

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
17 March 1994

Case T-44/91

**Carine Smets**  
v  
**Commission of the European Communities**

(Member of the temporary staff – Internal competition – Composition and competence of the Selection Board – Equal treatment)

Full text in Dutch . . . . . II - 319

**Application for:** Annulment of Competition COM/LA/2/89 or at least of the decision of the selection board not to place the applicant on the list of suitable candidates.

**Decision:** Partial annulment; for the rest, application dismissed.

**Abstract of the Judgment**

The Commission published Notice of Internal Competition COM/LA/2/89 based on tests to constitute a reserve of assistant interpreters in Grade LA 8. The competition, which involved interpretation from and into all the official Community

languages, was organized with a view to drawing up a single list of suitable candidates, each candidate having to choose, for the tests, three working languages including his or her mother tongue.

The applicant, a member of the temporary staff employed as an interpreter in Grade LA 7 in the Dutch Language Division, was a candidate. The notice of the competition provided *inter alia* that candidates were to take part in six oral tests, comprising both consecutive and simultaneous interpretation, and in which the selection board was to be assisted by 80 examiners. The oral tests for the 74 candidates admitted to take part in them were spread over 21 days between 13 September 1990 and 18 February 1991. The tests for Dutch-language candidates were on 29 November, 6 and 7 December 1990 and 8 February 1991. The candidates in the competition chose 58 different language combinations, and 70 different speakers gave more than 200 different talks.

The Chairman of the selection board was absent for the applicant's first oral test and was there for only part of the time at her second test, leaving the Deputy Chairman to act as Chairman.

Following the third oral test, the applicant was told that she would not be admitted to the other oral tests, and she was subsequently told that she had not been placed on the list of suitable candidates drawn up at the close of the competition because she had not obtained the minimum number of marks required.

Thirty-four successful candidates, whose mother tongues covered each of the nine Community languages, were placed on the list.

### **Admissibility**

Contrary to what the Commission maintains, the Court takes the view that the application sets out the pleas in law with sufficient clarity and precision for the

Commission to be able to defend itself effectively and for the Court to exercise judicial review. The application thus meets the minimum requirements laid down by the first paragraph of Article 19 of the Protocol on the Statute of the Court of Justice of the EEC and by Article 44(1)(c) of the Rules of Procedure of the Court of First Instance (paragraph 22).

See: 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail v High Authority* [1961] ECR 281

## Substance

### *Breach of the principle of equal treatment*

The Court points out that it is the duty of the selection board to ensure strict observance of this fundamental principle of Community law in the conduct of a competition. Whilst the selection board enjoys a wide discretion concerning the procedure and detailed content of the tests, the Community judicature may nevertheless exercise its powers of review in so far as is necessary to ensure that candidates are treated equally and that the choice from among them made by the selection board is objective (paragraph 46).

See: 144/82 *Detti v Court of Justice* [1983] ECR 2421; 228/86 *Goossens v Commission* [1988] ECR 1819, para. 14; T-156/89 *Valverde Mordt v Court of Justice* [1991] ECR II-407, para. 123

The Court also points out that the principle of equal treatment must be applied not only between the candidates of each language group taken on its own, but also between all the candidates in the competition, whatever their mother tongue (paragraph 47).

Whilst the Court appreciates the inherent complexity of organizing the competition in question, it nevertheless considers that the Commission may not rely on that complexity, which it invited itself by not organizing a competition by language groups, in order to exempt itself from observing a fundamental principle of Community law such as the principle of equal treatment (paragraph 48).

In that respect, the Court takes the view that, to be able to appraise the candidates' performance in conditions of equality, a sufficient number of the selection board's members must have a perfect command of the source and target languages chosen for the interpreting tests. Whilst the selection board in a competition may obtain the opinion of examiners with a command of the languages in question, it is for the selection board, and not for third parties intervening in an advisory capacity, to maintain ultimate control of the proceedings and to exercise its power of assessment (paragraph 49).

See: T-32/89 and T-39/89 *Marcopoulos v Court of Justice* [1990] ECR II-281, paras 31 to 41

As regards the absences of the Chairman of the selection board, the Court takes the view that the person deputizing for him may not act as Chairman of the selection board unless the Chairman has resigned or it appears that, for reasons beyond the administration's control, he is unable to sit. Moreover, even if valid reasons did prevent the Chairman of the selection board from sitting for part of the applicant's oral tests, the principles of sound administration, equity and equality between candidates required him to refrain from sitting for the whole of that person's oral tests, since, at the very least, the composition of a selection board cannot be allowed to change while the oral tests for one and the same candidate are in progress (paragraph 58).

Having regard to the lack, on the part of the members of the selection board, of a perfect command of many of the languages used in the oral tests, to the absences of one or more of the members of the selection board while those tests were being conducted, to the changes in examiners, bearing in mind the large number of candidates, language combinations and talks of varying content given by different speakers, and taking into account the considerable lapse of time between the beginning and the end of the oral tests, the selection board was not, in the Court's opinion, in a position to guarantee that its assessments of all the candidates were carried out in conditions ensuring objectivity and equality, or, more particularly, that the criteria used for marking all the candidates were uniform and consistently applied (paragraph 60).

Even though the nature of the competition itself may have been at the origin of some of the irregularities, the Court nevertheless takes the view that those irregularities occurred in the course of the competition. It follows that the applicant was not required to challenge the notice of competition itself (paragraph 62).

See: 64/86, 71/86 to 73/86 and 78/86 *Sergio v Commission* [1988] ECR 1399, para. 15

The Court therefore annuls the selection board's decision not to place the applicant on the list of suitable candidates. Although the applicant applied primarily for the annulment of the competition, the Court is of the opinion that her rights will be adequately protected if the institution seeks a just solution in her case, without there being any need to call into question the entire results of the competition or to annul the appointments that have been made in consequence of it (paragraph 64).

See: *Detti v Court of Justice*, referred to above, para. 33; C-242/90 P *Commission v Albani and Others* [1993] ECR I-3839, paras 13 and 14; *Marcopoulos v Court of Justice*, referred to above, para. 44

#### Operative part:

1. The decision of the selection board not to enter the applicant's name on the list of suitable candidates for Competition COM/LA/2/89 is annulled.
2. The remainder of the application is dismissed.