

In Case 225/82

RUDY VERZYCK, an assistant financial controller in the Belgian Civil Service, residing at 365 Stationstraat, 8250 Ichtegem (Ernegem), Belgium, assisted and represented by Georges Vandersanden, of the Brussels Bar, whose Chambers are at 38 Klauwaerts, 1050 Brussels, with an address for service in Luxembourg at the Chambers of J. Biver,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Hendrik Van Lier, a member of its Legal Department, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, whose Chambers are at 214 Avenue Montjoie, 1180 Brussels, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg, Luxembourg,

defendant,

APPLICATION for:

Annulment of the decision of the Commission of 28 May 1982 not to admit the applicant to the written tests for Competition No COM/A/325;

An order that all necessary measures be adopted by the Commission for the enforcement of the Court's judgment;

An order that the defendant pay the costs,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: S. Rozès

Registrar: J. A. Pompe, Deputy Registrar

gives the following

## JUDGMENT

### Facts and Issues

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

Public finance, accounting and auditing;

General administration.

The special conditions of eligibility contained in Section III (B) of the competition notice consisted principally of four requirements concerning the age of the candidate, the production of certificates and degrees, proof of appropriate experience and knowledge of languages.

#### I — Facts and written procedure

1. The Commission of the European Communities, the defendant, published in the *Official Journal of the European Communities* of 12 September 1981 (C 233, p. 21) Notice of Open Competition No COM/A/325 for “an open competition, based on qualifications and tests, to constitute a reserve of administrators in the career bracket covering grades 7 and 6 of Category A.”

2. On 30 November 1981 the applicant submitted an application to take part in Competition No COM/A/325, selecting the public finance, accounting and auditing option.

According to that notice the purpose of the competition was to constitute a reserve to be drawn upon to fill vacant or newly-created posts with the Commission, involving administrative, advisory and supervisory duties, relating to the Commission’s political, administrative and financial activities, with the following options available:

On 1 March 1982 the Head of the Recruitment Division notified the applicant that the selection board for the competition, which had originally decided that he fulfilled the conditions prescribed for admission to the competition, had formed the view that it had to reject his application on the ground that “an examination was then made of the qualifications of the candidates admitted to the competition, based in particular on degrees and diplomas and practical experience relating to the field covered by the competition, with a view to improving the geographical spread of nationals of the various Member States on the Commission’s staff” and that, following that examination, the selection board had been unable to accept his application.

External relations;

Press and Information;

On 5 March 1982 the applicant expressed to the Recruitment Division of the Commission his surprise at the decision taken concerning him and stated that he was unable to ascertain from its terms the reasons on which it was based and he also requested information regarding the qualifications and diplomas of other candidates.

On 26 March 1982 the Commission notified the applicant that the selection board was to re-examine his qualifications with a view to his admission to the tests.

On 28 May 1982 the Head of the Personnel Department of the Commission notified the applicant that, following a re-examination of the file concerning his application, "the selection board, having compared the candidates' supporting documents, has decided not to admit you to the written tests".

That is the decision against which this action is brought.

3. On 10 June 1982 the applicant again expressed his surprise regarding that decision and requested that he be informed of the specific reasons on which it was based.

On 28 June 1982 the Commission notified the applicant on the one hand that the selection board had made two successive selections (admission to the competition and admission to the written tests) being concerned to ensure that the geographical spread should not constitute the decisive factor for appraisal of the qualifications of the candidates and, on the other, that although Mr Verzyck's qualifications were sufficient for admission to the competition they did not suffice, after appraisal of the qualifications of the other candidates, to secure his admission to the written tests.

## II — Written procedure and conclusions of the parties

By application lodged on 25 August 1982 the applicant brought an action against the Commission of the European Communities. He claims that the Court should:

Annul the decision of the Commission of 28 May 1982 not to admit him to the written tests for Competition No COM/A/325;

Order all necessary measures to be adopted by the Commission for the enforcement of the Court's judgment;

Order the defendant to pay the costs.

