

OPINION OF MR ADVOCATE-GENERAL GAND
DELIVERED ON 10 NOVEMBER 1965¹

*Mr President,
 Members of the Court,*

We need not spend much time on the application made by Mr Morina against the proceedings in connexion with Competition No B 12 and the appointment of Mr Piraino which resulted from it; many of the issues raised are identical in fact with those already encountered in Application 11/65.

Mr Morina was one of the applicants for the internal competition on the basis of qualifications announced by a notice of 19 January 1965 to fill a vacant post of administrative assistant (career bracket B5-B4) in the Directorate-General of Administration. The qualifications required were a good, general, secondary education or experience in employment of an equivalent level, and an elementary knowledge of accounting. Also required were an extensive knowledge of one of the official languages of the Communities and a good knowledge of another.

The Selection Board included his name in the list of suitable candidates, but when the Secretary-General of the European Parliament appointed another person from the list, Mr Piraino, to the vacant post Mr Morina made Application 21/65, directed against both the decision appointing Mr Piraino and the prior assessment made by the Selection Board.

I shall not stop to consider the objection made by the defendant against the admissibility of the application. For the same reasons and in the same circumstances as indicated in Application 11/65, Mr Morina's application is admissible in so far as it objects to the proceedings of the Selection Board and the appointment made as a result of the competition.

His main argument is based on the fact, first, that the Selection Board failed to consider the value of his qualifications, which 'were manifestly far superior' to those of Mr Piraino; next, following the production at your request (after the applicant's reply had been lodged) of the minutes of the Selection Board's meeting, he claimed at the hearing that those proceedings were conducted in breach of Article 5 of Annex III to the Staff Regulations concerning the procedure for competitions.

Although this argument may appear to be a new one, it is without doubt admissible, since it is based on matters of law and fact which came to light in the course of the written procedure, and so meets the conditions imposed by Article 42 (2) of the Rules of Procedure regarding the raising of fresh issues.

I would add that it also seems well founded. Article 5 of Annex III defines the procedure to be adopted by the Selection Board as follows. The Board examines the files of the candidates and draws up a list of those who meet the requirements set out in the notice of competition. Then, when the competition is on the basis of qualifications—as here—the Selection Board, after determining how candidates' qualifications are to be assessed, considers the qualifications of the candidates whose names it has previously included in the list just mentioned. On completion of its proceedings the Selection Board, whatever the method of competition, draws up a list of suitable candidates which it forwards to the appointing authority together with a reasoned report.

What needs are these requirements designed to fulfil? A competition on the basis of qualifications is, of course, the one most vulnerable to subjective assessments, and the type of qualifications

1 — Translated from the French.

which may be taken into consideration may vary considerably between competitions. By requiring that the criteria of assessment be fixed in advance, the authors of the Staff Regulations intended to ensure that the discretion allowed the Selection Board should yet be exercised within the bounds of a framework previously established and objectively determined.

As to the requirement that a reasoned report be given, it must enable the appointing authority to exercise judiciously its power of selection between the persons on the list of suitable candidates. If the report merely lists the candidates in order of merit, without indicating the basis on which this was done, or makes no mention of, to follow the expression used in the *Mirossevitch* case which may usefully be applied here, 'the ways and means which may have led to this evaluation', the appointing authority can only blindly endorse the order indicated by the Selection Board.

In view of the powers conferred on the Selection Board, doubtless the conditions imposed on its operation need not be slavishly adhered to; but in the present instance a glance through the report which you now have before you reveals clearly that in at least two respects the procedure for Competition No B 12 was carried out in disregard of the above-mentioned provisions of Article 5.

Let us pass over the vague or inconsistent aspects of this document, where it is stated in paragraph IV that the conditions laid down 'in the notice of competition' are not met by one of the candidates, whose application is yet held in paragraph II to be admissible.

I shall merely read to you paragraph III

of the report which runs as follows: 'The Selection Board, after considering the qualifications of the candidates with regard to the requirements listed in the notice of competition, has drawn up the following list of suitable candidates in the course of the meeting on 3 March 1965'. There follows a list in order of merit of seven names, the first of which is that of Mr Piraino.

The European Parliament did admittedly suggest, more or less, at the hearing that the Selection Board, a member of which participated in the judging for Competition No B 10, the subject of Application 11/65, had perhaps intended to incorporate by reference, at least by implication, the very full report made for that competition when the qualifications of Mr Piraino and Mr Morina were examined. There is no proof of this. Even if it were true, it would be difficult to see why, when in Competition No B 10 Mr Morina is listed immediately after Mr Piraino but together with another candidate, his name appears in Competition No B 12 two places removed from the same candidate.

We must therefore keep to the actual content of the report for No B 12, where, contrary to what we have just noted in the report for No B 10, there is no mention of the criteria employed by the Selection Board, so that it is not a reasoned report. It seems, then, that the list of suitable candidates was drawn up in irregular circumstances. This is sufficient—as it was in the *Alvino* case—to make the competition procedure and the appointment following it illegal, without any need to consider the comparison between the applicant's qualifications and those of Mr Piraino.

My view is that Competition No B 12 and the decision of 10 March 1965 whereby the Secretary-General of the European Parliament appointed Mr Piraino an administrative assistant should be annulled and that the costs should be borne by the European Parliament.