

2. The Court is bound to inquire of its own motion whether the defendant institution satisfied its obligation to state the reasons on which the contested decision was based.
3. The obligation imposed on selection boards by the sixth paragraph of Article 5 of Annex III to the Staff Regulations to draw up a reasoned report accompanying the list of suitable candidates which is addressed to the appointing authority is designed to enable the appointing authority to exercise its discretion with due judgment and to assess whether the selection board's decisions were free from irregularity or whether, owing to some irregularity committed by the board, it should disregard the results of the competition and recommence the whole procedure. To that end, the report must set out both the general criteria employed by the board and the manner in which they were applied to the candidates.
4. The selection board is required to indicate precisely which conditions in the notice of competition were considered not to have been satisfied by the candidate. However, in view of the practical difficulties posed by a competition in which there is a large number of candidates, the selection board may initially notify candidates merely of the criteria and of the result of the selection process and provide individual explanations at a later stage to those candidates who expressly ask for an explanation.
5. Where the appraisal of a candidate's experience involves an appraisal falling within the specific competence of the members of the selection board, the Court must confine itself to examining whether the exercise of that power was vitiated by a manifest error of judgment.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
13 December 1990 *

In Case T-115/89,

José María González Holguera, an official of the European Parliament, represented by **Blanche Moutrier**, of the Luxembourg Bar, with an address for service in Luxembourg at her Chambers, 16, avenue de la Porte-Neuve,

applicant,

v

* Language of the case: French.

European Parliament, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the selection board for Open Competition No PE/126/LA (Linguistic Adviser in the Spanish Translation Division) not to admit the applicant to the competition,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

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

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 11 October 1990,

gives the following

Judgment

The facts on which the action is based

(omissis)

21 The applicant claims that the Court should:

(1) declare the action admissible and well founded;

(2) annul the decision of the selection board in Open Competition No PE/126/LA for a 'Linguistic Adviser in the Spanish Translation Division' refusing to admit the applicant to the tests;

- (3) declare that the applicant's previous experience in the field of translation and in relation thereto should be taken into account when the decision is taken;
- (4) annul either the tests for the competition or the appointment made on the basis of the competition, as the case may be;
- (5) order the defendant to pay the costs.

22 Parliament contends that the Court should:

- (1) dismiss the application;
- (2) make an order as to costs in accordance with the relevant legal provisions.

Substance

23 In support of his application the applicant put forward four submissions which the Court considers should logically be considered in the following order: first, the selection board did not take account of the fact that he had been admitted to previous competitions, in particular Internal Competition No LA/103; secondly, the statement of the reasons on which the selection board's decision was based was inadequate and incorrect; thirdly, the selection board disregarded his work experience; fourthly, the decision of the selection board discriminated against him as compared with other candidates in the competition.

First submission — admission of the applicant to similar competitions held in the past
(omissis)

29 The Court of Justice has consistently held that, if successive notices of competitions have laid down admission requirements which are formulated in identical

terms, a candidate cannot form the subject of a less favourable appraisal than that made of him in a previous competition, unless the statement of the reasons on which that decision is based clearly justifies such a difference of appraisal (judgments of the Court in Case 112/78 *Kobor v Commission* [1979] ECR 1573, at p. 1578 et seq., and in Case 225/87 *Belardinelli and Others v Court of Justice* [1989] ECR 2353). For this case-law to be applicable, however, the requirements for admission to the previous competition must have been the same as, or more demanding than, the requirements laid down in the case of the competition at issue (see the judgment in Case 108/84 *De Santis v Court of Auditors* [1985] ECR 947, at p. 959). It is therefore necessary to examine whether this is true of the competitions referred to by the applicant.

