980, the applicant posted a registered letter addressed to the President of the European Parliament lodging a complaint under Article 90 (2) of the Staff Regulations against the refusal to admit him to the tests for the competition in question. In that letter the applicant stated that he had no knowledge of the letter of 21 February 1980 from the Selection Board until 3 March 1980. The letter of 2 June 1980 was registered by the Parliament's Mail Department on 4 June 1980.

The applicant received no reply to that complaint.

By letter of 9 June 1980 the Selection Board replied to the applicant's letter of 4 March 1980 in the following terms:

"Please accept my apologies for the delay in replying to your letter of 4 March of this year; this was due to the exceptional work-load with which the Selection Board had to contend.

The reason for your exclusion from the stage of the tests was the inadequacy of the practical experience to which you refer in your application.

Since I am bound to respect the confidentiality of the Selection Board's deliberations, I cannot give you any further information."

142 candidates who were not admitted to the written tests requested further information and, like the applicant, received a standard reply which gave no individual details.

II — Written procedure and conclusions of the parties

By application lodged on 6 October 1980 the applicant brought an action against the European Parliament.

In his application, the applicant claims that the Court should:

- Declare that the implied rejection of his complaint is unjustified and consequently annul it;
- Declare that his application for admission to the tests for Competition No PE/21/A was wrongly rejected and consequently declare that the applicant fulfils the conditions for admission to the tests for that competition;
- Declare that the Parliament is liable for its wrongful act or omission and consequently award the applicant damages of BFR 50 000 for non-material damage and of BFR 40 000 for material damage, that is to say BFR 90 000 in total, with interest at 6 % per annum from the date of this application until final settlement;
- Order the Parliament to pay the costs.

In his reply, which was lodged on 14 January 1981, the applicant claims further that the Court should:

- Annul completely and in its entirety Competition No PE/21/A and all the consequences thereof.

The Parliament contends that the Court should:

- Dismiss the application as inadmissible or as unfounded;
- Dismiss as inadmissible or as unfounded the further conclusions put forward by the applicant in his reply.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties

1. Admissibility

(a) Failure to comply with the time-limit for lodging a complaint

According to the *Parliament*, the complaint through official channels was not lodged within the period required by the Staff Regulations. In view of the completely uniform methods of work employed in the Mail Department, it is certain that the Luxembourg postal authorities received the letter of 21 February 1980 on the same day and it may be assumed that it was delivered to the applicant's address in Brussels on Monday, 25 February 1980. Even if it were accepted that the period for lodging a complaint ran from the date on which the applicant claimed to have received notification of the Selection Board's decision, that is to say from 3 March 1980, the complaint would still be out of time because it reached the Parliament on 4 June 1980.

The *applicant*, in his reply, states that he did not receive the letter of 21 February 1980 until 3 March 1980. Such a delay in the delivery of the letter might easily be explained by an error on the part of the postal authorities. In order to avoid such irregularities the Selection Board should

have notified its decision by registered letter. With regard to the date on which his complaint was lodged, the applicant claims that, since his letter of 2 June 1980 was sent by registered post, account should be taken only of the dates of posting recorded by the public authority. Moreover, the applicant claims that on Saturday 31 May and Sunday 1 June it was not possible to dispatch registered letters at Belgian post offices and that Article 80 (2) of the Rules of Procedure therefore allowed him to post his letter on Monday 2 June.

The *Parliament*, in its rejoinder, contends that the applicant is bound at least to state the apparent reason for the alleged delay in the receipt of the letter of 21 February 1980. The fact that 31 May and 1 June fell at a weekend is of no consequence. Article 80 (2) of the Rules of Procedure is inapplicable since it envisages the case where a period ends on a Sunday or on an official holiday.

(b) Lack of legal interest in pursuing the action

According to the *Parliament*, the applicant has no interest in pursuing the action because he has meanwhile been notified of the reasons on which the decision refusing to admit him to the tests was based. The failure to give a statement of reasons constituted the ground relied on by the applicant. Moreover, the tests have already taken place. What the applicant is seeking is therefore the recognition by the Court of a purely theoretical right.

The *applicant* claims that in any competition candidates who have already taken part in a competition for the same category have an advantage which may be worth several marks and be decisive.

