

Similarly, the onus is in principle on a candidate in a competition to provide the selection board with all information and documents to enable it to check that the candidate satisfies the conditions laid down in the notice of competition. A selection board cannot be required to make enquiries itself in order to ensure that candidates satisfy all the conditions laid down in such a notice.

official concerned to know why a decision was adopted in his regard in order that he may take the legal steps necessary to defend his rights and interests.

Where requests from candidates who have been eliminated from a competition seek not to obtain additional individual explanations but rather to persuade the selection board to reconsider its decision not to admit them to the competition, such requests do not oblige the selection board to give a fuller account of the reasons on which its original decisions were based.

4. It is quite clear from the second paragraph of Article 2 of Annex III to the Staff Regulations that that provision merely enables a selection board to request additional information from candidates if it is in doubt as to the exact significance of a document submitted, but that it can in no way be interpreted as imposing an obligation on the selection board to arrange for the submission to it of all documents which the notice of competition requires from candidates.
5. The statement of reasons on which measures that may adversely affect officials are based must enable the

6. An official may not, in support of an action brought against a decision not to admit him to a competition, rely on submissions based on the alleged irregularity of the notice of competition, when he has failed to challenge in good time those provisions of the notice which he considers affect him adversely.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

20 June 1990 *

In Case T-133/89

Jean-Louis Burban, an official of the European Parliament, residing in Paris, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 6-8 rue Origer,

applicant,

* Language of the case: French.

v

European Parliament, represented by Jorge Campinos, juriconsult, and Manfred Peter, Head of Division, acting as Agents, assisted by Hugo Vandenberghe, of the Brussels Bar, with an address for service in Luxembourg at the office of Manfred Peter at the Secretariat of the European Parliament,

defendant,

APPLICATION for the annulment of decisions taken by the selection board in Competition No PE/44/A not to admit the applicant to the competition,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

composed of: H. Kirschner, President of Chamber, C. P. Briët and J. Biancarelli, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 5 April 1990, gives the following

Judgment

The facts of the case

- 1 On 28 December 1988 the European Parliament published a notice of Open Competition No PE/44/A (Official Journal 1988, C 333, p. 16), based on qualifications and tests, with a view to selecting a French-speaking Head of Division, at Grade A 3, to run the Paris Information Office. The notice of competition contained *inter alia* the following two paragraphs:

- (a) Under the heading 'Competition — nature and conditions of eligibility', at paragraph III, B. 1. (c):

'For the purposes of their application, candidates, including officials and other servants of the European Parliament or of other institutions of the European Community, may on no account refer to documents, application forms, record sheets, etc. submitted in connection with previous applications.'

- (b) Under the heading 'Applications', at paragraph VII:

'Candidates are requested to submit their applications, using the form contained in this issue of the Official Journal, to "European Parliament, Recruitment Service, L-2929 Luxembourg". This application, together with supporting documents concerning both education and professional experience, must be sent by registered post not later than midnight on 13 February 1989, as attested by the postmark.'

A note in italics stated that: 'Candidates, including officials and other servants of the European Parliament or other institutions of the European Community, who fail to submit an application form accompanied by all the necessary supporting documents within the prescribed time-limit, will not be admitted to the competition.'

Finally, the sheet acknowledging receipt of the application form, which had to be filled in by the applicant, stated that 'account will be taken only of those supporting documents relating to academic qualifications and professional experience which have been dispatched by the closing date specified in the notice of open competition or the notice of recruitment under the heading "Applications"':

- 2 The applicant, who has been working for the Parliament since 1968, had been Deputy Director of the Information Office of the European Parliament in Paris since 1982 when he submitted his application for the said competition. He sent the application form within the period specified but attached neither his diplomas nor documents supporting his professional experience. He claims that in January 1989 he had a telephone conversation with the head of the Staff Regulations and staff management service in the Parliament, during which the latter told him that he thought that where officials of the institution were applying to take part in a

competition such documents were sent directly by the administration to the selection board. On 28 June 1989, the head of the Staff Regulations and staff management service sent a letter to the chairman of the selection board which confirmed that such a telephone conversation had indeed taken place. The applicant for that reason simply wrote on the form for the acknowledgment of receipt of his application: 'My diplomas are contained in my file in the Personnel Department of the Parliament'.

