

JUDGMENT OF THE COURT (SECOND CHAMBER)  
14 DECEMBER 1965<sup>1</sup>

**Domenico Morina**  
**v European Parliament**

**Case 21/65**

**S u m m a r y**

1. *Officials — Recruitment — Competition — Proceedings of the Selection Board — Legal nature — Regularity of such proceedings challengeable only by way of an appeal against the decision of appointment*  
(*Staff Regulations of Officials of the European Communities, Articles 29 and 91*)
2. *Officials — Recruitment — Competition — Holding or reholding of a competition — Exclusive powers of the administration — Limit of the jurisdiction of the Court*  
(*Staff Regulations of Officials of the European Communities, Articles 29 and 91*)
3. *Officials — Recruitment — Competition — Procedure — Proceedings of the Selection Board — Formalities — Substantive nature — Purpose — Infringement adversely affects the unsuccessful candidates*  
(*Staff Regulations of Officials of the European Communities, Article 91; Annex III*)

1. The proceedings of the Selection Board are not challengeable as such; their legality may only be questioned in an application directed against the decision to which they were a preliminary.
2. Cf. paragraph 2, summary, Case 11/65.
3. The requirement laid down by the sixth paragraph of Article 5 of Annex III to the Staff Regulations of Officials, which states that the report sent to the appointing authority by the Selection Board for the com-

petition must be reasoned, is a requirement of substance. The statement of reasons must be such as to enable the authority to exercise its discretion with judgment, which means that it needs to be informed of both the general criteria employed by the Selection Board and the manner in which these were applied by the Board to the persons appearing on the list of suitable candidates. Infringement of this principle adversely affects the unsuccessful candidates within the meaning of Article 91.

**In Case 21/65**

**DOMENICO MORINA**, Doctor of Law, an official of the European Parliament, residing at 4 rue Théodore-Eberhard, Luxembourg, assisted by Camille

<sup>1</sup> — Language of the Case: French.

Linden of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of his said counsel, 1 rue Schiller,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary-General, Hans Robert Nord, acting as Agent, assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of its said counsel, 22 Côte-d'Eich,

defendant,

Application for the annulment of the assessment made by the Selection Board of the candidates for Internal Competition No B 12 and challenging the appointment of Mr Piraino as a result of the said competition,

THE COURT (Second Chamber)

composed of: W. Strauß (Rapporteur), President of Chamber, A. M. Donner and R. Monaco, Judges,

Advocate-General: J. Gand

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts

The facts may be summarized as follows:

1. The applicant was engaged by the defendant on 17 November 1958 under a so-called Brussels contract at a salary corresponding, by assimilation to the Staff Regulations of the ECSC, to Grade C12 (now C3).

On 1 June 1959 he was promoted to Grade C11 and in March 1962 to

Grade C10 (Grades C2 and C1 respectively, according to the present Staff Regulations of Officials of the EEC and the EAEC).

On 13 December 1962 he was integrated under the new Staff Regulations in Grade C3, Step 2, with effect from 1 January 1962. By a decision of the Secretary-General of the same date he was promoted to Grade C1, Step 1, with effect from 1 March 1962.

2. By notice of 19 January 1965 In-

ternal Competition No B 12 was announced to fill a vacant post of administrative assistant (career bracket B5-B4) in the Directorate-General of Administration, Personnel Division, Accounts Department. The notice contained in particular the following passages:

#### I — *Nature of duties*

- Application of the provisions of the Staff and other Regulations concerning observance of the rights of officials with regard to salary, allowances and the refund of expenses;
- drafting explanatory memoranda;
- preparing statistics;
- collection and filing of information.

#### II — *Competition*

This competition will be held on the basis of qualifications.

#### III — *Qualifications required*

- Good, general, secondary education or experience in employment of an equivalent level;
- elementary knowledge of accounting procedures.

#### IV — *Knowledge of languages*

A very extensive knowledge of one of the official languages of the European Community; a good knowledge of one other such language.'

The applicant submitted his application and the Selection Board for the competition included his name in the list of suitable candidates mentioned in the last paragraph of Article 5 of Annex III to the Staff Regulations, Mr Piraino being first on the list.

By a decision of 10 March 1965, the defendant's Secretary-General appointed Mr Piraino to the relevant post.

