

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
22 June 1990 \*

In Case T-27/89

**Vassilis Sklias**, an official of the Court of Justice of the European Communities, residing in Luxembourg, represented by Patrick Weinacht, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 6 rue Heine,

applicant,

v

**Court of Justice of the European Communities**, represented by Francis Hubeau, Head of the Personnel Division, acting as Agent, assisted by Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg at the office of its Agent at the Court of Justice, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the selection board in Competition No CJ 75/87 refusing to admit the applicant to the tests in that competition and for the annulment of the competition procedure,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

composed of: D. A. O. Edward, President of Chamber, R. Schintgen and R. García-Valdecasas, Judges,

Registrar: H. Jung

having regard to the written procedure and further to the hearing on 27 March 1990,

gives the following

\* Language of the case: French.

## Judgment

### The facts

- 1 The applicant, Vassilis Sklias, has been an official of the Court of Justice since 1 July 1984 in the capacity of lawyer-linguist (translator) of Greek mother tongue in Grade LA 6. On 28 September 1987 he applied to take part in Open Competition No CJ 75/87 based on qualifications and tests, organized by the Court of Justice in order to draw up a reserve list for the recruitment of interpreters of Greek mother tongue.
  
- 2 The Notice of Competition, the official version (in Greek) of which was published on 19 August 1987 (Official Journal (in Greek) 1987, C 222, p. 3) and an unofficial version (in French) of which has been produced by the applicant, contained 10 sections, three of which are relevant to the present case, namely Section III 'Eligibility', Section IV 'Selection on the basis of qualifications' and Section IX 'Applications'. Section III contained two subsections, (A) 'General Conditions' and (B) 'Special Conditions', the latter being in turn subdivided into three further subsections: 1. 'Qualifications, degrees, experience', 2. 'Knowledge of languages' and 3. 'Age-limit'.
  
- 3 Section III (B) 2 'Knowledge of languages' set out the following requirements:
  - '(a) perfect command of Greek, active language, classification A1C, A;
  
  - (b) thorough knowledge of three official languages of the European Communities, passive languages, minimum level C, A1C classification;
  
  - (c) ability to study procedural documents in French;
  
  - (d) account will be taken of knowledge of other passive languages or of a second active language from among the official languages of the European Communities;
  
  - (e) account will be taken of knowledge of other official languages of the European Communities even if level C (passive languages) of the A1C classification has not yet been achieved.'

4 Section IV 'Selection on the basis of qualifications' stated:

'Once the list of candidates satisfying the conditions set out in Sections III (B) 1 (a) and III (B) 2 (a), (b) and (c) above is established, the selection board, after laying down the criteria on the basis of which it will judge the qualifications of the candidates, will proceed to consider their qualifications and note on that list the candidates admitted to the tests.'

- 5 Section IX 'Applications' drew the candidates' attention to the fact that they had to produce, by the final date fixed in the Notice, documents providing evidence of 'degrees, practical experience as a conference interpreter . . . their knowledge of languages, stating their active language(s) and passive languages, their ability to study procedural documents in French . . . and the level of knowledge of other official languages of the Community which are not yet passive working languages'.
- 6 The term 'passive languages', used in the Sections 'Eligibility' and 'Applications' was defined in a note at the bottom of the page. In the Greek version that definition was worded as follows: 'Παθητική γνώση γλωσσών: C: Είναι η γνώση των γλωσσών τις οποίες ο διερμηνέας κατανοεί πλήρως και από τις οποίες διερμηνεύει'. In the French version the note was worded as follows: 'Langues passives: C: Langues dont l'interprète a une compréhension totale et à partir desquelles il travaille' (Passive languages: C: a language of which the interpreter has a complete understanding and from which he interprets).
- 7 In support of his candidature the applicant produced a document providing evidence that he had attended an intensive course of training as an interpreter, the working languages of the course being English and French. He stated that he could read English, French and Italian 'very well', that he could write and speak English and French 'well' and Italian 'satisfactorily'. Furthermore he stated that he had worked for almost a year as a free-lance interpreter and for six months as an interpreter in Grade LA 7 at the European Parliament, interpreting in both instances from French and English into Greek. As regards his knowledge of Italian he produced a certificate from the Court of Auditors attesting to his assiduous attendance at a course at level IV for 90 hours and also his last periodic report from the Court of Justice showing that he had translated from Italian (as well as English and French) into Greek. At no time during the entire procedure did the applicant claim that he had followed a course of training as an interpreter from Italian into Greek or that he had worked as an interpreter from Italian.

- 8 The selection board was composed of two persons designated by the appointing authority (the Head of the Interpretation Division of the Court and his deputy) and a person appointed by the Staff Committee, who alone had some knowledge of Greek. The composition of the selection board was the subject of certain reservations which the Staff Committee brought to the attention of the President of the Court of Justice. The applicant himself also sent to the President of the Court of Justice a letter dated 19 October 1987 asking him to reconsider that composition.
  