- 30 As far as Internal Competition No LA/103 (Head of Division), which was organized by the Parliament, is concerned, it was designed to fill a different post from that for which the competition at issue in these proceedings was organized. It appears from the notices for the two competitions that two posts of the same grade were involved but that the duties attaching to those posts were only to some extent comparable. The duties of the Head of Division were mainly to organize and manage the work of the division. The linguistic adviser, on the other hand, merely had 'to assist' the Head of Division in the performance of the management tasks, chiefly, however, in the linguistic field, in particular checking the quality of translated texts, revision and translation of complex texts, vocational training. The adviser's duties therefore lay mainly purely in the linguistic field.
- 31 This difference in the nature of the duties is reflected in the conditions for admission to the two competitions. The condition relating to experience, in particular, was defined in more general terms in the notice of Competition No LA/103 than in the notice of Competition No PE/126/LA. In the case of Competition No LA/103, it was sufficient, in order to be admitted to the written tests, to give evidence of experience in the 'linguistic field or in the field of translation, revision or terminology'. By contrast, as regards the experience required to take part in the open competition for the post of linguistic adviser the notice referred solely to 'translation and revision', that is to say the requirements were cumulative and not alternative. Thus, whereas the experience required for the post of Head of Division could have been acquired in one of the four fields referred to in the relevant notice of competition, or in any combination of those fields, the

requirement in the contested notice of competition for experience in two particular fields shows that the qualifications required in the case of Competition No PE/126/LA had to be more specific than those laid down in the notice for Competition No LA/1030. Consequently, it must be concluded that the conditions for admission to the competition for the post of Head of Division were not the same as or more demanding than those set out in the notice of the competition at issue in this case.

- 32 As regards the other competitions in which the applicant participated, it must be stated in the first place that the two procedures organized by Parliament, namely Selection Procedure No PE/26/LA and Competition No PE/101/LA, were designed to fill posts for principal translators, and were therefore of a level which was appreciably different from the post for which the competition at issue was organized. As for Open Competition No EUR/LA/7, which was organized by the Commission, the applicant has not adduced any evidence from which it might be established whether that competition was similar, as regards both the level of the posts to be filled and the respective admission requirements, to Competition No PE/LA/126. Lastly, Competition No CES/LA/4/89 cannot be taken into account since it was not held until April 1989, that is to say after the decision contested by the applicant.
- 33 Consequently, the applicant has not established that the appraisal made in respect of him when the decision was taken not to admit him to the competition in question was incompatible with the appraisal made when he was admitted to previous competitions. Consequently, the first submission put forward by the applicant is unfounded.

Second submission — inadequacy of the statement of the reasons on which the contested decision was based

(*omissis*)

- 37 The Court observes *in limine* that under Article 42(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to proceedings before the Court of First Instance, no fresh issue may be raised in the course of the proceedings unless it is based on matters of law or of fact which come to light in the course of the written procedure. However, the Court is bound to inquire of its own motion whether Parliament satisfied its obligation to state the reasons on which its decision was based (see the judgments of the Court of Justice in Case

18/57 *Nold v High Authority* [1959] ECR 41, at p. 52, and in Case 185/85 *Usinor v Commission* [1986] ECR 2079, at p. 2098, and the judgment of the Court of First Instance in Case T-37/89 *Hanning v European Parliament* [1990] ECR II-463).

- 38 Since in considering the first submission the Court has established that there were differences between the competitions in which the applicant had participated in the past and the competition at issue in these proceedings, it follows that the fact that the applicant was admitted to those previous competitions has no bearing in this case on the scope of the obligation to give reasons for rejecting his application (see the judgments in *Kobor*, *De Santis* and *Balardinelli*, cited above).
- 39 As regards the first limb of the submission, namely the alleged failure by the selection board to satisfy the obligation laid down in the sixth paragraph of Article 5 of Annex III to the Staff Regulations to state the reasons on which its report was based, it should be stressed that this submission is not concerned with giving reasons for the selection board's decision *vis-à-vis* the candidates but only *vis-à-vis* the appointing authority (see the judgment in Joined Cases 361/87 and 362/87 *Caturla-Poch and de la Fuente Pascual v Parliament* [1989] ECR 2471). As the Court of Justice held in that judgment, the requirement that the report be reasoned — as regards the assessment of the candidates appearing on the list of suitable candidates — is intended to enable the appointing authority to exercise its discretion with due judgment. For that purpose, the appointing authority must be informed of both the general criteria employed by the selection board and the manner in which they were applied by the board to the candidates. The Court held that it was sufficient for these purposes for the selection board's report to indicate the points obtained by the candidates for each of the assessment criteria.
- 40 Where, as in this case, certain candidates are refused admission to a competition, the requirement that the report should be reasoned is designed to put the appointing authority in a position to assess whether the decisions of the selection board were free from illegality or whether, owing to some irregularity committed by the selection board, it should disregard the results of the competition and recommence the whole procedure (see the judgments of the Court of Justice in Case 321/85 *Schwiering v Court of Auditors* [1986] ECR 3199, and in Joined Cases 322/85 and 323/85 *Hoyer v Court of Auditors* [1986] ECR 3215). To that end, the appointing authority must also be informed of the general criteria employed by the selection board with regard to the conditions for admission and the manner in which those criteria were applied by the board to the candidates.