- 3 The chairman of the competition selection board wrote to the applicant on 24 May 1989 to inform him that his application had been rejected by a decision taken by the selection board during its meeting of 17 May 1989. Two reasons were given: 'submission of supporting documents outside the time-limit' and 'absence of supporting documents'.
- 4 On 13 June 1989, the applicant addressed a complaint to the President of the Parliament in which he requested that the tests, due to be held between 3 and 6 July 1989, should be postponed in order, he said, that the injustice of which he had been a victim might be remedied. He claimed, first, that it was the Parliament's administration, in the person of the head of the Staff Regulations and staff management service, which had misled him; secondly, that because he was posted in Paris, he was far away from the Parliament's central administration; thirdly, that, by virtue of its duty of care, the appointing authority had 'the right and even the duty to amend decisions taken by the selection board, in cases where a candidate has been the victim of a wrong or an error on the part of the administration'.
- 5 The applicant also sent a letter on the same day, 13 June 1989, to the chairman of the selection board asking him to reconsider his decision not to admit the applicant to the competition and expounding the same arguments as those set out in the letter addressed to the President of the Parliament. However, he also added that, since he had pointed out in the application form that his diplomas would be sent by the administration to the selection board along with his file, the selection board itself ought to have drawn his attention to his mistake.
- 6 On 30 June 1989, the chairman of the selection board asked the applicant to send him written proof of his claim that he had stated in the application form that the administration would forward his diplomas, along with his file, to the selection board.

- 7 The applicant replied to the chairman of the selection board on the same day by sending him the acknowledgment of receipt of his application. He admitted that the words written on that receipt form differed in fact from those which he had mentioned in his letter of 13 June 1989, but he claimed that this document in any case proved his good faith.
- 8 On 5 July 1989, the chairman of the selection board wrote to the applicant and informed him that the selection board, by a decision of 3 July 1989, had confirmed its previous decision not to admit the applicant to the competition.
- 9 In those circumstances Mr Burbán, by an application lodged at the Court Registry on 28 August 1989, brought the present action against the Parliament.

Procedure

- 10 The applicant claims that the Court should:

‘declare the application admissible and well founded;

consequently, annul:

- (i) the decision of 3 July 1989 of the selection board in Open Competition No PE/44/A not to admit him to the competition;
- (ii) all subsequent decisions taken by the selection board, in particular the decision determining the list of suitable candidates, and any decision taken by the defendant on the basis of such decisions;
- (iii) in the alternative, the selection board’s decision of 15 May 1989 refusing for the first time to admit him to the competition;

order the defendant to pay the costs, either under Article 69(2) or under the second subparagraph of Article 69(3) of the Rules of Procedure, and the expenses necessarily incurred for the purpose of the proceedings, in particular those relating

to the address for service, travel and subsistence expenses and the remuneration of lawyers, pursuant to Article 73(B) of the said rules'.

- 11 The defendant contends that the Court should:
- (i) take note that the Parliament leaves to the wisdom of the Court the question of the admissibility of the action;
 - (ii) dismiss the action on its merits;
 - (iii) make an appropriate order as to costs.
- 12 Before the conclusion of the written procedure, the Court of Justice, by an 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.
- 13 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.
- 14 The oral procedure took place on 5 April 1990. As no Advocate General had been appointed for this case, the President announced the closure of the oral procedure at the end of the hearing.

Admissibility

- 15 While deferring to the wisdom of the Court, the Parliament contends that the applicant's complaint of 13 June 1989 served no purpose because the appointing authority, according to the consistent case-law of the Court, cannot annul a decision taken by a competition selection board.