The Commission contends that the Court should:

Dismiss the application;

Make an order as to costs in accordance with the legal provisions.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, the Commission was requested to reply before the hearing to the following questions:

1. When drawing up lists of persons admitted to the written tests did the selection board adopt more precise and more functional criteria than those mentioned in the Commission's defence, (p. 6)?
2. Did the selection board have difficulties in drawing up a final list of candidates to be admitted to the competition (since it did not hesitate to re-examine the files of the 818 candidates who were initially refused admission to the tests) and, if so, for what reasons?

In accordance with Article 95 (3) of the Rules of Procedure, the Court, by order of 30 September 1982, assigned the case to the Second Chamber.

Since its composition was changed on 7 October 1982 the Court, by order of 7 October 1982, assigned the case to the Third Chamber.

### III — Submissions and arguments of the parties

#### A — Admissibility of the application

1. The Commission states that the selection board's decision not to admit the applicant to the written tests was notified to him on 1 March 1982. The applicant acknowledged receipt of that notification on 5 March 1982.

The Commission maintains that Mr Verzyck should in normal circumstances have brought his action within the three months following that date. Consequently, since the action was not brought until 25 August 1982, it ought in principle to be declared inadmissible in so far as the purpose of the decision of 28 May 1982 was merely to confirm the prior decision refusing to admit him to the competition.

The Commission nevertheless concedes that since the applicant was notified by letter of 26 March 1982 that the selection board would carry out a fresh examination of his qualifications with a view to admitting him to the written tests and would inform him of its new decision, the applicant might have believed that the period of three months would start to run only from the date of that decision.

Accordingly the Commission relies in this matter on the judgment of the Court.

2. Mr Verzyck on the other hand claims that when it notified him that the selection board would re-examine his qualifications with a view to admitting him to the written tests and would inform him of its decision, the Commission postponed commencement of the period for lodging an application until such time as it had informed him of the decision taken by the selection board after it had carried out that re-examination.

The procedure was not therefore merely confirmatory but involved a re-examination of the circumstances of the applicant's case, as a result of which the initial conclusions arrived at by the selection board might have been altered.

Accordingly the applicant considers that he was perfectly correct to await the decision which was notified to him by the Commission on 28 May 1982 and that his application, which was lodged with the Court of Justice before the expiry of a period of three months from that date, is admissible.

The applicant adds that the decision not to admit him to the written tests in the competition adversely affects him and that his interest in challenging that decision cannot be questioned.

#### B — The substance of the case

1. Failure to state the reasons on which the contested decision was based

(a) *Mr Verzyck* puts forward arguments in support of this submission which fall into four categories:

He claims *in the first place*, both as a general principle of law and by virtue of the specific obligation imposed on the Community administration by Article 25 of the Staff Regulations, that every administrative decision relating to a specific individual must, above all if it is

capable of adversely affecting that person, contain an adequate statement of the reasons on which it is based.

That statement of reasons must provide the person concerned with sufficient information to enable him to determine whether the refusal is well founded or whether it is vitiated in such a way that he may challenge its legality.

In particular the applicant considers that, according to the well-established case-law of the Court, the letter of refusal should have contained, even if only in summary form, some information as to the reasons for the refusal in his case and should have indicated the criteria on the basis of which his qualifications were considered inadequate.

That requirement was not satisfied in this case since the letter of 28 May 1982 contained no statement of reasons whatsoever.

Mr Verzyck claims *in the second place* that in this case the failure to state the reasons on which the decision was based constitutes a breach of the formal requirements of the notice of competition which, on the one hand, contains an obligation to inform candidates of the reasons for their not being admitted to the tests and, on the other, provides that the selection board must establish the criteria on which it examines candidates' qualifications, including, in particular, results of university examinations and candidates' subsequent experience. The Court has already stated that criteria of assessment must ensure that qualifications are assessed objectively and without any possibility of arbitrariness (*Morina*, Case 21/65 [1965] ECR 1033). That formality is an essential requirement and in this case there is nothing to show that such criteria were in fact established and observed, in the absence of any disclosure of what they are.

