

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
19 September 1996

Case T-138/96 R

Giovanni Ballone Burini
v
Court of Justice of the European Communities

(Officials – Competition – Non-admission – Interim relief – Application for suspension of operation of a measure)

Full text in Italian II - 1185

Application for: suspension of operation of the Selection Board's decision in Open Competition CJ/A/11 rejecting the applicant's candidature.

Decision: Application dismissed.

Abstract of the Order

Mr Ballone Burini submitted his application, within the time-limit specified in the competition notice and using the official application form to take part in Open Competition CJ/A/11 organized by the Court of Justice of the European

Communities with a view to drawing up a reserve list for the recruitment of administrators with Italian legal education.

By letter of 23 May 1996, Mr Ballone Burini was informed of the Selection Board's decision not to admit him to the competition, by reason of 'the lack of, or lack of proof of, the knowledge of languages required at point III, B, 2 of the competition notice (thorough knowledge of Italian and good knowledge of another official language of the European Union. For reasons to do with departmental requirements, a good knowledge of French is demanded)'.

By letter of 13 June 1996, Mr Ballone Burini asked for re-examination of his application under Point VII of the competition notice. He enclosed with his request a new curriculum vitae referring to a 'good' knowledge of spoken French, and two certificates relating to French courses he had followed in June 1995 and from January to April 1996.

He was informed by letter of 18 July 1996 that, after examining his file, the Selection Board had confirmed its decision not to admit him to the competition on the ground that: 'the candidate does not satisfy the requirement regarding knowledge of languages set out at Point III, B, 2 of the competition notice, which states that: "For reasons to do with departmental requirements, a good knowledge of French is demanded". In his application form, the candidate indicated, by ticking the relevant boxes, that he had only a "passable" ("discreta") knowledge of French under the headings of reading, writing and speaking (three "passables"), and thereby admitted that he did not have a "good" knowledge of that language. Compliance with that requirement had to be stated at the time when his application was received, or, in other words, by 28 September 1995 at the latest. Such a deadline is imperative, and the Selection Board cannot derogate from it by taking into account documents produced subsequently.'

By application lodged at the Registry of the Court of First Instance on 12 September 1996, Mr Ballone Burini applied for the annulment of the above decision not to admit him to the competition.

By a separate document lodged at the Registry of the Court of First Instance the same day, he also applied under Articles 185 and 186 of the EC Treaty for suspension of the operation of the contested decision, so that he might be admitted to the written test in the competition in question starting on 20 September 1996, without prejudice to the effects of the Court's decision in the main action.

Law

In determining whether an application for suspension of a selection board's decision not to admit a candidate to a competition appears to be well founded, the President must ascertain whether, *prima facie*, under the terms of the relevant competition notice, a requirement regarding a good knowledge of one in particular of the official languages of the European Union constituted a precondition for admission of a candidate to the competition, and, if so, whether compliance with that requirement could be assessed by the Selection Board on the basis of a statement by the candidate himself, where there was no information on his application file to contradict that statement (paragraph 20).

In the procedure for the preselection of candidates by the Selection Board, laid down by the competition notice and preceding selection by qualifications properly so called, the relevant provisions did, *prima facie*, clearly and unequivocally confer an eliminatory character, from that stage of the examination of applications onwards, upon, *inter alia*, the requirements set out under Point III, B (paragraph 21).

Among the conditions concerning the candidates' linguistic qualifications was the requirement, 'for reasons to do with departmental requirements, [of] a good knowledge of French' (paragraph 22).

Moreover, the competition notice did not impose any obligation on candidates to provide evidence for their statements concerning their knowledge of languages, required under Point III, B, 2, by means of relevant documents such as diplomas and certificates (paragraph 23).

It appears, *prima facie*, that at that stage of the procedure for examining applications, all the Selection Board had at its disposal in order to assess each candidate's knowledge of languages was the assessment by the person concerned himself under the heading provided for that purpose on the compulsory application form prescribed by the competition notice, together, in some cases, with information provided by other documents in the application file such as the curriculum vitae or supporting documents provided by the candidate purely voluntarily and on his own initiative (paragraph 24).

It is apparent, at first sight, that, under the terms of the competition notice, the Selection Board could be led, in the absence from the file of any other indication of the level of the candidate's French, to base its decision in the context of the preselection procedure laid down at Point V of the competition notice solely on the statement of the person concerned. Bearing in mind the large number of candidatures generated by open competitions – in this case 645 complete application files were transmitted by the administration to the Selection Board, according to the information supplied by the defendant institution at the hearing – it does not seem unreasonable to allow an institution the possibility, when it organizes an open competition, of providing in the competition notice for an initial phase of preselection by the Selection Board so as to retain only those candidates who possess the qualifications required for admission to the competition. It seems legitimate in that respect, especially as regards qualifications, such as knowledge of

languages, that are not necessarily linked to the obtaining of a diploma or the issuing of certificates, that, in order to meet the requirements of a rational organization of the competition and in accordance with the principle of sound administration, the administration should be able to provide for such preselection to be made on the basis of statements by the candidates, in order to eliminate candidates who manifestly fail to meet one of the conditions for admission to the competition (paragraph 25).

It follows, prima facie, that a selection board, applying the conditions for admission set out in the competition notice, could be led, in the absence of any contrary indication in an application file, to reject the application on the basis of the candidate's statements concerning the level of his knowledge of a language, where that level does not meet the requirements of the competition notice (paragraph 27).

The application for suspension of the operation of the contested decision must therefore be dismissed, without there being any need to examine the condition regarding urgency (paragraph 31).

Operative part:

The application for interim measures is dismissed.