6 According to the applicant, the purpose of a complaint is to seek an amicable solution between the administration and the official, prior to any action at law. Furthermore, the selection board in the present case reconsidered its position during its meeting on 3 July 1989. The applicant contends therefore that the decision of 3 July 1989 is a new decision and that consequently there can be no dispute as to the admissibility of the present action.

7 It should be borne in mind that, as the Court of Justice has held on numerous occasions, the legal remedy open in respect of a decision of a selection board normally lies in a direct application to the Court (see *inter alia* the judgments of 14 June 1972 in Case 44/71 *Marcato v Commission* [1972] ECR 427, of 14 July 1983 in Case 144/82 *Detti v Court of Justice* [1983] ECR 2421 and of 7 May 1986 in Case 52/85 *Riboux and Others v Commission* [1986] ECR 1567; order of 8 November 1988 in Cases 264/88 and 264/88 R *Valle Fernandez v Commission* [1988] ECR 6341). A complaint against a decision of a selection board would appear to serve no purpose, since the institution concerned has no power to annul or amend decisions taken by a selection board. Consequently, an unduly restrictive interpretation of Article 91(2) of the Staff Regulations would merely result in a futile prolongation of the procedure (see, in particular, the judgment of 16 March 1978 in Case 7/77 *Von Wüllerstorff v Commission* [1978] ECR 769). If, nevertheless, the person concerned submits a complaint to the appointing authority, such a step, whatever its legal significance may be, cannot have the result of depriving him of his right to apply directly to the Court, since that is a right which the person concerned cannot renounce and which is therefore not capable of being affected by his individual behaviour (judgment of 30 November 1978 in Joined Cases 4/78, 19/78 and 28/78 *Salerno and Others v Commission* [1978] ECR 2403).

8 In the light of those principles, which are based on a twofold desire to simplify the procedure and to ensure that the rights of officials are respected, it is necessary to determine whether the action against the selection board's decisions of 17 May and 3 July 1989 was indeed brought within the period of three months laid down by the Staff Regulations, in view of the fact that the applicant, even though he made a prior complaint, finally chose to bring the matter directly before the Court. With regard to the conclusions directed against the selection board's decision of 17 May 1989 first refusing to admit the applicant to the competition, it does not appear from the documents before the Court, and it has not been contended by the European Parliament, that the applicant was informed of that decision prior to 13 June 1989, the date on which he made his complaint to the appointing authority and sent the letter to the chairman of the selection board. In those circumstances, the applicant was entitled to bring the matter directly before the

Court of Justice on 28 August 1989, without awaiting a response to his complaint or the expiry of the period for such a response laid down by the Staff Regulations. With regard to the conclusions directed against the selection board's second decision of 3 July 1989 refusing, following an exchange of letters with the applicant, to overturn its initial decision not to admit him to the competition, it should be noted that the applicant did not submit a prior complaint; that was a course of action he was perfectly entitled to take with regard to a decision of a selection board.

- 19 For those reasons, the doubts raised by the European Parliament as to the admissibility of the action are unfounded.

Substance

- 20 The applicant relied on the following three submissions in support of his conclusions: first, the European Parliament breached its duty to have regard for the interests of officials and the principle of proper administration; secondly, it infringed Article 25 of the Staff Regulations concerning the obligation to give reasons for decisions; thirdly, the provisions in the notice of competition are in breach of Article 2 of Annex III to the Staff Regulations and of the duty to have regard for the interests of officials.