*In the third place*, Mr Verzyck points out that the statement of reasons must in principle be communicated to the person concerned at the same time as the decision adversely affecting him and that the absence of a statement of reasons cannot be made good by the fact that the person concerned learns of the reasons on which the decision was based in the course of proceedings before the Court of Justice.

Neither the reply given by the Commission on 28 June 1982 nor the Commission's defence provides sufficient information in this respect or indeed regarding the objective criteria applied by the selection board in refusing to admit the applicant to the written tests.

*In the fourth place* the applicant claims that it is impossible to accept the arguments relied upon by the Commission in order to justify its failure to state the reasons on which its decision was based because;

The difficulty in comparing candidates' qualifications cannot justify, as the Court has already held, a bald reference to Article 5 of the Staff Regulations without any endeavour to carry out a more detailed examination or an indication of any additional criteria on which the selection was based.

The principle that the work of selection boards for competitions must be kept secret may not be relied upon to justify a refusal to communicate objective information, in particular criteria according to which assessments are made and which form the basis of the selection carried out in the initial stages of the competition.

The applicant also makes it clear that he does not demand any information about the proceedings of the selection board or the qualifications of any other individual candidates; he merely observes that the

contested decision contains no reference to the criteria of assessment adopted by the selection board and moreover that mere knowledge of those criteria would not enable him to determine the reasons why his application was refused as regards admission to the written tests.

Finally Mr Verzyck considers that, although it is true that by reason of the number of candidates the Commission cannot be required to inform each of the candidates not admitted to the tests of the specific reasons for that decision it is not, however, necessary for the Commission to restrict itself to such an attitude after a complaint has been submitted.

In conclusion the applicant considers that the decision of 28 May 1982, even after clarification by the subsequent letter of 28 June 1982, does not contain a sufficient statement of the reasons on which it was based to enable him to determine the reasons for which he was not admitted to the written tests in Competition No COM/A/325.

(b) The *Commission* admits that the statement of the reasons on which the contested decision is based is in this case brief. It nevertheless considers that the statement is sufficient, in view of the very considerable number of candidates admitted to the competition — there were initially 1 249 and further candidates were admitted after re-examination of their applications.

Having pointed out that the notice of competition drew a clear distinction between admission to the competition and admission to the tests, the Commission describes the three successive selection procedures which were carried out.

In accordance with the notice of competition, which requires the selection board to establish the criteria according to which it examines candidates' qualifications, the Commission states (appending a document in that connection to its defence) that the selection board took account of the following criteria:

The number of candidates to be chosen (between 350 and 450);

The provisions of Article 27 of the Staff Regulations;

Consideration; "in its comparative analysis, of the differences between the educational systems in the Member States and therefore separate evaluation of a series of similar and thus comparable factors, and also practical experience, including post-graduate instruction and periods of in-service training, both intrinsically and in relation to the field and the option chosen."

The candidates' statements as to their knowledge of languages.

The Commission states that the selection board drew up the definitive list of candidates admitted to the written tests after comparing, on the basis of the above-mentioned criteria, the applications of the persons whom it had admitted to the competition.

Ultimately 509 candidates were admitted to the written tests and the Commission considers that, in view of that number, it was impossible for the selection board to explain to each of the unsuccessful candidates the specific reasons for which the board considered that it had to choose

each of the 509 candidates rather than the unsuccessful candidate concerned.

As regards disclosure of the criteria which were adopted by the selection board and were employed in choosing the candidates to be admitted to the tests, the Commission claims that this was not requested by the applicant and that if such a request had been made it would have been granted.