In his view, a person seeking advancement has the greatest interest in discovering why he has failed a previous competition. The applicant claims that he is entitled to a finding that his application was not subjected to an objective examination and that he should have received the number of marks required for admission to the tests.

28 February 1980 in Case 89/79 *Bonu v Council* [1980] ECR 553, because it should have explained to unsuccessful candidates at least in a summarized form the criteria which the Selection Board had applied in arriving at its decision. The secrecy of the Selection Board's deliberations could not be raised as an objection to his request to be informed of the objective criteria for assessment.

(c) The barring of further submissions

With regard to the claim made by the applicant in his reply that the competition should be annulled in its entirety, the *applicant* states that he realized the full extent of the errors made only on reading the defence and the minutes of the Selection Board and adds that the Court should reach such a decision of its own motion even without conclusions to that effect.

The *Parliament*, in its rejoinder, contends that the further conclusions are inadmissible because the defence did not disclose any matters of law or fact which would justify further submissions on the part of the applicant. Still less can the applicant be permitted to change the object of his action.

2. *Substance*

(a) Failure of the Selection Board to state the reasons on which its decision was based

The *applicant*, in his application, claims that the Selection Board's decision did not contain the statement of reasons required according to the case-law of the Court, and in particular its judgment of

The *Parliament* contends, in its defence, that the reasons for the Selection Board's unfavourable decision were stated since the letter of 21 February 1980 indicated not only the result of the selection but also the manner in which it had been made. That statement of reasons was sufficient because it was supplemented by the letter of 9 June 1980, which contained a further statement of reasons already offered in the first letter. The two letters of 21 February and 9 June must be considered together. The letter of 21 February gave a summary of the basic criteria; the letter of 9 June added that the applicant's qualifications had been considered to be insufficient in respect of his practical experience. His request to be informed of the results which he personally had obtained for each of the criteria went beyond the principles laid down in the case-law. The large number of candidates forced the Selection Board to organize its work in such a way as to enable it to contend with it and it would have constituted an overwhelming burden to supply each candidate eliminated with individual information.

The *applicant*, in his reply, claims that by virtue of Article 25 of the Staff Regulations the Selection Board's decision and the reasons on which it was based should have been communicated to him at once. It would seem that the Selection Board omitted to inform him in order to avoid legal proceedings. The additional

information was not given until after the written tests. The reasons for the Selection Board's decision were stated in a standard letter for all candidates who were not admitted. That did not constitute an individual statement of reasons and provided the candidates with no information concerning the precise reasons for their elimination. The reference to the secrecy of the Selection Board's deliberations served only to conceal the lack of any statement of reasons.

(b) Incorrect assessment of qualifications by the Selection Board

The *applicant*, in his application, maintains that under the terms of the Notice of Competition the Selection Board was not entitled to concern itself with a candidate's practical experience where he possessed the required degree. The requirements of a degree and of practical experience were not cumulative. In view of the age-limit of 33 years imposed it is, moreover, difficult to see how a candidate could have practical experience equivalent to a full university degree.

The *Parliament*, in its defence, contends that the applicant's reasoning is based on a confusion of the various stages of the competition. Whereas at the stage of admission to the competition no practical experience was required on the part of candidates who possessed the necessary degrees, at the stage of the selection on the basis of qualifications, the Selection Board was entitled to assess *inter alia* candidates' practical experience in accordance with the criteria which the Board itself had drawn up.

The *applicant*, in his reply, claims that the Selection Board did not correctly apply the criteria which it had itself laid down.

It should have awarded him at least one mark for post-graduate courses and six marks for practical experience, that is to say, 28 marks in total, whereas only 24 marks were required for admission to the tests. In particular, the Selection Board did not fully appreciate the level of his practical experience and its relationship to the work of the institution. It failed to recognize that the duties which the applicant performed at the Commission as a graduate in his grade in Category B were those of a graduate.

The Selection Board applied the criteria in a discriminatory manner because it admitted another candidate, Mr Neijman, even though that candidate possessed the same degrees and had practical experience in the private sector covering a shorter period and at a lower level. In order to prove that, the applicant requests the Court to order the production of the file on his application as well as that of Mr Neijman. The applicant adds that he was unaware of those facts at the time when he brought his action.