The first submission based on breach of the duty to have regard for the interests of officials and the principle of proper administration

- 21 The applicant relies on the following arguments: first, the provisions of the notice of competition relating to the submission of documentary evidence of qualifications and professional experience were capable of being interpreted in various ways; secondly, he was misled by the Parliament's departments; thirdly, the administration was well aware of his mistake; fourthly, in view of his duties and the fact that the head of the Paris Information Office, his superior, was a member of the selection board, that selection board could not have been unaware that the applicant satisfied the necessary conditions.
- 22 Furthermore, the applicant claims that he had taken all necessary precautions by seeking advice from the head of the Staff Regulations and staff management service and by taking care to specify on the receipt form that his diplomas were in his file in the Personnel Division of the Parliament. On those grounds he

concludes that the administration was obliged, in the interest of the applicant, by virtue of the duty to have regard for the interests of officials and the principle of proper administration, as interpreted by the Court of Justice in its judgments of 23 October 1986 in Case 321/85 *Schwiering v Court of Auditors* [1986] ECR 3177 and of 4 February 1987 in Case 417/85 *Maurissen v Court of Auditors* [1987] ECR 551, to point out to him his error; furthermore, the selection board ought to have made use of the second paragraph of Article 2 of Annex III to the Staff Regulations before the prescribed period had expired and while the number of candidates was limited, particularly since the principle of equal treatment could not be applied in the present case, in view of the fact that candidates who were already officials and external candidates were in different legal positions.

- 23 The Parliament first points out that it is clearly indicated on three occasions, in the notice of competition and on the form for acknowledgment of receipt of the application form, that all candidates, including officials, and in particular those of the European Parliament who are expressly mentioned, must submit the necessary documents and that such a condition is therefore not capable of being interpreted in different ways. The views expressed by the applicant as to its relevance have no bearing whatever on its validity. There is consequently no obligation on the selection board to amend the clear conditions set out in the notice of competition; any other decision would be tantamount to according the applicant preferential treatment, which would run counter to the principles of equal treatment and non-discrimination. In this regard, the selection board is bound by Article 5 of Annex III to the Staff Regulations.
- 24 Secondly, the Parliament claims that the second paragraph of Article 2 of Annex III to the Staff Regulations empowers the selection board to request additional documents or information only if it has doubts as to whether the file is complete or if it wishes to have further details concerning the content of one or more of the documents submitted by the candidate. In the present case, there were no additional documents which could have been requested, since none of the basic documents had been submitted.
- 25 Thirdly, the Parliament stresses that the requirement that the requisite documents should be submitted with the application serves to put all candidates, whether officials or not, on an equal footing and cannot be regarded as unreasonable. In addition, candidates who are already officials and external candidates, in so far as they are candidates in the same open and external competition, are in the same legal position. The fact that they may indeed be treated differently after recruitment, in respect of their appointment and remuneration, in no way affects

the principle of equal treatment which applies when they submit their applications. In that regard, there is a distinction between the rules governing external competitions, such as this, and those governing internal competitions.

- 26 Fourthly, the Parliament contends that even if it is established that the applicant sought advice from the head of the Staff Regulations and staff management service, that does not release him from the obligation to comply with the conditions laid down in the notice of competition and that the interpretation given by the head of that service cannot be legally binding on the Parliament. The Parliament also points out that the note which the applicant wrote on the receipt form is not included in the file held by the selection board. It therefore concludes that this fact cannot call in question the selection board's initial decision, which was taken in accordance with the conditions laid down in the notice of competition and that it was not of such a kind as to require the selection board to have recourse to the second paragraph of Article 2 of Annex III to the Staff Regulations.
- 27 It should be noted at the outset, as the Court has held in its judgments of 28 May 1980 in Joined Cases 33/79 and 75/79 *Kuhner v Commission* [1980] ECR 1677, of 9 December 1982 in Case 191/81 *Plug v Commission* [1982] ECR 4229 and of 23 October 1986 in Case 321/85 *Schwiering v Court of Auditors*, already cited, that, although it is not mentioned in the Staff Regulations, the duty of the administration to have regard for the interests of its officials, which is also incumbent upon a selection board, reflects the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between a public authority and public servants. That duty, along with the principle of proper administration, implies in particular that when such an authority takes a decision concerning the position of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned.
- 28 It is therefore necessary to consider whether, as the applicant contends, the administration of the European Parliament or the selection board failed in the present case to respect the duty to have regard for the interests of officials as defined.
- 29 It should first be noted that the notice of Competition No PE/44/A twice mentions the unequivocal requirement, once highlighted in italics, applying to all candidates, including officials of the European Parliament, that they attach to their application form all supporting documents relating to their diplomas and