In its rejoinder the Commission adds that disclosure was not only physically impossible but also legally impossible since in order to reveal the specific reasons for the decision the selection board would have had to provide the applicant with information allowing him to make deductions regarding the proceedings of the board or, more seriously, the individual qualifications of other candidates, and that would be contrary to the principle upheld in the case-law of the Court of Justice that the work of selection boards must be secret.

The Commission states that the reason for the board's not admitting the applicant to the written tests is simply that which was communicated to Mr Verzyck: after comparison of his application form with that of the other candidates admitted to the written tests the selection board considered that the applicant's qualifications were not good enough for him to be admitted to the tests, a decision which was the outcome of a comprehensive appraisal which took into account all the relevant factors, in particular the nature of the applicant's university degrees and the duties which he wished to perform. As regards the geographical factor, the Commission considers that it was not decisive in the appraisal of the candidates' qualifications.

2. Breach of the principle of equality

(a) In his application Mr Verzyck considers that even though the selection board may have adopted more selective criteria in assessing the qualifications of the candidates and the nature of their post-graduate experience, all the candidates ought nevertheless to have been treated equally and without discrimination.

Mr Verzyck asserts that another candidate (Mrs Pelligrini), who has fewer qualifications than he has, occupies a lower grade in the Belgian Civil Service and has less practical experience, was admitted to the written tests.

That situation shows that he (like Mr Warègne) has suffered discrimination and that the refusal to admit him to the competition is vitiated both by the lack of a statement of reasons on which it was based and by the fact that it was not objective.

(b) In its defence the Commission disputes that there was such a breach of the principle of equality:

In Mr Warègne's case it states that he was admitted both to the competition and to the written tests after the qualification which he stated that he held was recognized as equivalent to a degree;

In Mrs Pelligrini's case, the Commission considers that, with respect both to the requirements regarding degrees and to those concerning practical experience, the choice of the selection board was entirely justified, in particular in view of the fact that the grade held by one of the candidates in a national administration is of little relevance in this case.

(c) In his reply the applicant claims that he has suffered discrimination in relation both to Mr Warègne and to Mrs Pelligrini.

In Mr Warègne's case the applicant considers that the Commission's explanations are unacceptable and that to say that Mr Warègne was admitted to the written tests after consideration whether his degree was of university level is false and in fact conceals certain facts recounted by Mr Verzyck.

In those circumstances Mr Verzyck considers that if the exceptional and privileged treatment accorded Mr Warègne is not extended to him he will suffer discrimination.

As regards comparison of the applicant's case with that of Mrs Pelligrini, Mr Verzyck rejects as false the Commission's claim that he holds a major degree in law and only a subsidiary degree in economics.

Mr Verzyck states that he holds two full degrees and that he is both a lawyer and an economist. Furthermore he affirms that his practical experience as financial controller required him to perform many duties and undertake assignments abroad which involved both economics and law, acting in most cases in the capacity of financial and budgetary expert, and that the very nature of his duties entails responsibilities of a high level.

It is quite apparent from the foregoing in the applicant's view, that, as regards the duties involved in the post to be filled, he was in a better position than Mrs Pelligrini.

(d) In its rejoinder the Commission gives details of the basis on which Mr

Warègne's application was considered and followed up and denies Mr Verzyck's allegations, stating that they are based on a simple error of fact in the Commission's defence.

With regard to Mrs Pelligrini's case the Commission states that, having regard to the degrees and practical experience of the two candidates, the selection board properly took the view, in the exercise of its wide discretion and in the light of the information supplied by Mr Verzyck in his application, that he was, by virtue both of his education and of his subsequent publications, primarily a lawyer and that his rôle as an economist was secondary. Since the staff to be recruited were to carry out duties falling within the public finance, accounting and auditing option, it was permissible to give preference to candidates who were primarily economists, like Mrs Pelligrini, who holds a degree in applied economics and is also qualified to teach economics in higher educational institutions.