- 41 In this case, the report indicated the number of years' experience required by the selection board and specified that supporting documents had to be provided. The appointing authority was therefore in a position to check whether the criteria adopted by the selection board complied with the notice of competition. The selection board then annexed to its report the list of candidates who had not been admitted to the competition with an indication in the form of a code number of the condition for admission which had not been satisfied. Although it is true that the report did not contain an express appraisal of the documents produced by the individual candidates, the information supplied by the selection board was nevertheless sufficient to enable the appointing authority to verify, in the event of a dispute, whether the selection board's decisions to admit or refuse to admit candidates to the competition had been vitiated by any irregularity. Consequently the selection board's report satisfies the requirement laid down in the sixth paragraph of Article 5 of Annex III to the Staff Regulations to the effect that the report should be reasoned.
- 42 As regards the second limb of the submission based on the obligation laid down in Article 25(2) of the Staff Regulations that any decision adversely affecting an official must state the reasons on which it is based, the Court of Justice has consistently held that this obligation is intended both to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision is well founded and to enable the Court to review the decision (see for example the judgments of the Court in Case 69/83 *Lux v Court of Auditors* [1984] ECR 2447, at p. 2467, and in Case 108/88 *Jaenicke Cendoya v Commission* [1989] ECR 2711, paragraph 10, and the judgment of the Court of First Instance in Case T-37/89 *Hanning v European Parliament*, cited above, paragraph 39).
- 43 As regards in particular decisions refusing a candidate admission to a competition, the Court of Justice has made it clear that the selection board is required for this purpose to indicate precisely which conditions in the notice of competition were considered not to have been satisfied by the candidate (see, for example, the judgments in Joined Cases 4/78, 19/78 and 29/78 *Salerno and Others v Commission* [1978] ECR 2403, at p. 2416, and in Case 108/84 *De Santis v Court of Auditors*, cited above, at p. 958). In this regard it should, however, be noted that the selection board in a competition in which there is a large number of applicants may initially notify candidates merely of the criteria and of the result of the selection process and provide additional individual explanations at a later stage to those candidates who expressly ask for an explanation (see most recently the judgment in Case 225/87 *Belardinelli*, cited above). The selection board therefore could not be criticized because it informed the applicant of the decision not to admit him to the competition by means of the standard letter dated 21 November 1988, which indicated in sufficient detail the conditions in the notice of competition which, according to the selection board, were not satisfied.

- 44 For its part, the letter which the Chairman of the selection board sent to the applicant on 19 December 1988 in reply to his request that his candidature should be reconsidered specified the period fixed by the selection board during which candidates had to have been regularly engaged in translation and revision as their main activity in order to determine whether the candidates' experience satisfied the conditions laid down in the notice of competition. The letter also stated that the selection board had been unable, on the basis of the supporting documents enclosed by the applicant with his application form, to conclude that he satisfied the criteria laid down. Those details enabled the applicant to check the documents which he had provided against the criteria laid down by the selection board. He could infer from them the reasons why the selection board had considered this documentary evidence to be inadequate and to assess whether or not his exclusion from the competition was well founded. Furthermore, it is clear from the arguments put forward by the applicant in these proceedings that he was apprised of all the factors necessary for him effectively to defend his rights.
- 45 On these grounds, it must be held that the decision refusing to admit the applicant to the competition in question is not vitiated by a failure to state the reasons on which it was based and that the second submission must be rejected.

Third submission — the selection board's assessment of the applicant's experience

(*omissis*)

- 52 The Court considers that it should examine whether by excluding the applicant the selection board exceeded the limits of the authority conferred upon it by the notice of Competition No PE/126/LA or committed a manifest error in judgment in assessing the applicant's individual qualifications (see the judgments of the Court in Case 34/80 *Authié v Commission* [1981] ECR 665, at p. 677 and in Case 417/85 *Maurissen v Court of Auditors* [1987] ECR 551, at p. 563).
- 53 In this regard it should be noted that it was for the selection board to lay down, consistent with the notice of competition, criteria for assessing the admissibility of candidates (judgment in Case 34/80 *Authié*, cited above, at p. 678). In this case, the criteria laid down by the selection board are consistent with the notice of

competition. Moreover, the applicant has not contested the selection board's decision to require, as a condition of admission, three years' experience of translation and two years' additional experience of revision, that is to say, a minimum of five years' experience of translation and revision.

