Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber)

24 April 2013 *

(Civil service — Open competition — Competition EPSO/AD/148/09 — Failure to include the applicant in the reserve list)

In Case F-88/11,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

BX, residing in Washington (United States), represented by R. Rata, lawyer,

applicant,

v

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

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

composed of H. Kreppel, President, E. Perillo and R. Barents (Rapporteur), Judges,

Registrar: J. Tomac, Administrator,

having regard to the written procedure and further to the hearing on 9 October 2012,

gives the following

Judgment

1 By application lodged at the Tribunal Registry on 16 September 2011, BX brought the present action seeking, firstly, the annulment of the decision of the selection board in open competition EPSO/AD/148/09 ('the selection board') not to include him in the reserve list for competition EPSO/AD/148/09, secondly, the annulment of the decision rejecting his complaint, thirdly, the amendment of the reserve list, and, lastly, an order that the European Commission pay damages assessed, on equitable principles, at EUR 7 000, as compensation for the non-material harm allegedly suffered, and pay the costs.

* Language of the case: English.

Legal context

2 The second paragraph of Article 3 of Annex III to the Staff Regulations of Officials of the European Union ('the Staff Regulations'), on competitions, provides:

'For open competitions common to two or more institutions, the Selection Board shall consist of a chairman appointed by the appointing authority referred to in Article 2(2) of the Staff Regulations and of members appointed by the appointing authority referred to in Article 2(2) of the Staff Regulations on a proposal from the institutions, as well as of members appointed by agreement between the Staff Committees of the institutions, in such a way as to ensure equal representation.'

3 Paragraph 5 of Article 3 of Annex III to the Staff Regulations states:

'If a selection board consists of more than four members, it shall comprise at least two members of each gender.'

4 On 21 January 2009, the European Personnel Selection Office (EPSO) published in the *Official Journal of the European Union*, in English, French and German, a notice of an open competition – Competition EPSO/AD/148/09 to constitute a reserve pool of Administrators (AD 5) of Bulgarian and Romanian citizenship in the field of Law (OJ C 14 A, p. 1; 'the notice of competition').

5 Section I, part A, of the notice of competition, entitled 'Duties', provided:

'Conducting analyses and carrying out administrative, advisory and supervisory duties relating to the activities of the European Union.

…

— [d]evising, analysing and drafting Community legislation,

— providing legal advice,

— carrying out research into national, Community and international law,

— taking part in the negotiation of international agreements,

— analysing and preparing draft decisions, for example in the area of competition law,

— examining and monitoring national legislation for conformity with Community law,

— investigating alleged infringements of Community law, complaints, etc.,

— various tasks related to legal proceedings; preparing positions for the institutions in legal proceedings, mainly before the Court of Justice [of the European Communities], the Court of First Instance [of the European Communities] or the European [Union] Civil Service Tribunal,

— legal duties in the secretariats of the Court of Justice, the Court of First Instance or the European [Union] Civil Service Tribunal,

— formulating, preparing and implementing rules in the field of justice and home affairs.'

6 Section III, point 2(d), of the notice of competition on the oral test and its marking, states:

‘Interview with the selection board in English, French or German (language 2), to enable it to complete its assessment of:

— your suitability to perform the duties described in Section I, part A,

— your specialist knowledge in the field in question,

— your knowledge of the European Union, its institutions and its policies,

— your motivation and your ability to adjust to working as a European civil servant in a multicultural environment.

Your knowledge of your main language (language 1) will also be examined.

This test will be marked out of 50 (pass mark: 25).

The oral test will normally be held in Brussels [(Belgium)].’

Facts

7 The applicant applied to be a candidate in open competition EPSO/AD/148/09.

8 The applicant was successful in the written test and, on 22 March 2010, received an invitation to the oral test to be held on 15 April 2010, that is to say, the third day the oral tests were taking place. At the oral test of 15 April 2010, the selection board consisted of its three full members. Two alternate members were also present on that day.

9 On 14 July 2010, EPSO informed the applicant, through his electronic EPSO account, that he had obtained only 23.5 points out of 50 points in the oral test, that mark not being sufficient, in so far as the pass mark was 25 points, and that, consequently, he could not be included in the reserve list of the competition.