professional experience, on pain of being refused admission to the competition. That requirement is reiterated a third time on the form for acknowledgment of receipt of the application which the candidate must himself fill in when sending his application to the recruitment service and which is then sent back to him.

30 This obligation, which is thus set out three times, is in no way ambiguous, contrary to the submissions made by the applicant, particularly during the oral procedure. Since the notice of competition, under III, B. 1. (c), cited above, prohibits all candidates, including officials of the European Parliament, from referring, for the purposes of their application, to documents submitted in connection with previous applications, that prohibition unambiguously relates in the present case to the diplomas and other documents which the applicant had submitted with his original application to the European Parliament when he became an official of that institution in 1968. For that reason, the distinction which the applicant draws between the documents submitted in connection with previous applications and the documents constituting an official's personal file, which in any case necessarily includes the former, must be rejected. Furthermore, the other provisions of the notice of competition cited above prove, if there were any need to do so, that the applicant's interpretation cannot be accepted.

31 It ought to be added that in the case of a competition based on qualifications and tests, it is for the candidate alone to decide which diplomas, qualifications and certificates of professional experience he intends to submit with his application and it is not up to the personnel service to carry out such a task itself, given the risk of mistakes which this entails. Furthermore, it is not the function of the personnel service to send to the selection board the complete personal file of the individual in question, which contains many documents other than those which are required under the notice of competition, since this would impose a heavy practical burden on the selection board and would run counter to the principle of proper administration.

32 Finally, in any event, it appears neither from the documents nor the arguments presented at the hearing that the note written by the applicant on the form for acknowledgment of receipt of his application, which referred only to his diplomas and not to any supporting documents regarding his professional experience, was such as to make the administration or the selection board fully aware of his mistake, since that receipt was sent back to the applicant and is not contained in his file.

- 33 It follows from the foregoing that the officers of the European Parliament in no way breached their duty to have regard for the applicant's interests or failed to comply with the principle of proper administration, since the balance of the reciprocal rights and obligations in the relationship between the institution and the applicant required the latter to read attentively and carefully the provisions in a notice of competition which was perfectly clear, precise and unconditional.
- 34 As regards the selection board's compliance with the duty to have regard for the interests of officials and with the principle of proper administration, it must be pointed out in the first place that the Court has consistently held that the onus is in principle on a candidate in a competition to provide the selection board with all information and documents to enable it to check that he satisfies the conditions laid down in the notice of competition. A selection board cannot be required to make enquiries itself in order to ensure that candidates satisfy all the conditions laid down in such a notice. It is incumbent on the candidates to provide the selection board with all information which they consider relevant for the appraisal of their application, *a fortiori* if they have been expressly or formally requested to do so (see, in particular, the judgment of 12 July 1989 in Case 225/87 *Belardinelli v Court of Justice* [1989] ECR 2353).
- 35 Secondly, it is necessary to point out that the applicant cannot properly rely on the second paragraph of Article 2 of Annex III to the Staff Regulations in order to circumvent a clear, precise and unconditional obligation laid down in the notice of competition. According to that paragraph, candidates 'may be required to furnish additional documents or information' in respect of competitions organized by the institutions. It is quite clear from that paragraph that it merely enables a selection board to request additional information from candidates if it is in doubt as to the exact significance of a document submitted, but that it can in no way be interpreted as imposing an obligation on the selection board to arrange for the submission to it of all documents which the notice of competition requires from candidates who are officials. There was all the more justification for the selection board to refrain from using that paragraph in connection with the applicant at a time when the number of candidates was 385, a number which cannot be regarded as limited, despite the submission of the applicant.
- 36 Thirdly, it must be stressed that the incorrect information which the applicant claims was given to him by the head of the Staff Regulations and staff

