

JUDGMENT OF THE COURT (Fourth Chamber)  
31 March 1992 \*

In Case C-255/90 P,

**Jean-Louis Burban**, represented by Jean-Paul Noesen, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 38 Avenue Victor Hugo,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 20 June 1990 in Case T-133/89 between Jean-Louis Burban and the European Parliament, seeking to have that judgment set aside,

the other party to the proceedings being:

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, assisted by Hugo Vanderberghe, of the Brussels Bar, with an address for service in Luxembourg at the office of its Agent, Manfred Peter,

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris and M. Díez de Velasco, Judges,

Advocate General: C. Gulmann,  
Registrar: D. Louterman-Hubeau, Principal Administrator,

\* Language of the case: French.



having regard to the Report for the Hearing,  
after hearing oral argument from the parties at the hearing on 24 October 1991,  
after hearing the Opinion of the Advocate General at the sitting on 13 December 1991,  
gives the following

### Judgment

- 1 By an application lodged at the Registry of the Court of Justice on 22 August 1990, Mr Burban brought an appeal against the judgment of 20 June 1990 in Case T-133/89 *Burban v Parliament* [1990] ECR II-245, in which the Court of First Instance dismissed his application for the annulment of the decisions of the selection board in Open Competition No PE/44/A not to admit him to the competition.
- 2 It appears from the judgment under appeal that 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 when he submitted his application for the said competition. However, he sent neither his diplomas nor documents supporting his professional experience with his application form, despite the explicit instructions to do so contained in the notice of competition. Accordingly, by a decision of 17 May 1989, confirmed by a second decision dated 3 July 1989, the selection board in that competition refused to allow the applicant to take part in the competition.
- 3 Before the Court of First Instance the applicant claimed that those decisions of the selection board were unlawful because they had been taken *inter alia* in disregard



of the duty to have regard for the interests of officials and the principle of proper administration. In that connection he submitted that pursuant thereto the Parliament's administration was bound to warn him of his error and that the selection board should have allowed him to rectify it for the following reasons: (a) he was misled by the information which had been given to him by the Head of the Parliament's Staff Regulations and Staff Management Service whom he had consulted by telephone; (b) the selection board could not have been unaware that he fulfilled the conditions laid down in the notice of competition because the Head of the Paris Information Service, his superior, was a member of that selection board; and (c) the selection board should have had recourse to the second paragraph of Article 2 of Annex III of the Staff Regulations of Officials of the European Communities (hereinafter referred to as the Staff Regulations) which permitted it to ask candidates to complete their files.

- 4 In support of his appeal, the applicant advances a 'single plea in law' based on the misinterpretation, and thus breach, by the contested judgment, of the concept of the duty to have regard for the interests of officials and the principle of proper administration. In particular, in its finding that the circumstances referred to in paragraph 3 above were not such as to give rise to a duty owed by the selection board to inform the official that his file was incomplete, the Court of First Instance adopted an overly strict interpretation of the duty to have regard for the interests of officials and of the principle of proper administration.
- 5 Formulated in those terms, that plea in law constitutes in fact a plea that the said principles were wrongly applied having regard to the particular circumstances of the case. It must therefore be examined in the light of each of those circumstances.
- 6 Reference is made to the Report for the Hearing for a fuller account of the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.



- 7 In paragraph 27 of the judgment under appeal, the Court of First Instance refers to the case-law of the Court concerning the duty to have regard for the interests of officials and the principle of proper administration. It states in that regard that, as the Court held in its judgments in Joined Cases 33/79 and 75/79 *Kubner v Commission* [1980] ECR 1677, Case 191/81 *Plug v Commission* [1982] ECR 4229, and Case 321/85 *Schwiering v Court of Auditors* [1986] ECR 2199, '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.'
- 8 Subsequently, at paragraphs 29 to 34 of the judgment under appeal, the Court of First Instance points out that the notice of competition mentioned clearly and unequivocally the requirement 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, and stated that, in the case of an open competition based on qualifications and tests, it is for the candidates themselves, not the staff management services or the selection board, to satisfy that requirement.
- 9 The appellant does not dispute that, in accordance with the notice of competition, he was required to attach to his application the necessary supporting documents. He maintains, however, that the administration or the selection board was obliged, because of the particular circumstances of his case, to inform him that his file was incomplete and that in rejecting that argument in the judgment under appeal the Court of First Instance misapplied the duty to have regard for the interests of officials and the principle of proper administration. The scope of the duty to have regard for the interests of officials and the principle of proper administration must therefore be examined in the light of those circumstances.



### **The information supplied by an official of the Parliament**

- 10 The Court of First Instance states, at paragraph 36 of the contested judgment, 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' and that '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'.
- 11 The appellant claims that the duty to have regard for the interests of officials and the principle of proper administration must be applied when the official has been misled by the administration itself.
- 12 That claim by the appellant is not well founded. When clear provisions in a notice of competition lay down the unequivocal requirement that candidates attach to their application form all necessary supporting documents, erroneous information given by an official who has no authority to change those provisions cannot, having regard to the meaning of the duty to have regard for the interests of officials and the principle of proper administration, either enable or *a fortiori* oblige a selection board or the appointing authority to act contrary to that notice of competition.