3. On 16 April 1965 the applicant made the present application, directed against this decision and against the assessment of the candidates made prior to it by the Selection Board for the competition.

## II — *Conclusions of the parties*

The *applicant* claims in his application that the Court should:

'declare that this application is admissible;  
declare that it has jurisdiction to entertain it;

order the lodging, by the departments of the Assembly concerned, of the administrative documents relating to this case which may be important in settling the application, in particular those relating to the qualifications and appointment of Mr Piraino, all this in conformity with Article 23 of the ECSC Treaty and the last paragraph of Article 26 of the Staff Regulations of Officials;  
rule that the application is well founded and, consequently, annul the assessment arising from Internal Competition No B 12 and the decision of the Secretary-General of the European Parliament resulting therefrom promoting Mr Piraino to the post of administrative assistant (B5-B4) with effect from 1 April 1965;

order Internal Competition No B 12 on the basis of qualifications to be reheld, under the conditions previously laid down and between the same candidates validly admitted to the competition, in accordance with the communication sent to the candidates by letter of 12 March 1965;

order the defendant to pay all the costs and expenses;

*alternatively:*

allow the applicant to prove to the extent necessary and by any means whatever including the production of other documents that his qualifications are superior to those of Mr Rosario Piraino.' He repeats his conclusions in his reply and adds the following:

'admit also the offer of proof . . . consisting of proving by any means whatever that the work which he has carried out, as evidenced by his immediate

superiors, is in fact of a higher level than that of Grade B5-B4.'

The *defendant* contends in his statement of defence that the Court should: 'declare that the application is inadmissible under all its different heads; alternatively, rule that it is unfounded; reject the applicant's offer of proof, in particular with regard to the production of documents concerning Mr Piraino; dismiss the application; order the applicant to pay the costs with the exception of those incurred by the defendant Parliament, in accordance with the provisions applicable.'

In its rejoinder the defendant maintains these conclusions and contends in addition that the abovementioned offer of proof contained in the applicant's reply should be rejected.

### III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

#### 1. Facts

The *applicant* lists his qualifications:

- not only has he a certificate to show that he has completed his education to secondary level, including a course in accounting, but he has obtained the degree of Doctor of Law (Laureato in Giurisprudenza) at Palermo University with 91 marks out of 100; the subjects for the degree examination included, *inter alia*, administrative law;
- he successfully completed a period of training in an advocate's office from July 1957 to October 1958;
- having enrolled as a student for the year 1962 to 1963 at the Faculty of Political Science at the University of Florence, he passed the examination at the end of the year in 'Political and Economic Geography' with 30 marks out of 30;
- his 'good drafting ability' is evidenced

in particular by his published works, written in Italian and translated into French, the translation also being partly carried out by the applicant and revised by him;

- his six years' employment with the defendant has enabled him to gain considerable practical experience, 'valued highly by his administrative superiors';
  - since 1959 he has worked for the Documentation Division, where his job is principally concerned with keeping publications and the corresponding catalogue up to date, as well as analysing, distributing and classifying them;
  - during 1962 he was asked to undertake an important inventory of publications, outside the normal scope of his duties;
  - his immediate superior has described him as an intelligent and assiduous colleague;
  - from December 1960 he temporarily looked after the periodicals department run by the library; in so doing he gained—according to a testimonial from the Deputy Director of Documentation, dated 22 November 1961—'wide-ranging experience in the field of scientific documentation'; the last words show that in fact the applicant has already undertaken duties of a level even higher to those of career bracket B5-B4;
  - besides Italian, his mother tongue, he has a good knowledge of French.
- The *defendant* does not contest the main import of these claims, but considers that the testimonial of 22 November is not sufficient ground for saying that the applicant has already performed duties of a higher level than those of career bracket B5-B4.

#### 2. Law

A — Admissibility of the application

The *defendant* contends:

- (a) That in so far as the applicant seeks the annulment of the competition his

application is inadmissible. It follows from Article 91 of the Staff Regulations that officials may challenge only individual acts adversely affecting them and not a collection of measures such as a competition.