management service during a telephone conversation, even assuming that it be proven and regrettable though it may be, was not of such a kind as to free the applicant from his duty to read carefully the conditions in question which were laid down in the notice of competition in a clear, precise and unconditional manner. Even if it is accepted that such a mistaken interpretation was indeed given in the terms described by the applicant and by the Parliament official concerned, it cannot be binding on that institution, since there was a wholly unambiguous notice of competition and in particular since the Parliament official who gave that interpretation admitted, in his letter of 8 June 1989, that he had 'extended to internal candidates in an external competition something that applied only in the case of an internal competition' and the applicant himself, in the letter of 13 June 1989 which he sent to the chairman of the selection board, stated that his colleagues, who were internal candidates in the same competition, themselves received correct information from the relevant department in the Parliament.

- 17 Fourthly, the applicant may also not rely on differences in treatment, in respect of remuneration and appointment, between candidates who are already officials and external candidates, following their entry into service, in order to attempt to justify differences in treatment at the time of the procedure for selecting candidates in respect of the same open competition. Discrimination of this kind in the selection procedure between candidates who are already officials and external candidates would be in breach of the principle that all candidates should be treated equally with regard to the same competition.
- 38 It follows from all the foregoing that neither the administration of the European Parliament nor the selection board failed to respect the duty owed to the applicant to have regard for his interests and the principle of proper administration, and that the selection board was quite right, in its decision of 17 May 1989, as confirmed by that of 3 July 1989, to refuse to admit the applicant to the competition because he had failed to submit any supporting documentation with his application form.
- 39 In those circumstances, the other arguments invoked by the applicant, that is to say, his remoteness from the European Parliament's department by virtue of his posting in Paris, the fact that his superior was a member of the selection board and the fact that the administration could not have been unaware that he satisfied the necessary conditions, are to no avail and cannot justify his own disregard of the clear provisions laid down in the notice of Competition No PE/44/A.

40 The first submission must therefore be rejected.

The second submission based on infringement of Article 25 of the Staff Regulations concerning the obligation to state reasons

41 In the view of the applicant, the decision taken by the selection board on 3 July 1989, following his request of 13 June 1989, is inadequately reasoned and is consequently in breach of Article 25 of the Staff Regulations since it allows neither the applicant nor the Court to examine the reasons why the applicant was refused admission to the competition and also why he was refused permission to submit the documents required. In this connection, he relies on the judgment of 12 July 1989 in Case 225/87 *Belardinelli v Court of Justice*, cited above, to the effect that the selection board in a competition which has attracted many candidates may initially inform candidates only of the criteria used in the selection procedure and the result thereof, even though they may subsequently supply individual explanations to those candidates who expressly request them. Furthermore, neither of the two letters which informed the applicant that his application had been rejected enabled him to pinpoint the exact reasons relied on against him and it was only in the Parliament's statement of defence that the applicant was able to discover the reasons for those two decisions.

42 According to the Parliament, the letter which the applicant sent to the chairman of the selection board on 13 June 1989 did not seek additional explanations for the decision not to admit him to the competition, but sought only to persuade the selection board to reconsider that latter decision. As the selection board took the view that the information supplied by the applicant was not such as to allow it to overturn its decision, it simply confirmed its letter of 24 May 1989, sufficient grounds for which were given within the meaning of Article 25 of the Staff Regulations. This was therefore an act which was purely confirmatory in nature, did not adversely affect the applicant and did not have to set out the grounds on which it was based. Furthermore, it emerges very clearly from the applicant's letters of 13 and 30 June 1989, examined above, that he was fully aware that the reason for the selection board's refusal to admit him to the competition was that he had failed to attach any supporting documents to his application form. That reason is quite clear from the letter of 24 May 1989 addressed to the applicant, following the decision taken by the selection board on 17 May 1989.

