

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
30 September 2003

Case T-214/02

**Marie-Angeles Martínez Valls**

**v**

**European Parliament**

(Community officials – Competition –  
Non-admission to oral tests – Access to documents)

Full text in French . . . . . II - 1117

**Application for:** annulment of the letters of 3 April and 31 May 2002 by which the Selection Board found that the applicant had obtained insufficient marks in the written tests in competition PE/90/A and, with respect to the letter of 31 May 2002, by which the Selection Board rejected the applicant's request seeking access to certain documents and, second, for compensation for the loss suffered as a result of those letters.

**Held:** That there is no need to rule on the application for annulment of the letter of 31 May 2002 in so far as it rejects the request for access to documents. The Parliament is ordered to pay the applicant EUR 1 by way of damages for non-material damage. The remainder of the application is dismissed. The Parliament is ordered to bear its own costs and to pay half of the costs incurred by the applicant. The applicant is ordered to bear one half of her own costs.

### Summary

*1. Procedure – Measures of organisation of procedure – Request for the production of documents – Presumption that a document does not exist based on assertion to that effect by the defending institution – Presumption which may be rebutted*

*2. Officials – Competitions – Competition based on qualifications and tests – Content of the tests – Discretion of the Selection Board – Judicial review – Limits*

*3. Officials – Competitions – Selection Board – Observance of the secrecy of the Board's proceedings – Scope – Criteria for marking – Inclusion (Staff Regulations, Annex III, Art. 6)*

*4. Officials – Actions – Claim for compensation related to a claim for annulment – Inadmissibility of claim for annulment resulting in inadmissibility of claim for compensation (Staff Regulations, Arts 90 and 91)*

*5. Officials – Non-contractual liability of the institutions – Conditions – Unlawfulness – Damage – Causal link*

6. *Officials – Non-contractual liability of the institutions – Unlawful refusal to communicate a document which has constrained the official to bring an action – Communication during the proceedings allowing non-material damage to persist – Award of monetary damages*

1. Where the institution concerned asserts that a particular document to which the applicant seeks access by way of a measure of organisation of the procedure does not exist, there is a presumption that it does not. That, however, is a simple presumption that the applicant may rebut in any way by relevant and consistent evidence.

(see para. 21)

See: T-123/99 *JT's Corporation v Commission* [2000] ECR II-3269, para. 58; T-311/00 *British American Tobacco (Investments) v Commission* [2002] ECR II-2781, para. 35

2. The Selection Board in a competition has a wide discretion with regard to the detailed content of the tests which form part of that competition. It is not for the Community court to criticise that content unless it is not confined within the limits laid down in the competition notice or is not consistent with the purposes of the test or of the competition.

(see para. 35)

See: 64/86, 71/86 to 73/86 and 78/86 *Sergio v Commission* [1988] ECR 1399, para. 22; T-153/95 *Kaps v Court of Justice* [1996] ECR-SC I-A-233 and II-663, para. 37

3. The criteria for marking form an integral part of the comparative assessments which the Selection Board makes of the candidates' respective merits. They are designed to guarantee, in the candidates' own interests, a certain consistency in the Board's assessments. Those criteria are therefore covered by the secrecy of the Board's proceedings.

(see para. 37)

See: C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, para. 29

4. A claim for compensation by officials must be rejected where it is closely related to a claim for annulment which has itself been rejected either as inadmissible or as unfounded.

(see para. 43)

See: T-273/94 *N v Commission* [1997] ECR-SC I-A-97 and II-289, para. 159 and the case-law cited

5. In an application for damages brought by an official, the Community can be held liable only if a number of conditions are satisfied as regards the illegality of the allegedly wrongful act, the actual harm suffered and the existence of a causal link between the act and the damage alleged to have been suffered.

(see para. 65)

See: 111/86 *Delauche v Commission* [1987] ECR 5345, para. 30; T-140/97 *Hautem v EIB* [1999] ECR-SC I-A-171 and II-897, para. 83

6. Where an institution, contrary to its own rules, has not communicated upon request to a candidate who has failed the written tests in a competition his test script together with the corresponding answer key card drawn up by the Selection Board and the marks obtained, thereby committing a wrongful act likely to render it liable, and where, as a result of this lack of due care which constrained him to bring an action in order to gain access to the documents in question, the person concerned has suffered non-material damage which the communication of the documents during the written procedure has not entirely rectified, the institution concerned may be held liable and the person concerned entitled to compensation.

(see paras 66-68)