### **The fact that the appellant's superior was a member of the selection board**

- 13 In its judgment the Court of First Instance held that the selection board did not act in disregard of its duty to have regard for the interests of officials and the principle of proper administration by not asking the appellant to complete his file, *inter alia* because, according to the Court's consistent case-law (see in particular the judgment in Case 225/87 *Belardinelli v Court of Justice* [1989] ECR 2353) a selection board cannot be required to make enquiries itself in order to ensure that candidates satisfy all the conditions laid down in the notice of competition



(paragraph 34 of the judgment under appeal). The Court of First Instance also held the applicant's argument concerning the fact that his superior was a member of the selection board (paragraph 39) to be of no avail.

- 14 According to the appellant, the Court of First Instance was mistaken in its reference to the judgment in *Belardinelli v Court of Justice* in support of its interpretation of the duty to have regard for the interests of officials and the principle of proper administration. It is not possible to draw an analogy with that judgment because in this case the selection board did not have to make any enquiries in order to ensure that the appellant satisfied the conditions laid down since his superior was a member of the selection board.
- 15 It need merely be stated in that regard that the fact that a member of the selection board happened to be the appellant's superior could not entitle the selection board to act contrary to the clear requirements of the notice of competition. Moreover, such an initiative on the part of the selection board would constitute discrimination vis-à-vis the candidates who were in the same position as the appellant but would nevertheless be rejected because no member of the selection board was acquainted with them. Accordingly that plea put forward by the appellant must be dismissed.

### **The second paragraph of Article 2 of Annex III to the Staff Regulations**

- 16 The Court of First Instance points out in the contested judgment (paragraph 35) that the second paragraph of Article 2 of Annex III to the Staff Regulations, according to which candidates 'may be required to furnish additional documents or information' in respect of competitions organized by the institutions 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, and consequently that the applicant could not avail himself of that provision to circumvent a clear, precise and unconditional obligation laid down in the notice of competition.



- 17 Furthermore, in reply to the appellant's argument that recourse to that provision was all the more necessary because the principle of equal treatment could not be applied in the case since the candidates who were already officials and external candidates were in different legal positions, the Court of First Instance held (at paragraph 37) that discrimination in the selection procedure between candidates who were 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.
- 18 Referring to the judgment of the Court in Case 321/85 *Schwiering v Court of Auditors*, cited above, and Case 417/85 *Maurissen v Court of Auditors* [1987] ECR 551, the appellant maintains that the said Article 2 allows a selection board to ask candidates for further information and in the light of the duty to have regard to the interests of officials and the principle of proper administration the selection board was obliged to avail itself of that possibility and draw the appellant's attention to the fact that his file was incomplete.
- 19 Moreover, he regards as mistaken the reasoning of the Court of First Instance relating to the principle of equal treatment, because to have allowed him to take part in the competition would in no way have diminished the chances of an external candidate whose merits were superior to his own.
- 20 It must be held in this respect that the appellant cannot, by relying on the duty to have regard to the interests of officials and the principle of proper administration, transform into an obligation that which the legislature viewed as a mere possibility open to the selection board in a competition. Apart from the fact that they involved internal competitions, the judgments relied upon by the appellant concerned cases in which the selection board had already decided to make use of the possibility offered by the second paragraph of Article 2 of Annex II to the Staff Regulations.



21 It should also be pointed out that it was rightly held in the judgment under appeal that Mr Burban's view was contrary to the principle of the equal treatment of candidates who were already officials and external candidates in the same position as Mr Burban in the course of the same open competition.

22 Consequently the appellant's arguments concerning the second paragraph of Article 2 of Annex III to the Staff Regulations must be dismissed.

#### **The gravity of the mistake committed by the official**

3 The appellant claims, lastly, that the duty to have regard for the interests of officials and the principle of proper administration are applicable in a case where the official has made a harmless mistake, which is the case here. If the conduct of officials was always beyond reproach, the duty to have regard for their interests would have no *raison d'être*.

4 On that point, it is not even necessary to examine whether the appellant's claim that his mistake was excusable is admissible but need merely be stated that the duty to have regard for the interests of officials and the principle of proper administration are not applicable in the case of the mistake he refers to in the circumstances examined above.

5 From the foregoing it is clear that the appeal must be dismissed.



## Costs

- 26 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. In this case the European Parliament requested the Court to make an order as to costs in accordance with the provisions of the Rules of Procedure. That form of order sought cannot be regarded as a request that the appellant should be ordered to pay the costs. The parties must therefore bear their own costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Dismisses the appeal;
2. Orders the parties to bear their own costs.

Kapteyn

Kakouris

Díez de Velasco

Delivered in open court in Luxembourg on 31 March 1992.

J.-G. Giraud

Registrar

P. J. G. Kapteyn

President of the Fourth Chamber