

That requirement to state reasons is complied with if in the letter sent to a candidate not admitted to the tests the Selection Board, after reconsidering the application at the candidate's request, states that the practical experience required by the notice of competition has not been demonstrated in full by the closing date for applications laid down in that notice.

2. Although the Selection Board for a competition based on qualifications and tests has a discretion in evaluating the qualifications and practical experience of the candidates, it is nevertheless bound by the wording of the notice of competition. The basic function of that notice is to give those interested the most accurate information possible about the conditions of eligibility for the post to be filled, in order

to enable them to judge whether they should apply for it and what supporting documents are important for the proceedings of the Selection Board and must therefore be enclosed with the application.

The Selection Board is obliged to take into account only the supporting documents which the candidates must submit before the closing date for applications laid down in the notice of competition. It is under no obligation whatever to check through all the applications to ascertain whether all the documents required have been forwarded and to ask candidates, if necessary, to produce additional documents; nor is it obliged to take into consideration documents produced after the closing date.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
21 May 1992 \*

In Case T-54/91,

**Nicole Almeida Antunes**, residing in Kayl (Luxembourg), represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

\* Language of the case: French.

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and initially by Roland Bieber and subsequently by François Vainker, of its Legal Service, 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 PE/107/C not to admit the applicant to the tests in that competition,

THE COURT OF FIRST INSTANCE  
(Fourth Chamber),

composed of: R. García-Valdecasas, President of the Chamber, R. Schintgen and C. P. Briët, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 17 March 1992,

gives the following

**Judgment**

**The facts**

1 On 7 June 1990 the applicant, Nicole Almeida Antunes, entered Open Competition PE/107/C, organized by the European Parliament for drawing up a reserve list for the recruitment of French-language typists in career bracket C 5/4.

- 2 The notice of competition, published in Official Journal 1990 C 118 of 12 May 1990 (French edition), p. 28, laid down the following conditions for admission to the tests:

‘III. *Competition — Nature and eligibility*

...

A. General conditions

...

B. Special conditions

1. Certificates and diplomas and/or practical experience required

- (a) Proof of completion of secondary school studies (lower secondary, commercial, technical or vocational) leading to a diploma, or possession of equivalent practical experience;

...

- (b) At least two years’ practical experience relevant to the “Nature of duties” specified under heading I, acquired after the qualifications required in (a) above.

Attendance of specialized or further training courses relevant to the duties specified under heading I, if duly attested by certificates or diplomas, will be taken into consideration as practical experience.’

3 According to heading I of the notice of competition, the duties in question consisted of routine office work, including in particular typing.

4 Heading V of the notice of competition, entitled 'Reconsideration of applications', reads as follows:

'Any candidate who feels that a mistake has been made has the right to ask for his/her application to be reconsidered. Within 20 days of the date postmarked on the letter stating that he/she has not been admitted to the competition, the candidate may complain to the recruitment unit, European Parliament, BAK 222, L-2929 Luxembourg, quoting the number of the competition in the letter and on the envelope.

The Selection Board will then reconsider the application, having regard to the candidate's observations, within 30 days of the date postmarked on the letter requesting reconsideration.'

5 Heading VIII of the notice of competition, published in the Official Journal of 12 May 1990, stated that applications, accompanied by supporting documents, were to be submitted not later than 25 June 1989. The Court of First Instance, which notes that this should in fact read '25 June 1990', considers that to be a material error which is of no consequence, especially as none of the parties has referred to it.

6 The applicant holds a certificate of lower secondary education, which is the Belgian equivalent of secondary school education, in addition to a certificate of completion of the sixth year of secondary education and a certificate of higher secondary education, which indicate that she pursued technical studies in the 'OG Secretariat 20 h' subdivision of the 'Qualification' section, and a certificate attesting to her suitability to go on to higher education. The last three certificates were issued on 30 June 1987 by the Institut Marie José, Liège.

- 7 In a standard letter of 4 March 1991 the Chairman of the Selection Board for the competition informed the applicant that she had not been admitted to the tests on the following grounds (paragraph 7 of the letter of 4 March 1991):

‘Lack of at least two years’ practical experience (paragraph III. B.1 of the notice of competition)’.

- 8 In a letter of 18 March 1991 the applicant asked for her application to be reconsidered. She also gave details of the various posts in which she had previously been employed, namely from 1 October 1987 to 31 October 1988 with a company based at Soumagne (Belgium); from 22 August 1988 to 12 November 1989 with a notary in Liège; from 28 November 1989 to 31 October 1990 with the Commission of the European Communities, as the employee of a temporary employment agency in Luxembourg; and from 1 November 1990 with the Commission, as a member of the auxiliary staff. She specified *inter alia* the various duties she had performed for her various employers.
- 9 In a letter of 5 April 1991 the Chairman of the Selection Board acknowledged receipt of the letter of complaint of 18 March 1991 and notified the applicant as follows: ‘At the meeting on 27 March 1991 the Selection Board reconsidered your file and took account of your observations. I regret to inform you that there are no grounds for the board to reverse its original decision, since the requirement of practical experience had not been satisfied in full by the closing date for applications’.
- 10 In a letter of 10 April 1991 the applicant requested the Selection Board to reconsider her application once more, again laying emphasis on the practical experience she had acquired between 1 October 1987 and 31 October 1988 and between 22 August 1988 and 12 November 1989, a total of 28 months, and on the fact that she had a certificate of completion of the sixth year of secondary education confirming that she had followed a technical course.