10 By an email and a letter of 20 July 2010, the applicant requested that his oral test be re-examined, and also requested additional information concerning his participation in that test.

11 The same day, 20 July 2010, EPSO sent the applicant an email containing the final evaluation sheet of the oral test, dated 15 April 2010, accompanied by information stating that that was the only documentation that could be sent, all the other documents being covered by the confidential nature of the selection board proceedings.

12 On 28 July 2010, EPSO informed the applicant that his request for re-examination would be processed as soon as possible, his file being temporarily unavailable due to the fact that EPSO was moving offices.

13 On 3 August 2010, the applicant supplemented his request for re-examination by requesting a non-confidential version of the list of questions corresponding to the four criteria of the final evaluation sheet and the scale of grading for the interview.

14 On 24 August 2010, EPSO reiterated to the applicant that he had only the right to receive the final evaluation sheet, which had already been sent, and his original tests.

15 On 13 September 2010, the applicant sent an email to EPSO seeking, first, confirmation that the final evaluation sheet for his oral test which had been sent to him by email was the only document which he could receive and, secondly, to ascertain whether that evaluation sheet too was going to be sent to him by post, given that, on 28 July 2010, EPSO had informed him that information would be sent to him as soon as possible.

16 On the same day, 13 September 2010, EPSO confirmed to the applicant that the final evaluation sheet had been correctly sent to him, according to the department's practice, and that it was not usually sent by post.

17 On 15 September 2010, the applicant supplemented his request for re-examination of his oral test by setting out, in four pleas, the explanations and arguments relating to the breaches of procedure by which he claimed his interview with the selection board was adversely affected, and the related case-law.

18 On 8 October 2010, the applicant sent a new email to EPSO containing the same arguments as those developed in his letter of 15 September 2010 and argued that there was another breach of procedure, relating to the composition of the selection board. In that email, he also stated that EPSO had published the reserve list of the competition before the results of its re-examination procedure were communicated.

19 On 13 October 2010, EPSO replied to the applicant that, if the re-examination of his oral test were to culminate in the finding that the number of points he had received was above the pass mark, there was nothing to prevent his name being added to the reserve list for the competition. EPSO added, concerning the composition of the selection board, that both the quorum and the same number of members of each gender (in this case, two) had indeed been respected.

20 By an email of 5 November 2010, the applicant requested that EPSO and the selection board act promptly in order to ensure that his oral test be re-examined in a fair manner.

21 By a letter of 9 November 2010, EPSO replied to the applicant that the selection board, after the re-examination of his oral test and his various claims, rejected all the arguments put forward and confirmed its initial decision not to include him in the reserve list ('the contested decision').

22 On 7 February 2011 the applicant lodged a complaint against the contested decision under Article 90(2) of the Staff Regulations.

23 The Director of EPSO, acting as the appointing authority, rejected the applicant's complaint by decision of 16 June 2011.

Forms of order sought

24 The applicant claims that the Tribunal should:

— annul the contested decision;

— annul the decision of the appointing authority of 16 June 2011 rejecting his complaint of 7 February 2011;

— amend the reserve list for open competition EPSO/AD/148/09, so that it includes his name or, in the alternative, order the publication of a new reserve list containing his name;

— order that damages be paid for the non-material harm suffered, assessed provisionally, on equitable principles, at EUR 7 000;

— order the Commission to pay the costs.

25 The Commission contends that the Tribunal should:

— dismiss the action;

— order the applicant to pay the costs.

Law

1. *The claims for the reserve list to be amended to include the applicant's name or, if not, for an order for publication of a new reserve list including his name*

26 In his claims, the applicant requests that the reserve list for the competition be amended in order to include his name or, if not, that an order be made for a new reserve list including his name.

27 Claims requesting the Tribunal to issue directions to the administration or to recognise the validity of certain pleas in law relied on in support of a claim for annulment are manifestly inadmissible, since it is not for the European Union judicature, in an action for annulment brought under Article 91 of the Staff Regulations, to issue directions to the European Union institutions or to make statements of law. That applies to claims requesting the Tribunal to establish the existence of certain facts and to instruct the administration to adopt measures such as to reinstate the person concerned in their rights (order of 29 June 2010 in Case F-11/10 *Palou Martínez* v *Commission*, paragraphs 29 to 31).