- 9 By letter dated 16 December 1987 the Head of the Personnel Division of the Court of Justice informed the applicant that the selection board had decided not to admit him to the tests. That letter, in standard form, was intended for all candidates who were not accepted by the selection board on the ground that they did not satisfy the conditions of eligibility for the competition. It contained a series of boxes to be ticked — two main boxes, each followed by several ancillary boxes — to show the condition not satisfied by the person concerned. In the letter sent to the applicant the main box relating to 'Production of inadequate supporting documents' was ticked as well as the ancillary box stating that the documents considered inadequate related to 'knowledge of *three* passive languages at level C of the AIIIC classification'. The other main box, relating to 'Qualifications, degrees and practical experience', was, like the ancillary box relating to 'Knowledge of three passive languages', not ticked.
  
- 10 After receipt of that letter the applicant telephoned a member of the selection board for an explanation of the ground on which his candidature had been rejected. He was told by that member of the selection board that his insufficient knowledge of Italian was the reason for rejecting his candidature.

### Procedure

- 11 In those circumstances the applicant brought the present action by application lodged at the Registry of the Court of Justice on 23 February 1988.

- 12 The written procedure took place entirely before the Court of Justice. By order of 15 November 1989 the Court of Justice referred the case to the Court of First Instance pursuant to Article 14 of Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.
- 13 Upon hearing the report of the Judge-Rapporteur the Court of First Instance decided to open the oral procedure without any preparatory inquiry. The Court of First Instance nevertheless requested the Court of Justice to supply further information in the form of the 'AIIC classification'. The document produced by the defendant, extracted from the directory of the International Association of Conference Interpreters (AIIC) for 1990, contains the AIIC definition of 'active languages' and 'passive languages' in French and English. The definition in French of 'passive languages' is identical to the French version of the abovementioned note in the Notice of Competition. The English, reproduced alongside the French, is worded as follows: 'Passive languages: C: a language of which the interpreter has a complete understanding and from which he interprets'.
- 14 The hearing took place on 27 March 1990. The representatives of the parties presented oral argument and answered the questions put to them by the Court of First Instance.

### **Conclusions of the parties**

- 15 The applicant claims that the Court of First Instance should:
- (1) annul the decision of the selection board in Competition No CJ 75/87 refusing to admit the applicant to the tests in that competition;
  - (2) annul the procedure in Competition No CJ 75/87;
  - (3) order the Court of Justice to pay the costs.

16 The defendant contends that the Court of First Instance should:

- (1) dismiss the action as unfounded;
- (2) make an appropriate order as to costs.

### Substance of the case

17 In support of his application the applicant puts forward four submissions. The first submission is that the Notice of Competition was imprecise or was restrictively interpreted by the selection board, the second that the statement of the reasons for the selection board's decision was inadequate, the third that the selection board was improperly constituted. The fourth alleges a misuse of powers.

#### *First submission*

18 In support of his first submission the application puts forward 'two alternative complaints' in relation to the Notice of Competition: either the Notice of Competition published was imprecise or it was interpreted restrictively by the selection board. According to the applicant the definitive text of the Notice of the Competition requires only knowledge of three official passive languages at level C. It does not require the production of documents testifying to a period of work as an interpreter from the languages in question. The definition of the term 'passive language', given in a note at the bottom of the page, cannot constitute an integral part of the conditions of eligibility for the competition. To interpret the condition relating to knowledge of the languages on the basis of such a definition is restrictive and therefore unlawful. Even if that definition were to be taken into account, it would be ambiguous and for that reason unlawful, inasmuch as it refers to languages from which the interpreter 'travaille' without specifying whether the 'travail' in question must be current. The practical consequence of the approach adopted by the selection board was to limit access to the competition to persons who could, at the time of their application, produce documentary evidence that they had worked as interpreter from three Community languages into Greek. After reading the conditions the applicant thought that even if, until then, he had not worked as an interpreter from Italian, he would be given an opportunity to prove his ability to do so.