### 3. Manifest error of fact and of law vitiating the contested decision

(a) The applicant concludes that insufficient attention was paid to his degrees and practical experience and maintains that his qualifications are much higher than those laid down in the special conditions for the competition.

He deduces from this that the selection board was under an obligation to admit him to the written tests, and its failure to do so constitutes a manifest error of appraisal.

(b) The Commission considers that this submission is the result of confusion on the part of the applicant between

admission to the competition and admission to the tests. It maintains that it is clear from all the foregoing considerations that there was no discrimination against the applicant and that the selection board was not guilty of any manifest error of appraisal in refusing to admit him to the written tests.

The Commission emphasizes finally that it has not itself committed any manifest error of fact or of law.

IV — Written observations lodged in reply to questions put by the Court

1. The *first question*: The Commission replied that the selection board considered that no point would be served by drawing up more precise or functional criteria than those which it had already established, particularly because other criteria had already been laid down in the notice of competition and in fact the selection board adopted subsidiary criteria relating to studies, practical experience and knowledge of languages.

2. The *second question*: the Commission replied that between 15 and 19 March 1982 the selection board dealt with complaints lodged by the candidates who had not been admitted to the competition or to the written tests. The board re-examined in their entirety the applications of the candidates admitted to the competition but not to the written tests. On the other hand it did not re-examine the applications of the candidates whom it had decided not to admit to the competition or those of the candidates who had already been admitted to the written tests.

V — Oral procedure

The applicant, represented by G. Vandersanden, Advocate, and the Commission of the European Communities, represented by R. Andersen, Advocate, presented oral argument at the sitting on 21 April 1983.

The Advocate General delivered her opinion at the sitting on 19 May 1983.

## Decision

1 By application lodged at the Court Registry on 25 August 1982 Mr Verzyck brought an action against the Commission of the European Communities for annulment of the decision of the Head of the Personnel Department of the Commission of 28 May 1982 informing him that the selection board for Competition No COM/A/325 had decided not to admit him to the written tests for that competition and also for an order that all the necessary measures should be adopted by the Commission for the enforcement of the Court's judgment.

- 2 The competition in question was an open competition based on qualifications and tests to constitute a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A. The notice of competition, which was published in the *Official Journal of the European Communities* of 12 September 1981, required candidates to have completed a full university course, with degree or diploma, in an appropriate field, to have had at least two years' experience since graduation and to have a certain knowledge of languages.
  
- 3 On 30 November 1981 the applicant submitted an application to take part in the competition, for which the total number of candidates was 2 264, and selected the option "Public finance, accounting and auditing". The file on Mr Verzyck's application shows that he performed the duties of assistant financial controller in the Belgian Civil Service, having held since 1978 various responsible posts in a number of Ministries, had a degree in law and a degree in economics and had the knowledge of languages prescribed by the competition notice.
  
- 4 Nevertheless the Head of the Recruitment Division notified the applicant by letter of 1 March 1982 that although the selection board initially considered that he fulfilled the requirements laid down for admission to the competition, it had then carried out "an examination . . . of the qualifications of the candidates admitted to the competition, based in particular on degrees and diplomas and practical experience relating to the field covered by the competition, with a view to improving the geographical spread of nationals of the various Member States on the Commission's staff" and, following that examination, the selection board had been unable to accept his application.
  
- 5 On 5 March 1982 the applicant expressed his surprise to the Recruitment Division at that decision and stated that it was impossible to deduce from the wording of the decision the reasons on which it was based and he asked in addition for information as to the qualifications and the degrees and diplomas of other candidates.

- 6 On 26 March 1982 the Commission informed the applicant that the selection board would re-examine his qualifications with a view to admitting him to the tests.
- 7 On 28 May 1982 the Head of the Personnel Department of the Commission informed the applicant that, after a re-examination of the file on his application, he had not been admitted to the written tests. It is against that decision that these proceedings have been brought.

