

treated as experience, there is no reason why the alternate periods of vocational training and vocational activity completed by a *Referendar* during his *Vorbereitungsdienst*, in the framework of

the organization of legal studies in the Federal Republic of Germany, should not be treated in their entirety as relevant experience.

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

In Case T-50/89

**Jürgen Sparr**, a lawyer living in Hamburg (Federal Republic of Germany), represented by L. Schulze and G. Meyer, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the office of Gerd Recht, c/o Fulton Prebon SA, 25, rue Notre-Dame,

applicant,

v

**Commission of the European Communities**, represented by Henri Étienne, a member of its Legal Department, acting as Agent, assisted by Reinhard Wagner, a German judge seconded to the Commission's Legal Department, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

\* Language of the case: German.

APPLICATION for the annulment of the decision of the Selection Board in Open Competition COM/A/621 refusing to admit the applicant to the tests in that competition,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

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

Registrar: B. Pastor, Administrator

having regard to the written procedure and further to the hearing on 4 April 1990,  
gives the following

**Judgment**

**Facts**

- 1 The applicant applied to take part in Open Competition COM/A/621, based on tests, organized by the Commission in 1988 to constitute a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A.
  
- 2 By letter of 18 July 1988, the Head of the Commission's Recruitment Division informed him that the Selection Board had not admitted him to the tests on the ground that his professional experience did not satisfy the special conditions laid down in Section II B 2(b) of the Notice of Competition.

According to those conditions, candidates must, by the closing date for the submission of applications, have completed a course of university education and

'have at least two years' experience since obtaining the degree or diploma referred to at (a) commensurate with the duties described at I above and relevant to one of the fields covered by the competition: details of this experience should be given on the application form.

Duly attested periods of specialist or refresher training, or further training courses leading to a diploma of a level at least equivalent to that required for admission to the competition, relevant to the duties described under I above will also count as experience'.

The duties in question are defined in Section I as administrative, advisory and supervisory duties, following general guidelines, in (1) Personnel and Administration, (2) External Relations and (3) Information/Communication. The applicant chose External Relations.

- 3 When he submitted his application, the applicant was a *Referendar*—an official title given in the Federal Republic of Germany to persons who have passed the First State Law Examination, which is in principle taken after three and a half years of studies at university — and as such was undergoing practical training in the form of the *Vorbereitungsdienst*, which at the end of two and a half years leads to the Second State Law Examination.
- 4 The Selection Board, having regard to German law and without examining the actual content of the duties carried out by the applicant during the training period, took the view that the *Vorbereitungsdienst* undertaken by the applicant as a *Referendar* was a 'further training course' within the meaning of Section II B 2(b) of the Notice of Competition, which must lead to a diploma if it is to count as experience. The Selection Board considered that it could not be taken into account unless the person concerned had passed the Second State Examination.

- 5 By letter of 4 August 1988, the applicant submitted a complaint against the decision of the Selection Board, notified to him by letter of 18 July 1988. The complaint was rejected by the Commission by letter of 6 October 1988.

### Procedure

- 6 Consequently, by an application lodged at the Registry of the Court of Justice on 3 November 1988, Jürgen Sparr brought this action against the Commission for the annulment of the decision of 18 July 1988.

- 7 The applicant claims that the Court should:

(1) (a) annul the decision of 18 July 1988 in the version of the decision of 6 October 1988 rejecting his complaint;

(b) order the Commission of the European Communities to admit the applicant to a test corresponding to the test in Competition COM/A/621 but not to be held in the framework of, or at the same time as, another competition open to lawyers;

(2) in the alternative, order the Commission of the European Communities to admit the applicant to a test corresponding to the test in Competition COM/A/622 (assistant administrators) held parallel to Competition COM/A/621, such test, however, not to be held in the framework of, or at the same time as, another competition open to lawyers;

(3) order the defendant to pay the costs.

- 8 The defendant contends that the Court should:

(1) dismiss the application as unfounded:

(2) order the applicant to pay the costs.

- 9 An application for interim measures, which was lodged on the same day, requesting the Court to order the Commission to admit the applicant to a test corresponding to the test in Competition COM/A/621 or, in the alternative, to a test corresponding to the test in Competition COM/A/622, was dismissed by order of the President of the Court of Justice of 13 December 1988.
- 10 In his reply, the applicant withdrew several heads of his initial claim and maintained only the application for the annulment of the decision of 18 July 1988 and for costs to be paid by the defendant, as claimed in 1(a) and 3 of his conclusions.
- 11 The whole of the written procedure took place before the Court of Justice, which, by order of 15 November 1989, referred the case to the Court of First Instance pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.
- 12 Upon hearing the Report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry. However, it requested the parties to reply before the hearing to a number of questions concerning the specific duties performed by the applicant during his training period as a *Referendar*, the previous practice of selection boards in competitions in this regard and the relevant legislation, and to produce supporting documents. It is clear from the certificates produced by the applicant at the request of the Court of First Instance that during his *Vorbereitungsdienst* he worked for the Staatsanwaltschaft (Public Prosecutor's Office), Hamburg, the Amtsgericht (Local Court), Hamburg-Altona, the Oberfinanzdirektion (Principal Revenue Office), Hamburg, Messrs Schön and Pflüger, Rechtsanwälte, Hamburg, the Verwaltungsgericht (Administrative Court), Hamburg, the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court of the Hanseatic City of Hamburg), the Directorate-General for Competition of the Commission of the European Communities and Messrs Schulze and Meyer, Rechtsanwälte, Hamburg.
- 13 The hearing took place on 4 April 1990. The representatives of the parties submitted oral argument and answered questions asked by the Court.