(b) In so far as the application objects to the assessment made by the Selection Board, it is inadmissible on two grounds:

1. First, it fails to recognize the unfettered discretion enjoyed by the Board; only the procedure which it adopts, not its assessment of candidates, can be challenged. The applicant's claim that Article 91 allows the Court unlimited jurisdiction is mistaken; in fact the provision expressly states that the dispute must concern the legality of an act, and unlimited jurisdiction is conferred only in exceptional cases. Equally wrong is the applicant's reference to the third paragraph and the final paragraph of Article 5 of Annex III to the Staff Regulations, for the procedures laid down by these provisions are covered by Article 6 of that Annex, whereby the proceedings of the Selection Board are to be secret.

2. Secondly, the applicant has no legal interest in his claim, for the assessment made by the Board is not binding on the appointing authority.

(c) As regards the conclusions requesting the annulment of Mr Piraino's appointment, the applicant's arguments reveal that no valid ground for annulment has been raised against this decision. In fact the applicant himself concedes that the alleged illegality of the decision is merely a consequence of the alleged illegality of the competition. The applicant replies:

*To point (a):* The defendant has failed to indicate any adequately defined criteria for drawing the distinction between 'individual measures' and a 'collection of measures'. Moreover it has not specified the provision which makes inadmissible an application directed

against a 'collection of measures'. In any event, the applicant is seeking the annulment not of a collection of measures, but of specific measures which have directly prejudiced him.

*To point (b):*

1. The argument that the Selection Board has 'unfettered' discretion is an attempt to remove an essential matter from the Court's power of review, depriving the unsuccessful candidate of any possibility of appeal, even where the Selection Board has been guilty of a flagrant injustice. Furthermore Article 91 of the Staff Regulations confers on the Court unlimited jurisdiction.

The third and final paragraphs of Article 5 of Annex III to the Staff Regulations state that the Selection Board shall determine 'how candidates' qualifications are to be assessed' and shall forward 'this list [the list of suitable candidates] to the appointing authority, together with a reasoned report'; the Court must be allowed to determine whether or not these provisions have been correctly observed.

2. It is true that the assessment made by the Selection Board does not bind the appointing authority; however it is precisely the appointment made by the latter which forms 'in particular' the subject matter of the application.

*To point (c):*

'Obviously an appointment made on the basis of the results of a competition itself justly challenged cannot be held to be legal', bearing in mind particularly the fact that the appointing authority is under a duty to make a careful examination of comparable files.

B — The substance of the case

(a) *Failure to consider the applicant's qualifications*

The applicant claims that 'a competition on the basis of qualifications amounts to no less than a competition for the highest qualifications, in other words a straight assessment according to quali-

fications'. That being so, 'the candidate offering the highest qualifications must be successful'. In the present case the applicant's qualifications 'are manifestly far superior' to those of Mr Piraino, and they are also better than those required in the notice of competition, the applicant having had a university education. Consequently, the assessment of candidates made by the Selection Board and adopted by the defendant is inequitable; these authorities failed to fulfil their obligation to examine with all due care the qualifications of the various candidates.

The *defendant* replies that 'discussion of the value of the applicant's qualifications is futile' in view of the unfettered discretion exercised by the Selection Board.

(b) *Infringement of the third and sixth paragraphs of Article 5 of Annex III to the Staff Regulations*

At the hearing the *applicant* stated that, as a reading of the report submitted by the Selection Board to the appointing authority reveals, the former neglected both to draw up in advance the criteria on the basis of which it was to assess the candidates' qualifications, and to state the reasons for their report.

He considers this ground admissible in view of the defendant's failure to include the report in the file of the case until after the applicant had submitted his reply.

The *defendant* leaves the question of admissibility of this ground to the wisdom of the Court.

On its substance, it objects:

- that the very detailed report of the Selection Board in the previous competition, No B 10, in which both the applicant and Mr Piraino participated, was in the forefront of the minds of members of the Selection Board for Competition No B 12;
- that the formula set out in the report in the present case and stating that the Selection Board considered the candidates' qualifications also satisfies the preliminary requirement that criteria of assessment be fixed;
- that, succinct though it may be, the report does contain an adequate statement of reasons.

#### IV — Procedure

The procedure followed the normal course.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Second Chamber of the Court requested the defendant to produce, before 5 October 1965, the report of the Selection Board in the competition in question, as well as the applications of Mr Piraino and the applicant, with all the documents annexed thereto.

The defendant complied with this request within the required time, stating that the parties had not included any documents with their applications.

The parties presented oral argument at the hearing on 13 October 1965.

The Advocate-General delivered his opinion at the hearing on 10 November 1965.