28 Consequently, the claims requesting the Tribunal to order the amendment of the reserve list in order to include in it the applicant's name or, if not, to order the publication of a new reserve list including his name, must be rejected as inadmissible.

2. *The claims seeking the annulment of the appointing authority's decision, of 16 June 2011, rejecting the complaint*

29 According to settled case-law, claims for annulment formally directed against the decision rejecting a complaint have the effect, where that decision is devoid of any independent content, of bringing before the Tribunal the act against which the complaint was submitted (see, to that effect, judgment of 17 January 1989 in Case 293/87 *Vainker* v *Parliament*, paragraph 8; judgment of 9 July 2009 in Case F-104/07 *Hoppenbrouwers* v *Commission*, paragraph 31). In those circumstances, since the decision of the appointing authority, of 16 June 2011, rejecting the complaint, is devoid of any independent content, the claims for annulment must be regarded as directed only against the contested decision.

3. *The claims for annulment of the contested decision*

30 In support of his claims for annulment, the applicant relies on six pleas:

— infringement, by the selection board, of its obligation to make a comparative evaluation of the candidates;

— infringement of the principle of equal treatment;

— infringement of the procedural requirements relating to the composition of the selection board;

— infringement of the notice of competition;

— improper conduct of the oral test;

— infringement of the principle of sound administration.

31 It must be recalled that, according to settled case-law, the appointing authority enjoys a wide discretion in deciding upon the rules and conditions under which a competition is organised and it is for the Court to censure its choice only if the limits of that discretion have not been observed (judgment of 26 October 2004 in Case T-207/02 *Falcone* v *Commission*, paragraph 38).

32 It is also settled case-law that an administrative act is presumed to be lawful and the burden of proof lies, as a matter of principle, on the person claiming it to be unlawful, so that it is for the applicant to provide at the very least sufficiently precise, objective and consistent information to corroborate the truth or likelihood of the facts in support of his claim. Consequently, an applicant, disputing decisions adopted on competitions, who has no evidence or no body of indicia, at the very least, must accept the presumption of lawfulness attached to those decisions (judgment of 4 February 2010 in Case F-15/08 *Wiame* v *Commission*, paragraph 21).

The first plea, alleging infringement by the selection board of its obligation to make a comparative evaluation of the candidates

– Arguments of the parties

33 The applicant submits that the final evaluation sheet for his oral test indicates that it was signed on 15 April 2010, the date of the oral test, by the chairman of the selection board, which suggests that the jury had made a final evaluation of his abilities long before the other candidates had been examined. The elimination of the applicant therefore was not based on a comparative evaluation of the candidates, since that evaluation could not have taken place before 9 July 2010, the end of the oral test session.

34 The applicant states that he is unconvinced by the explanation provided by the appointing authority, in its decision rejecting the complaint, that the reference to the date of 15 April 2010 is due to a computer processing error and was not noticed by the chairman of the selection board when that chairman filled in and signed, on 9 July 2010, the evaluation sheets for the candidates' oral tests. Firstly, according to the applicant, the final evaluation sheet for the oral test is set out in such a way that it would be impossible to sign it without noticing its date. Secondly, the computer error alleged, in the 'mail merge' function, could not in itself explain why, on 9 July 2010, the chairman of the selection board signed 129 oral test evaluation sheets, nevertheless dated April, May and June 2010. Thirdly, no explanation has been given as regards the reason for that computer error and the date on which it occurred. Fourthly, neither the EPSO departments, nor the selection board, nor the appointing authority have submitted evidence in support of their contentions. Fifthly, certain passages of the decision rejecting the complaint contradict the argument that the placing of the signature of the chairman of the selection board next to the date of the document is the result of a computer error. Lastly, the applicant disputes the relevance of the case-law cited in the decision rejecting the complaint. In his view, it is for the Commission departments to prove, beyond all doubt, that the breaches of procedure he has alleged did not affect the results of the oral test in the competition concerned.