The criterion of practical experience applied by the Selection Board led, moreover, to the automatic exclusion from the tests of any candidate who did not have a university education but had equivalent practical experience; this was contrary to the terms of the Notice of Competition which required that they be admitted.

In general, the Selection Board performed its work both superficially and too hastily, it committed glaring errors of substance, the applications were examined in an incorrect and disorganized manner and Mr Michel's application was not subjected to objective examination.

The *Parliament*, in its rejoinder, contends that the allocation of marks for the applicant's qualifications in accordance with the various criteria of the Selection Board, and in particular with that of practical experience, was a matter which fell within the Board's discretion. The Selection Board examined the qualifications relied upon and assessed them with reference to the requirements of the competition. The applicant was not entitled to any marks other than those which he received.

There are no grounds for the assertion that the Selection Board departed from the objective and impartial approach required in order to assess the hundreds of applications submitted. The Parliament rejects the applicant's insinuations regarding the Selection Board's work. Moreover, they were contained in further submissions which were lodged out of time.

The further submission based on alleged discrimination, concerning the admissibility of which the applicant himself has doubts, can relate only to the assessment of qualifications, a matter which falls within the Selection Board's discretion. The documentation of the case is complete, in so far as the applicant's application form, the documents annexed thereto and the marks which he obtained are concerned, since the relevant documents have been submitted to the Court. A request for the production of

the file of a person who is not a party to the proceedings is inadmissible.

(c) Error vitiating the entire competition

The *applicant*, in his reply, 'points out that in its defence the Parliament stated that the purpose of the competition was merely to draw up "a reserve list for recruitment". He refers to the Notice of Competition, which stated that the competition was also being held to fill vacancies in the institution's departments and concludes that the Parliament encouraged a large number of applications on the basis of promises which, in the case of persons seeking immediate employment, were misleading and fallacious and could not be fulfilled. There is therefore justification for the annulment, even of the Court's own motion, of the entire open competition. Only on reading the defence did the applicant realize the full extent of the errors committed which justify that claim.

The *Parliament*, in its rejoinder, refers to the wording of the Notice of Competition and states that in the case of a competition held for the purpose of drawing up a reserve list for recruitment, persons are drawn from the reserve list as soon as posts become vacant. The applicant's claims on this matter amount merely to inadmissible suppositions and insinuations.

(d) Damage sustained by the applicant

In his application, the *applicant* states that if the complete annulment of the competition were to be regarded as a penalty too severe for the irregularity committed, he nevertheless sustained serious damage of both a non-material

and a material nature. He assesses the non-material damage at a minimum of BFR 50 000. The material damage is not merely hypothetical because, in view of the infrequency of open competitions for Category A, the opportunity which he has lost is a severe handicap to his career, which he assesses, subject to all necessary reservations, at BFR 40 000.

The *Parliament*, in its defence, objects that even if the application were accepted in principle, the applicant would obtain complete satisfaction by the annulment of the contested decision refusing him admission. His claim for damages is in any event unfounded since the purpose of the competition was to draw up a reserve list for recruitment.

In his reply the *applicant* claims that he could legitimately assume that there was a vacant post. The non-material damage which he has suffered would not be remedied merely by the annulment of the decision rejecting his application but only if the entire competition were annulled. The estimate of BFR 40 000 for material damage is modest in view of the opportunities which the applicant would have had and of the fact that the difference between the salary of an official in Grade B3 and that of an official in Grade A7 amounts to BFR 5 218 per month.

IV — Oral procedure

The applicant, represented by Victor Biel, of the Luxembourg Bar, and the European Parliament, represented by Alex Bonn, of the Luxembourg Bar, presented oral argument at the sitting on 25 June 1981.

The Advocate General delivered his opinion at the sitting on 17 September 1981.

By a statement lodged on 12 October 1981 the applicant requested the Court to order measures of inquiry or the re-opening of the oral procedure. In support of that request the applicant stated that he had recently discovered as a result of inquiries at the Luxembourg post office that the registered letter containing his complaint had been received by an official in the Parliament's Mail Department on 3 June 1980. He produced as evidence thereof a receipt for registered post made out by the Luxembourg post office on 3 June 1980.