- 11 The applicant maintains that her request evoked no response. The defendant, on the other hand, states that in a letter of 22 May 1991 the Chairman of the Selection Board confirmed the board's decision not to admit the applicant to the tests in the competition. The Parliament has supplied a copy of a letter dated 22 May 1991, in which the Chairman of the Selection Board informed the applicant that 'each application was carefully examined on the basis of the provisions of the notice of competition' and also 'reminded' her that her letter did not constitute a complaint.

### Procedure

- 12 In those circumstances the applicant brought the present action by application lodged at the Registry of the Court of First Instance on 4 July 1991.

- 13 After the defence had been filed, the applicant decided not to submit a reply. The defendant similarly waived its right to submit a rejoinder.

- 14 On hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. However, by a letter of the Registrar of 20 January 1992, the Court called on the defendant to show proof that the letter of 22 May 1991 had been notified to the applicant. It also requested both parties to specify the date on which the applicant had submitted the various documents in support of her application.

- 15 The hearing took place on 17 March 1992. The representatives of the parties presented oral argument and answered the questions put to them by the Court of First Instance.

- 16 In the light of the explanations given by the parties, it transpired that the letter of 22 May 1991 was sent by the Parliament but was not received by the applicant, probably because she had left her previous abode in late April or early May of 1991 and had had problems receiving her mail following this change of address.
- 17 It was established at the hearing, with respect to the supporting evidence for the applicant's practical experience in the strict sense, that she had merely forwarded to the Selection Board together with her application, and hence before the closing date for the production of supporting documents, a certificate of employment relating to the part-time work she had carried out for a firm in Soumagne from 1 October 1987 to 31 October 1988, and a certificate relating to her full-time employment with a notary in Liège from 22 August 1988 to 12 November 1989. Only with her complaint of 18 March 1991 did the applicant submit the employment certificate issued on 18 October 1990 relating to her work from 28 November 1989 to 31 October 1990 as an employee of a temporary employment agency in Luxembourg.
- 18 Moreover, the parties stated at the hearing that they were in agreement on the fact that the applicant had submitted together with her application three 'provisional documents' certifying that on 30 June 1987 she had obtained a 'certificate of completion of the sixth year of technical studies — Economics', a certificate of higher secondary education and a certificate attesting to her suitability to go on to higher education. The parties disagree, on the other hand, on the date when the definitive certificates themselves, mentioned in paragraph 6 above, were submitted: the applicant maintains that she forwarded them together with her application, while the defendant maintains that it received them only with the letter of 18 March 1991 in which the applicant requested her application to be reconsidered.

19 The applicant claims that the Court of First Instance should:

- (i) annul the decision of 5 April 1991 of the Selection Board for Open Competition PE/107/C not to admit her to the tests in that competition;
- (ii) order the defendant to pay the costs.

20 The defendant contends that the Court of First Instance should:

- (i) dismiss the application as unfounded;
- (ii) award costs in accordance with the applicable provisions.

### Substance

21 The applicant stated on several occasions during the written procedure and the oral procedure that she was relying on a single plea in law in support of her application, namely the failure to state the reasons on which the contested decision is based. However, in the context of this plea and after setting forth her arguments, she maintained that the decision was also vitiated by a manifest error of appraisal and was adopted in breach of the conditions laid down by the notice of competition. The Court of First Instance therefore considers that the application has to be examined from this point of view as well.

#### *The plea alleging infringement of the obligation to state reasons*

22 In support of her application the applicant alleges an infringement of the second paragraph of Article 25 of the Staff Regulations of Officials of the European Communities, which states that 'any decision relating to a specific individual which is

taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based'.