The claim for annulment of the decision of 28 May 1982

*Admissibility*

- 8 The Commission questions the admissibility of that claim and in that regard relies upon the judgment of the Court. It points out, on the one hand, that the selection board's decision not to admit the applicant to the written tests for the competition was notified to him by letter of 1 March 1982, of which Mr Verzyck acknowledged receipt on 5 March, and, on the other, that the decision of 28 May 1982 contested by Mr Verzyck is in reality of a purely confirmatory nature. Consequently, since the application was lodged on 25 August 1982, it is out of time and inadmissible.
- 9 In fact, as the Commission itself concedes, the applicant was informed by letter of 26 March 1982 that the selection board would re-examine his degrees and certificates with a view to admitting him to the written tests and that it would notify him of its new decision. Furthermore the file shows that on that date the selection board had decided to carry out a complete re-examination of more than 800 applications.
- 10 Consequently, it is clear to the Court that the decision of 28 May 1982, which was adopted after a complete re-examination of the applicant's situation and of that of many other candidates, totally superseded the decision of 1 March 1982 and cannot be regarded as purely confirmatory.
- 11 The doubts raised by the Commission must therefore be disregarded.

*Substance of the case*

- 12 As regards the substance of the case, the applicant makes three submissions relating respectively to a failure to state the reasons on which the contested decision was based, a breach of the principle of equality and a manifest error vitiating the decision of 28 May 1982.

The absence or inadequacy of the statement of the reasons on which the decision was based

- 13 The contested decision is worded as follows: "As I mentioned in my letter at the end of March 1982 the selection board has re-examined the file on your application. I regret to inform you that, after comparing the candidates' degrees and diplomas, the selection board has decided not to admit you to the written tests".
- 14 In order to justify the contested decision the Commission relies in the first place upon the need to observe the principle of secrecy regarding the proceedings of selection boards, but it must be stated in reply to that argument, as the Court held in its judgment of 28 February 1980 in Case 89/79 *Bonu v Council of the European Communities* [1980] ECR 553, that although observance of that principle stands in the way of disclosure both of the views taken by the individual members of selection boards and of any information relating to personal or comparative assessments of candidates, it cannot absolve a selection board for a competition 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 summary form.
- 15 In the second place, as the Court held in its judgment of 26 November 1981 in Case 195/80 *Michel v European Parliament* [1981] ECR 2861, 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.
- 16 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.

- 17 The text of the contested decision set out above shows that it did not inform the applicant of even the general criteria on which the qualifications of the candidates were appraised and the selections made and does not contain any statement, even in summary form, of the reasons on which the decision relating to him was based. Such a decision cannot therefore be regarded as stating the reasons on which it is based and the arguments relied upon by the Commission in its defence, based on the large number of applicants, the physical impossibility of providing a more precise statement of the reasons for the refusals to admit candidates to the competition and the fact that Mr Verzyck did not expressly request disclosure of the criteria of assessment adopted by the selection board, cannot be accepted.
- 18 It follows from the foregoing considerations that judgment should be given in favour of the applicant and that it is unnecessary to consider the other submissions made by him.

The claim that the Court should order the Commission to adopt the measures necessary for the enforcement of this judgment

- 19 The Court cannot, without encroaching upon the prerogatives of the administration, order a Community institution to adopt the measures necessary for the enforcement of a judgment by which a decision refusing to admit a candidate to a competition is annulled.

20 Consequently that claim is inadmissible.

Costs

21 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs. Since the Commission has been substantially unsuccessful in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls the decision dated 28 May 1982 by which the Commission informed Mr Verzyck that the selection board in Open Competition No COM/A/325 refused to admit him to the tests in the said competition;**
2. **Dismisses the remainder of the application:**
3. **Orders the Commission to pay the costs.**

Everling

Galmot

Kakouris

Delivered in open court in Luxembourg on 9 June 1983.

J. A. Pompe  
Deputy Registrar

U. Everling  
President of the Third Chamber