- 19 The defendant replies that the object of the definition given to the term 'passive language' was, precisely, to define the level of knowledge required. Far from interpreting the Notice of Competition restrictively, the selection board was prepared to admit not only candidates who had worked but also candidates who had provided evidence of their capacity to work as an interpreter from the languages in question. In any event, the applicant's actual abilities do not fall within any of the possible interpretations of the conditions of eligibility for the competition and the selection board could do no other than to exclude his name from the list of candidates admitted to the tests.
- 20 The Court of First Instance finds, first of all, that, contrary to the terms of the applicant's first complaint, the terms of the notice of competition at issue were very precise. It is clear that one of the special conditions required of each candidate was a thorough knowledge of three official languages of the European Communities at least at level C of the AIIC classification. The reader was thus expressly referred to the AIIC classification. The extract from that classification produced by the defendant, which the applicant has not challenged, shows that the note at the foot of the Notice of Competition merely reproduced the terms of the AIIC classification. The Greek wording of the notice uses the term 'διερμηνεύει' which corresponds to the verb 'interprets' in the English version of the AIIC definition, thus removing any doubt about the meaning of the French word 'travailleur'. Furthermore the notice of competition in question clearly stated that candidates had to produce the requisite supporting documents before the date fixed for that purpose.
- 21 In the present case it is not disputed that the applicant produced the documents required as evidence of his knowledge of English and French. As regards his knowledge of Italian on the other hand, even giving the AIIC classification the widest possible interpretation, it is plain from the foregoing findings that in any event the applicant did not possess the level of knowledge required, according to that classification, for a passive language and therefore that he would not have been able to prove that level of knowledge by producing the requisite documentary evidence.
- 22 In consequence, the applicant cannot complain that the selection board interpreted the Notice of Competition restrictively or claim that he should have been given an opportunity to prove his knowledge later by allowing him to take part in the tests. It follows that the first submission cannot be upheld.

*Second submission*

- 23 The applicant claims that the contested decision did not clearly show whether the deficiency given as the reason for rejecting his application related solely to the production of documentary evidence or actually concerned his knowledge of languages. In the first case, the selection board was obliged, by reason of its duty to have regard for his interests, to ask him for additional information. On the other hand, if the selection board had been convinced on the basis of the documents produced that his knowledge of languages was inadequate, it should have ticked the box appearing under the heading 'Qualifications, degrees and practical experience', and relating to knowledge of three languages rather than the box under the heading 'Production of documents'. In any event the selection board should have stated clearly in respect of which one or more of the three languages the documents produced were inadequate.
- 24 The defendant replies that it should have been obvious to the applicant that the refusal to admit him was based on his insufficient knowledge of Italian. If he had still been at all uncertain about the matter it was for him to ask for further explanation. In the present case that information was given to him by a member of the selection board with whom he spoke on the telephone.
- 25 In that respect, it is sufficient to observe that the Notice of Competition provided that the supporting documents relating to candidates' knowledge of languages had to be produced before the date specified in the Notice. At that date the applicant possessed neither the knowledge of Italian required for admission to the tests nor the evidence necessary for that purpose. In consequence it matters little which box was ticked, since the defendant was in any event entitled to tick the box relating to the failure to produce documents. It follows that the submission under consideration must be rejected.

*Third submission*

- 26 The applicant submits that the composition of the selection board was unlawful since none of the members had a perfect command of Greek and the majority of them did not have even the slightest knowledge of that language. That fact was all the more serious since the competition was one that was based on tests. The decision at issue is accordingly also unlawful because it was adopted by an unlawfully constituted body.

- 27 The defendant replies in the first place that since the applicant was excluded at the first stage of the competition by reason of his inadequate knowledge of Italian he could not in any way have been adversely affected by the fact that no member of the selection board was of Greek mother tongue. The applicant therefore has no interest in putting forward that submission. In the second place it denies that the composition of the selection board was unlawful since it was composed in accordance with established practice of the Court of Justice in like competitions and was assisted by examiners whose mother tongue was Greek.
- 28 In that respect, it must be held that since the applicant did not satisfy the conditions presented in the Notice of Competition for admission to the tests he would have had to be rejected by any selection board regardless of its composition. It follows that the submission challenging the selection board's competence to judge the said tests is wholly irrelevant for the purposes of the decision in these proceedings and must therefore be rejected.

*Fourth submission*

- 29 The applicant alleges that there was a misuse of powers since the competition was organized in order to regularize the situation of two members of the temporary staff who were already assigned to the Interpretation Department.
- 30 In refuting that argument the defendant observes that three persons were admitted to the tests, two of whom were members of the temporary staff assigned to the interpretation department. Only one of them was successful.
- 31 In that respect, it should be borne in mind that, as the Court of Justice has consistently held, a misuse of powers is not deemed to exist unless it is proved that in taking the measure in question the appointing authority has pursued an objective other than the legal one (see, for example, the judgment of 25 November 1976 in Case 123/75 *Küster v Parliament* [1976] ECR 1701, at p. 1710). In the present case the applicant has not challenged the correctness of the information provided by the administration. He has therefore not adduced sufficient evidence in support of his allegation. In those circumstances he had not made out even a prima-facie case in support of his submission.

32 It follows from all the foregoing considerations that the application must be dismissed.

**Costs**

33 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which apply *mutatis mutandis* to the Court of First Instance pursuant to the third paragraph of Article 11 of the aforementioned Council Decision of 24 October 1988, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- (1) Dismisses the application;
- (2) Orders the parties to bear their own costs.

Edward

Schingten

García-Valdecasas

Delivered in open court in Luxembourg on 22 June 1990.

H. Jung

Registrar

D. A. O. Edward

President