## Grounds of judgment

### I — Admissibility

1. The defendant contends that the application is inadmissible, first, because it challenges the assessment made by the Selection Board and, secondly, because it seeks the annulment of the appointment of Mr Piraino. It considers

that the assessment cannot be questioned in court, in particular on the ground that the Selection Board's opinion is not binding on the appointing authority and that the applicant has brought no valid arguments against the appointment, contenting himself with concluding its illegality from that of the procedure followed by the Selection Board.

The proceedings of the Selection Board cannot, in principle, be challenged as such since the Board is not a body empowered to take decisions binding on officials; the proceedings are merely preparatory acts, so that their illegality may only be questioned in an application directed against the decision to which they were a preliminary.

The applicant himself, however, has acknowledged this in his application, since he declares that it is directed 'in particular' against the appointment of Mr Piraino. The application directed against the appointment is therefore admissible and the conclusions seeking the annulment of the assessment need only be considered as arguments against the decision making the appointment.

2. The defendant contends that 'inasmuch as the stated object of the application is the annulment of the competition', the application is inadmissible, as under Article 91 of the Staff Regulations, officials may challenge only specific acts adversely affecting them, not a collection of measures. This objection need not be examined, the Court's view of the application having been explained above.

3. The applicant claims that the Court should order Internal Competition No B 12 to be reheld on the conditions previously laid down and between the same persons who appeared in the list of suitable candidates.

Assessment of the expediency or necessity of organizing a competition lies within the exclusive domain of the appointing authority.

In these circumstances, the Court cannot order a competition to be held or reheld without encroaching upon the prerogatives of the administrative authority.

For this reason, these conclusions are not admissible.

4. The applicant only made his allegation that the procedure followed by the Selection Board infringed the provisions of Article 5 of Annex III to the Staff Regulations at the hearing. The defendant has said that it submits to the wisdom of the Court the question whether the allegation is admissible.

The argument is based on the Selection Board's report, which was only placed on the file by the defendant after the applicant's reply.

In view of this the argument, being based on matters of law and fact which came to light in the course of the written procedure, is admissible according to Article 42 (2) of the Rules of Procedure.

As a result of the above consideration the application is admissible.

## II—The substance of the case

The applicant claims that, contrary to the provisions of the third and sixth paragraphs of Article 5 of Annex III to the Staff Regulations, the Selection Board neglected both to determine the basic criteria according to which it was to assess candidates' qualifications, and to state the reasons for the report submitted by it to the appointing authority.

In respect of the list of suitable candidates included in this report, the Selection Board merely stated that it had been compiled 'after consideration of the qualifications of the candidates relative to the requirements for the post set out in the competition notice . . . in the course of its meeting on 3 March 1965'.

In the circumstances it must be considered that the selection and assessment of the applicants on the list of suitable candidates was not supported by any statement of reasons. More particularly, by failing to set out the criteria according to which it made its assessment of the qualifications, the Selection Board omitted from its report a factor which was essential to support the statements contained therein; it thereby infringed the provisions in the sixth paragraph of Article 5 of Annex III to the Staff Regulations, which must be considered requirements of substance. The criteria of assessment should be fixed in order to ensure that the qualifications are assessed objectively and without any possibility of arbitrariness.

In addition, the requirement that the report be 'reasoned' enables the appointing authority to exercise its discretion with judgment, which means that it needs to be informed of both the general criteria employed by the Selection Board and the manner in which these were applied by the Board to the persons appearing on the list of suitable candidates. These requirements were also imposed in the interests of candidates, so that infringement of them adversely affects the unsuccessful candidates within the meaning of Article 91 of the Staff Regulations.



For the above reasons the applicant's claim should be admitted, without its being necessary to examine the remainder of his arguments.

### III — Costs

Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

As the defendant has failed in its defence, it must be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Staff Regulations of Officials of the EEC and of the EAEC, especially Article 91 and Article 5 of Annex III;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 42 and 69;

### THE COURT (Second Chamber)

hereby:

1. **Annuls the decision of the Secretary-General of the European Parliament dated 10 March 1965 appointing Mr Piraino to the post of administrative assistant (B5-B4);**
2. **Orders the defendant to pay the costs of the action.**

Strauß

Donner

Monaco

Delivered in open court in Luxembourg on 14 December 1965.

A. Van Houtte

Registrar

W. Strauß

President of the Second Chamber