43 It is first necessary to point out that the Court of Justice has consistently held (see judgment of 1 June 1983 in Joined Cases 36/81, 37/81 and 218/81 *Seton and Others v Commission* [1983] ECR 1789) that the statement of reasons on which measures that may adversely affect officials are based must enable the official

concerned to know why a decision was adopted in his regard in order that he may take the legal steps necessary to defend his rights and interests. In addition, as the Court held in its judgment in *Belardinelli*, cited above, where requests from candidates who have been eliminated from a competition seek not to obtain additional individual explanations but rather to persuade the selection board to reconsider its decision not to admit them to the competition, such requests do not oblige the selection board to give a fuller account of the reasons on which its original decisions were based.

14 In the present case, it is clear from the documents before the Court that the letter sent by the chairman of the selection board to the applicant on 24 May 1989 did enable him to learn the reasons why he had been refused admission to the competition. The letters which the applicant sent on 13 and 30 June 1989 also show that he was aware of those reasons since, in particular, he admits that he had erroneously failed to enclose with his application form the supporting documents required by the notice of competition. Furthermore, those two letters from the applicant clearly constitute requests that the selection board reconsider its decision not to admit the applicant to the competition and are not requests seeking an additional individual explanation. The selection board was therefore under no obligation to provide fuller reasons for its decision of 3 July 1989 and was entitled to indicate simply that it was confirming its previous decision.

15 It follows that the second submission must also be rejected.

The third submission based on infringement by the notice of competition of Article 2 of Annex III to the Staff Regulations and of the duty to have regard for the interests of officials

16 The applicant claims that the notice of competition precludes the selection board from requesting candidates to produce additional documents and information and that it therefore amounts to an infringement of Article 2 of Annex III to the Staff Regulations and of the duty to have regard for the interests of officials.

17 According to the Parliament, the object of the second paragraph of Article 2 of Annex III to the Staff Regulations is to make it possible for a selection board, if in doubt, to request additional documents from candidates, but it can in no case be applicable if the candidate has failed to submit any supporting documents. It adds that the authority to require that candidates submit diplomas and other supporting documents is derived from Article 1 of Annex III to the Staff Regulations, which allows the appointing authority to lay down specific conditions of this kind, compliance with which must be ensured by the selection board.

- 48 It is first necessary for the Chamber of its own motion to point out that, as the Court of Justice ruled in its judgment of 8 March 1988 in Joined Cases 64/86, 71/86 to 73/86 and 78/86 *Sergio and Others v Commission* [1988] ECR 1399, an official may not, in support of an action brought against a decision not to admit him to a competition, rely on submissions based on the alleged irregularity of the notice of competition, when he has failed to challenge in good time those provisions of the notice which he considers to affect him adversely.
- 49 It follows that the applicant in the present case is no longer entitled to dispute the legality of the notice of competition which he failed to challenge within the period laid down by the Staff Regulations.
- 50 Furthermore, in any case, contrary to the assertions of the applicant, no provision in the notice of Competition No PE/44/A has as its object or effect to preclude the selection board from invoking the second paragraph of Article 2 of Annex III to the Staff Regulations.
- 51 The third submission must therefore be rejected. Accordingly, the application made by Mr Burban must be dismissed.

Costs

- 52 Under Article 69(2) of the Rules of Procedure, which applies *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, cited above, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those Rules provides that, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

- (1) Dismisses the application;**
- (2) Orders the parties to bear their own costs.**

Kirschner

Briët

Biancarelli

Delivered in open court in Luxembourg on 20 June 1990.

H. Jung

Registrar

H. Kirschner

President