35 In its defence, the Commission contends that the oral test obliges the selection board to make a double assessment of each candidate. First of all, the selection board determines whether the candidate meets the minimum requirements of the oral test, namely, obtaining the pass mark of 25 points. It is only once this is established that the selection board raises the issue of how to classify the candidate in relation to the others ('the final comparative evaluation'). The Commission states that the selection board was entitled to sign a final evaluation sheet for the oral test the day of the oral test itself, and subsequently to amend only the final evaluation sheets to which changes were made following the final comparative evaluation, or indeed to make a provisional evaluation of all the candidates and to fill in the final evaluation sheets on the basis of provisional sheets. The Commission also submits that, therefore, it would not be possible for the date on an oral test final evaluation sheet to have any effect on the content of that sheet.

36 As regards the present case, the Commission confirms that all the candidates were, on the actual date of their oral test, awarded a mark determined in accordance with the pre-established criteria and that the final evaluation sheet for the applicant's oral test was actually signed, by the chairman of the selection board, on 15 April 2010. During the comparative final evaluation, which took place on 9 July 2010, the selection board discussed the oral test evaluations of certain candidates in respect of which there were still differences of opinion, and the establishment of the definitive reserve list. According to the Commission, EPSO initially and incorrectly asserted that all the final evaluation sheets for the oral tests were signed on 9 July 2010. The Commission adds that, in the present case, since the applicant failed the oral test by obtaining 23.5 points out of 50 points, whereas he would have had to obtain a minimum of 25 points, there was no need to include him in the final comparative evaluation in order to determine his position on the competition reserve list. At the meeting for the purposes of the final comparative evaluation, on 9 July 2010, the mark obtained by the applicant for his oral test was not altered.

– Findings of the Tribunal

37 It is settled case-law that the assessments made by a selection board in a competition when it evaluates the knowledge and abilities of candidates and also the decisions whereby the selection board determines that a candidate has failed a test constitute the expression of a value judgment. They fall within the wide discretion enjoyed by the competition selection board and are amenable to review by the European Union judicature only where there has been a flagrant breach of the rules governing the work of the competition selection board (judgment of 7 February 2002 in Case T-193/00 *Felix* v *Commission*, paragraph 36; judgment of 5 April 2005 in Case T-336/02 *Christensen* v *Commission*, paragraph 25; and judgment of 14 July 2005 in Case T-371/03 *Le Voci* v *Council*, paragraph 102). In its evaluation of the candidates' professional knowledge and of their abilities and motivation, that selection board must decide, exclusively and independently, solely on the basis of the candidates' performance, in accordance with the requirements of the notice of competition.

38 It follows that the competition selection board is required to ascertain whether the candidates possess the knowledge and the professional experience necessary to perform the duties of the post advertised in the notice of competition. It is also required to make a comparative examination of the candidates' knowledge and abilities so as to retain those most suited to the duties to be carried out (judgment of 14 July 2000 in Case T-146/99 *Texeira Neves* v *Court of Justice*, paragraph 42).

39 It must also be observed that, according to the notice of competition, in order to be included in the reserve list, the candidate must obtain, not only a minimum of 25 points in the oral test, but also a final mark in respect of all the tests which must be among the 86 best marks in the competition. It follows that, in respect of the candidates allowed to sit the oral test, the selection board should retain only those who meet the minimum requirements stipulated for that test.

40 In the present case, it is common ground that the selection board, after the oral test which took place on 15 April 2010, awarded a total of 23.5 marks out of 50 marks to the applicant's performance, as is apparent from the oral test final evaluation sheet signed by the chairman of the selection board on that date. Clearly, therefore, the applicant did not meet the minimum requirements stipulated in respect of the oral test, with the result that the comparison of the evaluation of the applicant's oral test with that of the other candidates, with a view to classification in the reserve list of the competition, was no longer necessary. In that regard, it matters little whether the final evaluation sheet for the applicant's oral test was signed on 15 April 2010 or on 9 July 2010, since it is not disputed that, during the meeting for the purposes of the final comparative evaluation, the selection board did not alter its initial assessment of the applicant's oral test.

41 The first plea must therefore be rejected.

The second plea, alleging infringement of the principle of equal treatment.

– Arguments of the parties

42 The applicant claims that he was discriminated against, in so far as the selection board eliminated him from the competition on 15 April 2010, that is to say, well before the oral tests of the other candidates and, consequently, without the selection board having made the final comparative evaluation. Thus, the other candidates had a greater chance of being included in the reserve list.