In reply to that request, the Parliament stated that the applicant's letter, which was addressed to the President of the Parliament, had been transmitted by the Parliament's Mail Department directly to the President's office in accordance with instructions received. There it was opened and was subsequently returned to the Mail Department for the purpose of registration. It seems that the exceptional result of that procedure was that the letter was registered by the Mail Department on the day following the day on which it was actually received. The Parliament expressed its regret that this internal instruction, which is intended to ensure that the post addressed to the President is sent to her office, should have caused incorrect information to be given during legal proceedings.

Under Article 61 of the Rules of Procedure the Court (Third Chamber), after hearing the views of the Advocate General, ordered the re-opening of the oral procedure on that point.

The applicant, represented by Victor Biel, and the European Parliament, represented by Alex Bonn, presented oral argument at the sitting on 12 November

1981 concerning the date on which the complaint reached the Parliament. The Advocate General delivered his further opinion at the same sitting.

Decision

- 1 By application lodged at the Court Registry on 6 October 1980, Bernard Michel brought an action against the European Parliament, on the one hand, for the annulment of the decision of the Selection Board for Competition No PE/21/A refusing to admit him to the tests for the competition and for the complete annulment of the competition and, on the other hand, for an order that the Parliament should pay damages for the non-material and material injury sustained as a result of his non-admission to the tests for the competition.
- 2 The competition in question was an open competition based on qualifications and tests organized for the purpose of drawing up a reserve list for the recruitment of French-language and Dutch-language administrators in Grades A 7 and A 6. The Notice of Competition, which was published in the Official Journal of the European Communities of 6 June 1979, required a university degree or equivalent experience and stated that only those candidates would be admitted to the tests who obtained the necessary number of marks when the Selection Board, after deciding upon the criteria for selection, proceeded to assess their qualifications.
- 3 The applicant submitted an application for the competition, for which a total of 2 140 candidates entered. It was clear from his application that since 1975 he had been an official of the Commission of the European Communities in Category B after working for nine years in the private sector, that he held a degree in commercial and consular sciences and was an Agrégé de l'Enseignement Supérieur pour les Sciences Commerciales, qualifications

which he had obtained in 1977 at the Institut d'Enseignement Supérieur Lucien Cooremans, in Brussels, and that from 1978 to 1979 he had attended courses at the Institut d'Études Européennes in Brussels.

- 4 Although he fulfilled the conditions for admission to the competition, Mr Michel's application — like those of 1 455 out of 1 740 candidates who satisfied those conditions — was rejected at the stage of the selection on the basis of qualifications, because the Selection Board did not award him the required number of marks. The applicant was informed of that decision by a letter dated 21 February 1980 from the Chairman of the Selection Board. It was a standard letter identical in wording to those sent to all the candidates who were not admitted to the tests.
- 5 By a registered letter of 2 June 1980, which was recorded by the Parliament's Mail Department on 4 June 1980, the applicant lodged a complaint pursuant to Article 90 (2) of the Staff Regulations against the refusal to admit him to the tests for the competition in question. Since he received no reply to that complaint, he brought this action.

Admissibility

- 6 The Parliament first raised an objection of inadmissibility, contending that the applicant had failed to comply with the time-limits laid down by Articles 90 and 91 of the Staff Regulations.
- 7 The application in this case concerns the decision of a selection board and it was therefore unnecessary for the purposes of admissibility that it should have been preceded by the submission of a complaint. However, since the applicant availed himself of the right conferred by Article 90 of the Staff Regulations to bring the matter first to the attention of the appointing authority, his application is admissible under Article 91 (2) and (3) of the Staff Regulations on condition that the complaint addressed to the appointing authority was lodged within the period laid down by Article 90 (2) of the Staff Regulations. That three-month period starts to run on the

date of notification of the decision to the person concerned, but in any case no later than the date on which the latter received such notification, if the measure affects a specified person.

