

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
7 February 2001

Case T-118/99

Beatrice Bonaiti Brighina
v
Commission of the European Communities

(Officials – Competitions – Rules on the use of languages – Admissibility –
Non-admission to the oral tests – Access to documents)

Full text in Italian II - 97

Application for: annulment of the decision of the selection board in competition COM/B/18/96 not to admit the applicant to the oral tests in that competition and, if necessary, annulment of the list drawn up on the basis of the written tests, of the final list of successful candidates in the competition, and of the subsequent appointment of those candidates.

Held: The application is dismissed. The parties are ordered to bear their own costs.

Summary

1. Officials – Actions – Time-limits – Point at which time starts running – Notification – Concept – Decision rejecting a complaint, addressed to an official in a language which was neither her mother tongue nor that of the complaint – Recourse to translation – Date of notification of the translation – Burden of proof of notification

(Staff Regulations, Art. 91(3))

2. Officials – Competitions – Competition based on tests – Admission to the oral test made dependent on certain conditions – Admissibility

(Staff Regulations, Annex III, Art. 5, second para.)

3. Officials – Competitions – Selection board – Drawing up the list of suitable candidates – Number of candidates to be included – Internal competition

(Staff Regulations, Arts 28(d) and 30; Annex III, Art. 5, fifth para.)

4. Officials – Competitions – Selection board – Secrecy of the proceedings – Scope

(Staff Regulations, Annex III, Art. 6, Commission Decision 94/90)

5. Officials – Competitions – Selection board – Rejection of candidature – Obligation to state reasons – Scope – Observance of the secrecy of the board's proceedings

(Staff Regulations, Art. 25, Annex III, Art. 6)

6. Acts of the institutions – Presumption of validity – Dispute – Measures of inquiry by the Community judicature – Conditions

(Art. 249 EC)

1. The notification of a decision must enable the person concerned to have effective knowledge of the decision and the grounds on which the administration justifies it.

A decision rejecting a complaint in a language which is neither the mother tongue of the official nor that in which the complaint was drafted is duly notified provided that the person concerned is able to have effective knowledge of it. If, on the other hand, the addressee of that decision considers that he is unable to understand it, it is for him to ask the institution, with all due despatch, to provide him with a translation either in the language of the complaint or in his mother tongue.

Where such a request is made without delay, the time for filing an appeal starts to run only from the date on which that translation is notified to the official concerned, unless the institution can demonstrate, without any doubt remaining in that regard, that the official was able to have effective knowledge both of the operative part and of the grounds of the decision rejecting his complaint in the language of the original notification. In that regard, it is the responsibility of the party alleging that an action is out of time for the purposes of the time-limits laid down in Article 91 of the Staff Regulations to prove on what date the contested decision rejecting the complaint was notified.

(see paras 16-19)

See: 5/76 *Jänsch v Commission* [1976] ECR 1027, para. 10; T-94/92 *X v Commission* [1994] ECR-SC I-A-149 and II-481, para. 24; T-102/98 *Papadeas v Committee of the Regions* [1999] ECR-SC I-A-211 and II-1091, para. 31; T-197/98 *Rudolph v Commission* [2000] ECR-SC I-A-55 and II-241, paras 43 to 45

2. In a competition based on tests, the appointing authority is entitled to determine, in exercise of its wide discretion when deciding on the conditions for the competition, that only candidates who have satisfied certain conditions as a result of the written test will be admitted to the oral test, and thus to reduce progressively the number of candidates admitted to the successive stages of the competition.

(see para. 29)

See: T-44/92 *Delloye and Others v Commission* [1993] ECR II-221, para. 22

3. There is no infringement of Article 5 of Annex III to the Staff Regulations or of Article 28(d) thereof in the fact that a notice of competition specifies that only a certain number of candidates must be placed on the list of suitable candidates or in the fact that the selection board complies with that instruction, as it is obliged to do. The guideline that that list should contain at least twice as many names as the number of posts to be filled merely constitutes a recommendation to the selection board, which cannot, on any view, override the express terms of the notice of competition.