43 The Commission contends that that plea should be rejected. It considers that argument to be irrelevant since the applicant was not excluded following a comparative assessment but because he did not obtain the pass mark in the oral test. Moreover, the date of the oral test cannot in itself constitute a real difference in treatment in so far as it was chosen in the light of the organisational requirements of the test.

– Findings of the Tribunal

44 As was observed in paragraph 41 above, the applicant did not obtain the pass mark required in the oral test to be included in the reserve list, with the consequence that the comparison of his results with those of the last candidates to be included in the reserve list was no longer necessary. There has therefore been no discrimination that could give rise to an infringement of the principle of equal treatment.

45 Accordingly, the second plea must be rejected.

The third plea, alleging infringement of procedural requirements relating to the composition of the selection board

– Arguments of the parties

46 The applicant's third plea may be broken down into three parts. In the first part, the applicant submits that the selection board which assessed his performance at the oral test on 15 April 2010 was composed of five members, of which four were men and one was a woman. This, he submits, does not comply with paragraph 5 of Article 3 of Annex III to the Staff Regulations. In the second part, the applicant submits that, in his oral test, the selection board was composed of three full members and two alternate members, a composition which is unlawful. In the third part, the applicant claims that the selection board responsible for considering his request for re-examination of his oral test was not composed of the same persons as that with which he had sat his oral test.

47 The Commission disputes this plea. First, paragraph 5 of Article 3 of Annex III to the Staff Regulations could not have been infringed, in so far as that article is applicable only where the competition selection board includes more than four full members, which was not the case in these circumstances. Secondly, according to the case-law, the simultaneous presence of full members and alternate members during an oral test does not render the composition of the competition selection board unlawful, in so far as alternate members are also permitted to ask questions. Thirdly, the Commission maintains that the composition of the selection board was not altered during the competition.

– Findings of the Tribunal

48 So far as concerns the fact that there was only one woman among the members of the selection board at the applicant's oral test, it is sufficient to recall that, according to paragraph 5 of Article 3 of Annex III to the Staff Regulations, a selection board consisting of more than four full members is to comprise at least two members of each gender (judgment of 23 November 2010 in Case F-50/08 *Bartha* v *Commission*, paragraph 43). It is not disputed that the selection board consisted of three full members. Clearly, therefore, the composition of the selection board did not infringe that provision.

49 As regards the second part of the third plea, it is settled case-law that, from the time when the composition of the competition selection board complies with the requirements of paragraph 2 of Article 3 of Annex III to the Staff Regulations, the simultaneous presence of full members and alternate members in the selection board at the oral tests in a competition does not render the proceedings and composition of the selection board unlawful, as long as, in such circumstances, the alternate member does not have a vote (judgment of 13 October 2008 in Case T-43/07 P *Neophytou* v *Commission*, paragraph 53 and the case-law cited). The applicant moreover does not claim that the full members of the selection board did not retain control over the oral tests.

50 Lastly, so far as concerns the infringement of the principle that the composition of the selection board must be stable during the re-examination procedure, it must be noted that the applicant merely stated that he had legitimate reasons to presume that the selection board responsible for assessing his request for re-examination of his oral test was not composed of the same persons as that with which he had sat his oral test, without however having adduced the slightest evidence in that regard.

51 It follows from the above that the third plea must be rejected.

The fourth plea, alleging infringement of the competition notice

– Arguments of the parties

52 By his fourth plea, the applicant criticises the selection board for not evaluating his specialist knowledge as envisaged in Section III, point 2(d), second indent, of the notice of competition. He claims that, at the oral test, he was not asked any question enabling his specialist knowledge in certain fields of European Union law to be evaluated, despite the fact that he had indicated, in the electronic version of his curriculum vitae, that he had specialist knowledge of, inter alia, competition law and anti-dumping legislation.

53 According to the Commission, that plea is unfounded, since the applicant has misinterpreted the notice of competition. The notice of competition refers to certain branches of law by way of example, but it does not stipulate that the duties of the posts to be filled are limited to those fields or particularly focused on them. The applicant was asked questions on all the subjects mentioned in the notice of competition, and so the requirements of the notice of competition were fully satisfied.