- 8 It should be mentioned that the date on which the unregistered letter of 21 February 1980 from the Chairman of the Selection Board arrived at the applicant's address in Brussels has not been established. However, in his letter of 2 June 1980 containing the complaint the applicant stated that he had received it on 3 March 1980. It is established that the complaint, contained in a registered letter posted in Brussels on 2 June 1980, was delivered to the Parliament's Mail Department on 3 June 1980, even though it was not recorded there until 4 June 1980.
- 9 The Parliament submits that the period for lodging a complaint began to run at the latest on 25 February 1980 because it may be assumed that the letter of 21 February 1980 from the Chairman of the Selection Board, which had been posted in Luxembourg on the same day, was delivered to the applicant's address in Brussels no later than on the following Monday, that is to say on 25 February 1980, as the applicant has put forward no reason for the alleged late receipt of the letter.
- 10 The applicant maintains, however, that he did not receive the letter of 21 February 1980 until 3 March 1980 and that therefore the period for lodging a complaint began to run on that date.
- 11 The Parliament, for its part, has adduced no evidence to prove that the letter of 21 February 1980 reached the applicant before the date on which he claims to have received it and noted its contents. The addressee of an unregistered letter is not required to show the reasons for any delay in its delivery.
- 12 Consequently, it is evident that the period laid down by Article 90 (2) of the Staff Regulations began to run on 3 March 1980 and that the complaint had to be lodged no later than 3 June 1980.
- 13 The complaint reached the Parliament on 3 June 1980. It was therefore lodged before the expiration of the prescribed period.

- 14 It follows that the objection based on a failure to adhere to the periods laid down by Articles 90 and 91 of the Staff Regulations is unfounded.
- 15 The Parliament maintains further, in order to contest the admissibility of the application, that the applicant has no interest in bringing the action because the tests for the competition have already been held.
- 16 However, if the Selection Board's decision refusing to admit the applicant to the tests is annulled, the Parliament will be required under Article 176 of the EEC Treaty to take the necessary measures to comply with this judgment. Consequently, the applicant's interest in bringing the action cannot be contested.
- 17 It follows from all the above considerations that the application is admissible.

Substance

- 18 The applicant claims first that the Selection Board's decision not to admit him to the tests for the competition is null and void because it infringes an essential procedural requirement inasmuch as it fails to set out adequately the reasons on which it is based.
- 19 In that regard, it should be mentioned that the letter of 21 February 1980 informed the applicant that candidates had been selected for admission to the tests by the award of marks for their qualifications on the basis of the supporting documents supplied, that in the award of those marks account had been taken of university qualifications obtained, of their nature and level, of periods of post-graduate training and of appropriate practical experience acquired, and that after the marks had been awarded the applicant had not obtained the required minimum of 24 marks. It was stated in that letter that the Selection Board would reply to any request for further explanation of that selection. The applicant sent such a request to the Selection Board and the Chairman of the Selection Board informed him by a letter dated 9 June 1980 that he had not been admitted to the tests because of the inadequacy of the practical experience to which he had referred in his application and that

since the Chairman was bound to respect the confidentiality of the Selection Board's deliberations, he was unable to give him any further information.

- 20 It emerges from the reasoned report drawn up by the Selection Board, an extract of which was submitted by the Parliament as an annex to its defence, that the Selection Board decided as a general principle to admit to the stage of the tests only those candidates who could demonstrate that they had "the record of an 'outstanding young university graduate' and in addition a certain minimum of specialization, work or practical experience" and that for that purpose the Selection Board adopted the criteria of awarding a maximum of 22 marks for a university first degree, between 1 and 3 marks for further university qualifications, between 1 and 3 marks for special post-graduate courses, periods of practical training, similar experience with a European aspect or having been placed on the list of suitable candidates in competitions for Category A officials organized by the Communities, and between 1 and 12 marks for practical experience. The report stated with regard to the last-mentioned criterion that the following experience was required: "Experience at executive level (junior administrator) in the public or private sector, similar experience or teaching experience at university level only (in the case of employment by the Communities: Grade B 1 and above and all the L/A grades); experience in a field related to the work of the institution". According to the report, the Selection Board awarded the applicant 22 marks for his university first degrees but no marks for the other criteria.
- 21 The Parliament claims first that the applicant has no interest in adhering to his submission relating to the lack of a statement of reasons because he has meanwhile received a statement of the reasons on which the decision was based. The Parliament's argument amounts in substance to an assertion that any failure which there may have been to state the reasons on which the decision was based has been subsequently remedied by the fact that the applicant has learnt the reasons for the refusal to admit him to the tests during the proceedings before the Court.
- 22 However, it must be remembered in that regard that the requirement that a decision adversely affecting a person should state the reasons on which it is based is intended to enable the Court to review the legality of the decision and to provide the person concerned with details sufficient to allow him to