## Substance

- 14 Although the application is formally directed against the Commission Decision of 18 July 1988, which is in reality only the letter by which the Commission informed the applicant of the decision adopted in his regard by the Selection Board and which, considered on its own, is not a measure open to challenge, the Court considers that there is no doubt as to the true subject-matter of the dispute and that the application clearly seeks the annulment of the decision not to admit him to the tests taken by the Selection Board for Competition COM/A/621.
- 15 In support of his application for annulment, the applicant, referring to the fact that the Selection Board applied German law in order to interpret the Notice of Competition, claims in particular that it infringed Article 7 of the EEC Treaty. By not recognizing as experience training periods completed as a *Referendar* unless the person concerned had passed the Second State Examination, the Commission was imposing a supplementary requirement which discriminates against him and against all German candidates, as compared with candidates from other Member States.
- 16 The Commission considers that the way in which the activity in question is to be treated depends first of all on the significance attached to it under the applicable national law, in this case German law. Under German law, practical training completed by a *Referendar* is further training, and not experience, in the strict sense. In this regard, the Commission relies *inter alia* on the 'Deutsche Richtergesetz' (German Law on Judges), which provides in Paragraph 5 that a person who, after passing the First State Examination, completes a *Vorbereitungsdienst* of two and a half years leading to the passing of the Second State Examination, shall qualify for the office of judge. It also points out that in the Federal Republic of Germany the right to become a *Staatsanwalt*, a *Rechtsanwalt* and a *Notar*, as well as an administrator in the public service, is defined by reference to that provision.
- 17 The Commission accordingly concludes that the applicant's activity as a *Referendar* during his *Vorbereitungsdienst* constitutes a period of practical training which cannot count as experience unless he has passed the Second State Examination. It

therefore refuses to recognize the periods completed by the applicant as a *Referendar* as experience within the meaning of the Notice of Competition.

18 Since the Notice of Competition makes no reference to the national law applicable to the candidates as regards the definition of the experience required, the Court considers that it must be interpreted exclusively in the light of the aims of the competition in question, as set out in the general description of duties contained in the Annex to the Notice of Competition. Discrimination between candidates of different nationalities can be eliminated only by interpreting the concept of 'experience' in accordance with rules specific to each competition. An interpretation on the basis of the national law of each candidate would inevitably lead to differences in treatment, in view of the differences between the post-graduation systems in the individual Member States.

19 In this case, Open Competition COM/A/621 was organized to constitute a reserve of administrators whose duties are to be administrative, advisory and supervisory, in three fields of Community activity: Personnel and Administration, External Relations and Information/Communication. The description of duties contained in the Annex to the Notice of Competition does not mention, for any of those three fields, duties which require of candidates a specific qualification to practise as a lawyer or perform a judicial function.

20 The special conditions laid down by the Notice of Competition require candidates to have at least two years' experience or have completed duly attested periods of specialist or refresher training, or a further training course leading to a diploma. Departing from the interpretation given to a similar notice of competition in a previous competition (COM/A/403) in 1984, the Selection Board for the competition in this case, referring to German law, treated the *Vorbereitungsdienst* completed by the applicant as a further training course.

- 21 It is true that the duties which the applicant performed as a *Referendar* in the course of his *Vorbereitungsdienst* not only involved the rendering of service but also formed part of a practical preparation for the actual exercise of the profession. It is also true, however, that the activities performed as a *Referendar* were not just further training, since during the *Vorbereitungsdienst* periods of vocational practice alternated with periods of instruction.
- 22 In this case it is apparent from the testimonial statements produced by the applicant at the Court's request that the activities which he performed during his *Vorbereitungsdienst* constituted both vocational practice and vocational training.
- 23 Since the Notice of Competition allowed periods of specialist or refresher training completed in the course of exercising a profession to be treated as experience, there is no reason why the alternate periods of vocational training and vocational activity completed by a *Referendar* during his *Vorbereitungsdienst* should not also be treated in their entirety as relevant experience.
- 24 Such activities therefore correspond to the purpose of the Notice of Competition and must be taken into account in the calculation of the period of experience required in Section II B 2(b) of the Special Conditions in the Notice of Competition.
- 25 Consequently, the applicant's claim must be upheld.
- 26 It is unnecessary to examine the other submissions and arguments put forward by the applicant, since it follows from the considerations set out above that the contested decision must be annulled.

## Costs

27 Under Article 69(2) of the Rules of Procedure of the Court of Justice, applicable *mutatis mutandis* to the Court of First Instance by virtue of the third paragraph of Article 11 of the Council Decision of 24 October 1988, the unsuccessful party is to be ordered to pay the costs. As the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- (1) Annuls the decision of the Selection Board in Open Competition COM/A/621 refusing to admit the applicant to the tests.**
- (2) Orders the Commission to pay the costs.**

Edward

Schintgen

García-Valdecasas

Delivered in open court in Luxembourg on 22 May 1990.

H. Jung

Registrar

D. A. O. Edward

President of the Fourth Chamber