– Findings of the Tribunal

54 It is not disputed that the purpose of open competition EPSO/AD/148/09 was to recruit administrators in the field of law. According to Section III, point 2(d), of the notice of competition, the oral test consisted of an '[i]nterview with the selection board … to enable it to complete its assessment of: … [the candidate's] specialist knowledge in the field in question …'. Therefore, the assessment of the candidate's specialist knowledge was to concern only the field of law, but the selection board was not obliged to interview the candidates about their respective specialisations. Furthermore, it is clear from the description of the duties described in Section I, part A, of the notice of competition, that the profile sought was that of a lawyer capable of performing tasks in any field of law in relation to the activities of the European Union.

55 The fourth plea must therefore be rejected.

The fifth plea, alleging breaches of procedure in the conduct of the oral test

– Arguments of the parties

56 The applicant claims that his oral test was affected by breaches of procedure which consisted in the formal prohibition by the chairman of the selection board of his briefly organising the structure of his responses in writing. This distorted the conditions of the applicant's oral test and, consequently, discriminated against him, in so far as the other candidates were not expressly forbidden from organising their answers in writing during their interviews.

57 The Commission contends that the plea should be rejected. Contradicting the applicant on this issue, who claims that he was interrupted as soon as he started writing, the Commission maintains that two members of the selection board confirmed that they allowed the applicant to organise his response in writing and asked him to stop writing after a significant period of time. Leaving aside the fact that the selection board is free to organise the procedure of the oral test, and even if the sole fact that the applicant was interrupted while writing could be interpreted as a breach of procedure capable of constituting an infringement of the principle of equal treatment, the Commission points out that the applicant has not, however, stated that the other candidates had an unlimited period of time in which to draft their responses in writing before answering the selection board. On the contrary, it is apparent from the sworn statements of the chairman and one member of the selection board that all the candidates were treated in the same way.

– Findings of the Tribunal

58 As has already been observed in paragraph 38 above, the assessments made by a selection board in a competition when it evaluates the abilities of candidates and the decisions whereby the selection board determines that a candidate has failed a test constitute the expression of a value judgment. They fall within the wide discretion enjoyed by the selection board and are amenable to review by the European Union judicature only where there has been a flagrant breach of the rules governing the selection board's work.

59 As regards, specifically, oral tests in a competition, the discretion of the competition selection board is further increased by the element of freedom and uncertainty characterising this type of test. It is, by its very nature, less uniform than the written test and its content may vary depending on the experience and the personality of the different candidates and the responses given by them to the selection board's questions (judgment of 23 March 2000 in Case T-95/98 *Gogos* v *Commission*, paragraph 36).

60 It follows that the selection board did not exceed the bounds of its wide discretion, having regard to the limited time of the oral test, in restricting the time the applicant was allowed to prepare his answer and in asking him to give a spontaneous response. Furthermore, and without this having been contradicted by the applicant, it is apparent from the sworn statements of the chairman and one member of the selection board that that attitude towards the applicant was no different from that adopted in the other candidates' oral tests.

61 Therefore, the plea alleging improper conduct of the oral test must be rejected.

The sixth plea, alleging infringement of the principle of sound administration

– Arguments of the parties

62 According to the applicant, the procedures for processing the request for re-examination of the oral test and the complaint were vitiated by breaches of procedure and did not offer him an effective remedy, thereby infringing Article 41 of the Charter of Fundamental Rights of the European Union, in particular due to the unreasonable length of the procedure, the unfair nature of the assessment and the lack of any evidence. The principles of sound administration, that the procedure should take place within a reasonable time period and that there should be an effective remedy available, were therefore infringed.

63 The Commission contends that a general claim that a candidate's file was not handled properly does not constitute a ground for annulment of a competition selection board's decision.

– Findings of the Tribunal

64 First of all, the applicant submits that the two-month duration of procedure for the re-examination of his oral test was excessive, in particular in comparison with the time-limit of 10 days for submitting a request for re-examination.