ascertain whether the decision is well founded or whether it is vitiated by an error which will allow its legality to be contested. It follows that the statement of reasons must in principle be notified to the person concerned at the same time as the decision adversely affecting him and that a failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the decision during the proceedings before the Court.

- 23 The Parliament maintains next that the statement of reasons which the applicant received in the letter of 21 February 1980 and, in any event, in the letter of 9 June 1980, satisfied all the requirements.
- 24 It must be emphasized first that the secrecy of the proceedings of the Selection Board prescribed by Article 6 of Annex III to the Staff Regulations of Officials cannot absolve a selection board from its obligation to inform a candidate who is rejected at the stage of the selection on the basis of qualifications of the reasons for that decision, at least in summarized form.
- 25 That requirement to give a statement of reasons must however be evaluated having regard to the different levels and types of competition and, more particularly, to the number of candidates competing in each of them. In the case of competitions such as the present, where the candidates are more numerous, the statement of the reasons for the rejection of applications must not be so voluminous as to place an intolerable burden on the proceedings of the selection boards and the work of the personnel administration.
- 26 Whilst the letter of 21 February 1980 certainly informed the applicant, at least in summarized form, of the criteria taken into account in making the selection on the basis of qualifications, it contained no details, even in summary form, of the reasons for the individual decision and did not even inform the applicant of the criteria in respect of which his qualifications had been regarded as inadequate. The contents of that letter cannot therefore satisfy the requirement to state the reasons on which the decision was based.
- 27 In order to make allowance for the practical difficulties confronting a selection board for a competition for which there is a very large number of applications, it may be accepted that the selection board may initially send to candidates merely information on the criteria for selection and the result

thereof, such as that contained in this case in the letter of 21 February 1980, and not give individual explanations until later and to those candidates who expressly request them, on condition, however, that those individual details are sent by the Selection Board before the expiry of the period laid down by Articles 90 and 91 of the Staff Regulations, so that the recipients may, if they think fit, avail themselves of their rights.

28 It follows that the submission relating to the lack of a statement of reasons is well founded and there is no need in that connection to consider the contents of the letter of 9 June 1980 from the Chairman of the Selection Board.

29 It must therefore be concluded that in this case the Selection Board's refusal did not adequately state the reasons on which it was based.

30 In his reply, the applicant also claimed that the Parliament encouraged a large number of applications on the basis of misleading and fallacious promises which could not be fulfilled and that that justified the annulment of the entire competition.

31 However, the applicant has put forward no serious consideration which would support such an allegation. It is therefore unnecessary to decide whether the applicant is entitled to put forward in his reply fresh conclusions of that nature supported by a further submission.

32 The applicant also claimed that the Parliament should be ordered to pay damages as compensation for the injury sustained as a result of the refusal to admit him to the tests for the competition.

33 However, on the basis of the documents at present before the Court it cannot be stated positively either that the applicant should have been admitted to the tests or that he was certain subsequently to be placed on the list of suitable candidates and to be appointed to a vacant post. The applicant has therefore adduced no evidence of such a nature as to prove that he has actually sustained material or non-material damage.

34 It follows from the foregoing that the contested decision of the Selection Board not to admit the applicant to the tests must be annulled and that the remainder of the application must be dismissed.

Costs

35 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Parliament has failed in the major part of its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls the decision whereby the Selection Board for Open Competition No PE/21/A (French-language and Dutch-language administrators) refused to admit the applicant to the tests for that competition;**
2. **Dismisses the remainder of the application;**
3. **Orders the Parliament to pay the costs.**

Touffait

Mackenzie Stuart

Everling

Delivered in open court in Luxembourg on 26 November 1981.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Third Chamber