- 54 As regards the appraisal of the applicant's experience, it should be noted that this involves an assessment falling within the selection board's linguistic abilities, which were necessary in order to determine whether the duties previously carried out by the applicant satisfied the criteria in question. In reviewing the legality of such an assessment, which essentially falls within the wide discretion enjoyed by the selection board in this sphere, it is not for the Court to take the place of the selection board. The Court must confine itself to examining whether the selection board's decision was vitiated by a manifest error of judgment (see the judgment in *Maurissen*, cited above).
- 55 As at 1 November 1988, the reference date adopted by the selection board, the applicant had had two years and almost 10 months' experience of revision and translation at the Parliament. That experience alone was not enough to satisfy the criteria laid down by the selection board, which required experience totalling five years in those fields. Nevertheless, since the applicant's work at the Parliament could have been regarded as constituting more than two years' experience in the field of revision, it is necessary to consider whether the selection board was guilty of a manifest error by failing to take into account the applicant's previous work experience as experience of translation.
- 56 In that regard, the applicant claims mainly that the three years and one month which he spent as a lecturer at Rouen University should be regarded as experience of translation. As far as the duties carried out by the applicant during that period are concerned, it appears from a certificate issued to the applicant by the Director of the Spanish faculty of that university on 23 October 1985 that 'in view of his abilities as a translator, he was entrusted with courses of the highest level, in particular to prepare for the State examination for teachers'. That document also certifies that the applicant was involved in the cinema club and the theatre group of that faculty and carried out research, in particular publishing an article on Miguel de Unamuno. The applicant's duties consisted of the teaching of translation into Spanish, other activities connected with the teaching of the Spanish

language and culture, and research in this field. The other supporting documents produced by the applicant concerning his work as a lecturer relate only its duration and do not specify the duties which he performed.

57 In the context of the review which the Court is required to make of the selection board's appraisal of these documents, it should be noted that the documents available to the selection board concerning the applicant's activity at Rouen University clearly related — according to their very wording — to experience as a university lecturer and not to translation performed on a regular basis as the applicant's main activity. Moreover, it is clear from those documents that the range of duties carried out by the applicant was both broader and less specific than the experience of translation and revision required by the notice of competition. Furthermore, the applicant's individual file, which the selection board consulted, does not contain any document capable of resulting in a different appraisal. As a result, it must be held that the selection board did not commit any manifest error of judgment in the first stage of the open competition at issue in finding that the experience acquired by the applicant at Rouen University did not constitute experience of translation carried out on a regular basis as the applicant's main activity.

58 As regards the applicant's previous posts in a number of universities in the United Kingdom and Ireland, it is clear from the relevant documents in his personal file that the duties which they involved consisted above all of teaching Spanish. Lastly, it does not appear from references made in his file to books translated by the applicant that translation was his main activity carried out on a regular basis. It follows that the selection board did not commit a manifest error of judgment in this regard either.

59 Consequently, the selection board's judgment that the applicant's experience did not satisfy the conditions laid down in the notice of competition cannot be regarded as being vitiated by a manifest error. It follows that the third submission is unfounded.

The last submission

60 The applicant also alleges that the selection board discriminated against him as compared with other candidates in the competition. However, it should be pointed

out that no evidence for assessing whether this submission is well founded has been put forward, either in the course of the written procedure or at the hearing. Therefore this submission must be rejected (see the judgment of the Court in Case 198/87 *Kerzmann v Court of Auditors* [1989] ECR 2083).

It follows from the whole of the foregoing considerations that the application must be dismissed.

Costs

(omissis)

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

- (1) Dismisses the application;**
- (2) Orders the parties to bear their own costs, including the costs relating to the application for interim measures.**

Briët

Kirschner

Biancarelli

Delivered in open court in Luxembourg on 13 December 1990.

H. Jung

Registrar

C. P. Briët

President