Moreover, although, according to Article 30 of the Staff Regulations, the appointing authority chooses from the list of suitable candidates yielded by the competition those whom it intends to appoint to the vacant posts, that does not imply that that list must necessarily contain a greater number of successful candidates than the number of posts to be filled. It simply means that the appointing authority, within the scope of its wide discretion to compare the merits of the candidates included on that list, selects from among them the candidate who is most suitable for the specific post to be filled.

In any event, although it is desirable that the appointing authority should be able to exercise a choice in the case of a competition the purpose of which is to draw up a reserve list from which posts which will become free in the future will be filled, it is not appropriate to oblige the appointing authority to draw up a list which contains more names than the number of posts to be filled in the case of an internal competition, the sole purpose of which is to select a predetermined number of Grade C officials who are to be promoted to Grade B. In such a situation exercising a choice in selecting a candidate from a reserve list would be pointless, or even unreasonable.

(see paras 30, 34-35)

See: 122/77 *Agneessens v Commission* [1978] ECR 2085, para. 22; T-158/94 *Brunagel v Parliament* [1996] ECR-SC I-A-383 and II-1131, para. 69; T-166/95 *Karagiozopoulou v Commission* [1997] ECR-SC I-A-397 and II-1065, para. 55

4. The principle of secrecy of the proceedings of selection boards in competitions is justified by overriding considerations relating to the public interest. That principle was established with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings, by protecting them from all external interference and pressures, whether these come from the Community administration itself or the candidates concerned or third parties.

Under those circumstances, it must be held that the provisions of the Code of conduct concerning public access to Council and Commission documents, which establish the principle of the greatest possible public access to documents, and Article 1 of Decision 94/90 on public access to Commission documents, which applies that principle with regard to the Commission, cannot prevail over the rule of secrecy of the proceedings of the selection board, laid down in Article 6 of Annex III to the Staff Regulations. By virtue of the principle of the hierarchy of norms, neither the Code of conduct nor Decision 94/90 can alter the effects of a provision of the Staff Regulations, since their adoption did not follow the procedure laid down for the amendment of the Staff Regulations by the second subparagraph of Article 24(1) of the Treaty establishing a single Council and a single Commission

and by Article 10 of the Staff Regulations themselves. The abovementioned considerations also preclude the lifting of that secrecy after the completion of the proceedings of the selection board.

(see paras 46-47)

See: 89/79 *Bonu v Council* [1980] ECR 553, para. 5; T-285/94 *Pfloeschner v Commission* [1995] ECR II-3029, para. 51; C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, para. 24

5. Having regard to the secrecy which must surround the proceedings of a selection board in a competition by virtue of Article 6 of Annex III to the Staff Regulations, communication of the marks obtained in the various tests constitutes an adequate statement of the reasons for the board's decision to reject a candidature following one or more tests, since the decision taken at that stage comes within the scope of an examination of the comparative merits of the candidates.

(see para. 48)

See: *Parliament v Innamorati*, cited above, paras 26 to 31; T-157/96 *Affatato v Commission* [1998] ECR-SC I-A-41 and II-97, paras 33 to 35

6. In the absence of any evidence to call into question the validity of a decision, the presumption of validity enjoyed by Community measures must apply to the decision. Consequently, if an applicant has failed to produce the slightest evidence which might call into question that presumption, it is not appropriate for the Community judicature to order measures of inquiry aimed at bringing to light any defects by which a decision may be vitiated.

(see para. 51)

See: 51/65 *ILFO v High Authority* [1966] ECR 87; T-34/92 *Fiatagri and New Holland Ford v Commission* [1994] ECR II-905, para. 27; T-266/94 *Skibsvaerftsforeningen and*

Others v Commission [1996] ECR II-1399, para. 200; Opinion of Advocate General Tesouro in *C-362/95 Blackspur DIY and Others v Council and Commission* [1997] ECR I-4775, I-4777, para. 26