65 In this connection, without its being necessary to rule on the allegedly excessive nature of the duration of the procedure for the re-examination of his oral test, it must be observed that the applicant has not shown that that duration might have distorted the results of that procedure (see, to that effect, judgment of 29 June 2011 in Case F-7/07 *Angioi* v *Commission*, paragraph 123).

66 The applicant also submits that his request for re-examination of his oral test was not processed properly by the selection board. In his view, the final evaluation sheet for his oral test shows that he was suitable to perform the duties described in Section I, part A, of the notice of competition since, in respect of the criterion of his suitability to perform the duties, he had obtained the pass mark, namely 7.5 out of 15 points.

67 The applicant's argument is based on a manifestly incorrect reading of the notice of competition. According to Section III, point 2(d), of the notice of competition, the aim of the oral test was to enable the selection board to assess not only the candidates' suitability to perform the duties described in Section I, part A, of the notice of competition, but also to assess their specialist knowledge in the field in question, their knowledge of the European Union, its institutions and its policies, and their motivation and their ability to adjust to working as a European civil servant in a multicultural environment. Section III, point 2(d), also indicated that the oral test would be marked out of 50 points with a pass mark of 25 points. It is not disputed that the applicant obtained only 23.5 points.

68 Next, the applicant complains of inaccurate information provided by EPSO departments in the emails of 28 July, 24 August and 13 October 2010. It is sufficient to observe, in this connection, that the applicant has not shown that, if there had been no such breaches of procedure, the re-examination decision could have been different.

69 In addition, the applicant maintains that the reserve list referring to the names of the successful candidates was published before the contested decision. He was therefore not treated fairly, in particular so far as concerns the transition period for the recruitment of Romanian officials expiring at the end of 2011. The appointing authority rejected all his arguments and sent him the decision rejecting the complaint two weeks after the legal time-limit, thereby rendering the harm caused irreparable in so far as the special recruiting process was no longer available.

70 It is important, in this connection, to point out that, under the first paragraph of Article 266 TFEU, '[t]he institution whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union' (see, to that effect, judgment of 12 December 2000 in Case T-11/00 *Hautem* v *EIB*, paragraph 34). Consequently, it must be stated that that argument is unfounded since, were the contested decision to be annulled, the institution would be required to take all the necessary measures to comply with that judgment for annulment.

71 Lastly, in this sixth plea, the applicant alleges that the appointing authority did not provide any evidence to substantiate its contentions, so far as concerns, inter alia, the 'mail merge' function computer error, the information in the file concerning the prohibition on taking notes during the interview, the list of questions asked during the interview and the fact that the selection board met on 14 September and 29 October 2010.

72 In the present case, it must also be observed that the applicant has not adduced any evidence that, if the appointing authority had not behaved in this allegedly obstructive manner, this could have had an influence on the results of the procedure for the re-examination of the oral test and the complaint procedure.

73 The sixth plea must therefore be rejected.

74 It follows that the claims for annulment must be rejected.

4. *The claims for damages*

75 In accordance with settled case-law, where an application for damages is closely linked with an application for annulment, the rejection of the latter, either as inadmissible or as unfounded, also results in the rejection of the application for damages (judgment of 30 September 2003 in Case T-214/02 *Martínez Valls* v *Parliament*, paragraph 43; judgments of 4 May 2010 in Case F-47/09 *Fries Guggenheim* v *Cedefop*, paragraph 119; and of 1 July 2010 in Case F-40/09 *Časta* v *Commission*, paragraph 94).

76 In the present case, the claims for annulment have been rejected.

77 Accordingly, the claim for damages must also be rejected.

78 It follows from all the foregoing that the action must be dismissed.

Costs

79 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title 2 of those rules, 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), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that that party is not to be ordered to pay any.

80 It follows from the grounds set out above that the applicant has failed in his action. Furthermore, in its claims the Commission has expressly requested that the applicant should be ordered to pay the costs. Since the circumstances of the present case do not warrant application of Article 87(2) of the Rules of Procedure, the applicant must bear his own costs and be ordered to pay the costs incurred by the Commission.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders BX to bear his own costs and to pay the costs incurred by the European Commission.**

Kreppel Perillo Barents

Delivered in open court in Luxembourg on 24 April 2013.

W. Hakenberg
Registrar

H. Kreppel
President