

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
1 December 1994

Case T-46/93

**Fotini Michaël-Chiou**  
**v**  
**Commission of the European Communities**

(Officials – Internal competition for promotion from Category C to Category B  
– Decision of the selection board not to place the applicant on the list of suitable  
candidates)

Full text in French . . . . . II - 929

**Application for:** annulment of the decision of the selection board of Internal  
Competition COM/B/4/92 not to enter the applicant on the list  
of suitable candidates.

**Decision:** Application dismissed.

**Abstract of the Judgment**

The applicant, who entered the Commission's service on 1 January 1984, was promoted to Grade C 3 on 1 April 1992. She was responsible for the reading room

of the library of the Directorate-General for Telecommunications, Information Industries and Innovation.

Between February 1990 and January 1992, she had corresponded with the administration (in particular with Mrs A., the chairman of the Promotion Committee for Category C and head of personnel for the B, C and D categories) in connection with the annual promotions procedure.

While working at the Commission, the applicant obtained various university diplomas. In September 1992, she took part in Internal Competition COM/B/4/92, based on tests, for the promotion of officials from Category C to Category B. The chairman of the selection board was Mrs A.

The competition comprised two written tests and an oral test. The notice of competition stated, in particular, that the oral test would consist of an interview to establish 'the candidates' capacity for oral expression and their ability to perform the duties of category B' and would be marked out of a total of 40 marks. Candidates had to state the Community language in which they wished to take the tests, and were able to choose a different language for the written tests and the oral test. The list of suitable candidates was to comprise a maximum of 40.

The applicant was among the 65 candidates admitted to the oral test, out of 1 245 called to the written tests. That test, which lasted about 50 minutes, took place on 23 September 1992. The applicant chose to take it in French, although she had taken the written tests in Greek, her mother tongue.

At the conclusion of the oral tests, the selection board drew up a list of 31 suitable candidates. The selection board's report was signed on 13 October 1992.

The applicant was informed of her results. Despite having obtained high marks in the written tests, she did not obtain the minimum number of marks required in the oral test and could not therefore be entered on the list of suitable candidates.

The applicant lodged a complaint alleging a manifest error of assessment by the selection board in its assessment of the oral test and requested that that assessment be re-examined. At a hearing, she stated that her complaint was also based on an allegation of misuse of powers.

On 16 June 1993, Mr K., an alternate member of the selection board, sent a memorandum to the chairman of the local staff committee about a problem which he considered had arisen at the end of that competition as to the possibility of an alternate member of the selection board entering his comments on the report.

During the proceedings, the Court ordered the applicant to appear in person and heard Mrs A., the chairman of the selection board, and three other members of the selection board, including Mr K., as witnesses as to the manner in which the oral tests of the competition, including that of the applicant, had been conducted, and as to the circumstances in which the report of the selection board had been drawn up.

## Substance

### *The alleged misuse of powers*

It must be borne in mind, first, that the concept of misuse of powers has a precisely defined scope and refers to cases where an administrative authority has used its

powers for a purpose other than that for which they were conferred on it, and, secondly, that a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (paragraph 35).

See: T-80/92 *Turner v Commission* [1993] ECR II-1465, para. 70; T-109/92 *Lacruz Bassols v Court of Justice* [1994] ECR-SC II-105, para. 52

The Court finds, first, that the fact that Mrs A. was, at the same time, chairman of the selection board, head of personnel for the B, C and D categories and chairman of the Promotion Committee for those categories does not, of itself, provide any indication of a misuse of powers. Moreover, the previous correspondence between the applicant and Mrs A. on the subject of the applicant's promotion does not reveal evidence of any lack of impartiality or hostility on the part of Mrs A. towards the applicant (paragraph 37).

In the light of all the evidence it has heard, the Court considers that the applicant's oral test was not conducted unfairly. Admittedly, the atmosphere was not a relaxed one, and the selection board questioned the applicant in an intensive manner, but that is nothing unusual having regard to the purpose of an oral test of that type. No personal animosity or lack of impartiality on the part of the chairman of the selection board towards the applicant has been proven; nor, in particular, is any such proof constituted by the fact that the chairman of the selection board made a remark to the applicant at the beginning of the oral test as to her choice of language for that test, or by the fact that the chairman of the selection board questioned the applicant as to why she had pursued university studies (paragraphs 38, 40 and 41).

The disparity in the marks obtained by the applicant in the written tests and in the oral test is not, of itself, relevant evidence of a misuse of powers and is explicable in this particular case (paragraph 42).

See: T-23/91 *Maurissen v Court of Auditors* [1992] ECR II-2377, para. 31

As regards the memorandum from Mr K., it is clear from the evidence that the selection board's report was signed on 13 October 1992, without Mr K. having asked to add his own comments. Nor is the fact that, on the following day, he reacted against the selection board's decision and the conduct of its chairman capable of establishing that misuse of powers has taken place (paragraph 43).

#### *The alleged manifest error of assessment*

The selection board of a competition enjoys a wide discretion, and the Community judicature has no jurisdiction to review its value judgments unless the rules which govern the proceedings of selection boards have been infringed (paragraph 48).

See: T-17/90, T-28/91 and T-17/92 *Camara Alloisio v Commission* [1993] ECR II-841, para. 90; T-6/93 *Pérez Jiménez v Commission* [1994] ECR-SC II-497, para. 42

Since the applicant has not proved any such infringement, the Court has no jurisdiction to review the selection board's assessment of her oral test (paragraph 49).

In any event, none of the circumstances pleaded by the applicant, in particular the good marks she obtained in the written tests and the fact that she holds various university diplomas, is sufficient to establish a manifest error of assessment by the selection board (paragraph 50).

*The alleged infringement of the notice of competition*

It is clear from the wording of the notice of competition, according to which the list of suitable candidates was to comprise a maximum of 40, that the drawing up of a list comprising fewer candidates was not excluded. The fact that the list comprises 31 candidates, the only ones to have obtained the minimum number of marks required, does not therefore constitute an infringement of the notice of competition (paragraphs 55 and 56).

As regards the communication from the Brussels local staff committee, stating that the administration had reserved a certain number of budgetary posts for the successful candidates in the competition, the Court holds that such an undertaking on the part of the administration cannot affect the duty of the selection board, acting in complete independence, to determine, exercising its own power of assessment, the number of candidates satisfying the requirements of the competition (paragraph 57).

*The alleged infringement of the competition procedure*

The Court rejects the plea that there has been an infringement of the fifth paragraph of Article 5 of Annex III to the Staff Regulations, which provides that the list of suitable candidates 'shall ... contain at least twice as many names as the number of posts to be filled', since, having failed in the oral test in any event, the applicant was not suitable for inclusion on the list, whatever number of candidates the selection board should have accepted (paragraph 63).

**Operative part:**

**The application is dismissed.**