- 23 Relying on the case-law of the Court of Justice and the Court of First Instance on the duty to state reasons (judgment of the Court of Justice in Case 195/80 *Michel v Parliament* [1981] ECR 2861; Opinion of Mrs Advocate General Rozès in Joined Cases 316/82 and 40/83 *Kohler v Court of Auditors* [1984] ECR 641, at p. 667; judgment of the Court of First Instance in Case T-1/90 *Perez-Minguez Casariego v Commission* [1991] ECR II-143, paragraph 73), the applicant considers that in the present case it is appropriate to examine first whether the grounds stated for the contested decision contain sufficient details to allow her to ascertain whether the decision is well founded or whether it is vitiated by an error enabling its legality to be contested, and second whether the grounds stated for the decision enable this Court to review its legality.
- 24 The applicant claims that she sent to the Selection Board together with her application copies of all the certificates issued to her by the Institut Marie José in Liège and copies of the employment certificates relating to the posts she had held from 1 October 1987 to 31 October 1988 and from 22 August 1988 to 12 November 1989. In her view those documents show, first, with respect to the education requirement, that she had completed her secondary education leading to a diploma, and second, with respect to the requirement of practical experience, that the Selection Board should have taken into consideration both the practical experience duly attested by the employment certificates and the three years of additional secretarial training completed by her and evidenced by the certificate of higher secondary education, such training being relevant to the duties described in the notice of competition. The applicant adds that, even on the assumption that the definitive certificates had not been submitted within the time-limit laid down in the notice of competition, her qualifications were sufficiently apparent from the provisional documents alone.
- 25 In the applicant's view, the grounds stated for the contested decision do not explain in what respect the requirement of practical experience in the notice of competition had not been satisfied in full on the date of the submission of her application, nor why her additional training had not been taken into account.

- 26 At the hearing the applicant also laid emphasis on the fact that the Selection Board for the competition had been mistaken in considering that her part-time employment with the firm in Soumagne had been half-time work, when in fact it had been three-quarters-time work. If that period of employment had been calculated correctly, the Selection Board would have had to conclude that the applicant possessed a total of 24 months' practical experience, in other words the two years required in the notice of competition, simply because of her two jobs with the firm in Soumagne (three-quarters of 13 months) and the notary in Liège (15 months).
- 27 The applicant states, in conclusion, that the contested decision is vitiated by the absence or at least the inadequacy of the statement of reasons and by a manifest error of appraisal, and was adopted in breach of the conditions laid down by the notice of competition.
- 28 The defendant refers at the outset to the case-law of the Court of Justice on the purpose and extent of the obligation to state reasons which is incumbent on the Selection Board for a competition (judgments in Joined Cases 64, 71 to 73 and 78/86 *Sergio v Commission* [1988] ECR 1399, paragraph 48; Case 225/82 *Verzyck v Commission* [1983] ECR 1991; and Case 195/80 *Michel v Parliament*, cited above).
- 29 It adds that in several judgments the Court of Justice has accepted that the Selection Board for a competition with a large number of candidates may proceed in two stages in carrying out its obligation to give reasons (judgments in Case 225/87 *Belardinelli and Others v Court of Justice* [1989] ECR 2353; Joined Cases 100/87, 146/87 and 153/87 *Basch and Others v Commission* [1989] ECR 447; and Case 206/85 *Beiten v Commission* [1987] ECR 5301; see also the *Michel v Parliament*, *Verzyck v Commission* and *Sergio v Commission* judgments, cited above).

30 Moreover, following the applicant's complaint of 18 March 1991, the Chairman of the Selection Board gave individual details in his reply of 5 April 1991, stating that the requirement of practical experience had not been satisfied in full by the closing date for applications. If that statement is read in conjunction with the letter of 4 March 1991, it is clear that in the Selection Board's opinion the candidate did not have the two years' practical experience required.

31 As to the method of calculating the length of the applicant's practical experience, the defendant states that it took into consideration only the school and employment certificates submitted before the closing date for applications. The 'provisional documents' stating that the applicant had obtained the diploma and certificates she now relies on did not give sufficient information on the subject-matter of the applicant's studies. It was not until she produced the definitive diploma and certificates relating to her studies that further details as to the subject-matter of those studies were provided. Consequently, it was not until then that the Selection Board learnt that the applicant's certificate of higher secondary education mentioned 'secretarial studies' and that her certificate of completion of the sixth year of secondary education specified that that course had lasted for an entire school year. The Selection Board was therefore right to refuse to take the additional training into consideration. Moreover, with reference to practical experience as such, the defendant explains that although the periods of employment stated as having been spent with the first and second employers coincided for a period of more than two months, from 22 August 1988 to 31 October 1988, the Selection Board nevertheless accepted 21.5 months' practical experience, consisting of 13 months' half-time work, that is 6.5 months, and 15 months' full-time work.

32 This Court notes that, according to the settled case-law (see the judgment in Case T-115/89 *González Holguera v Parliament* [1990] ECR II-831, paragraphs 42-45), the obligation to state the reasons for any individual decision taken under the Staff Regulations 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. With respect more specifically to decisions refusing to admit a candidate 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 are considered not to have been satisfied by the candidate (see, for example, the judgments in Joined Cases 4, 19 and

29/78 *Salerno and Others v Commission* [1978] ECR 2403 and in Case 108/84 *De Santis v Court of Auditors* [1985] ECR 947).

33 It should also be noted that in the case of a competition with a large number of applicants, the settled case-law authorizes the Selection Board initially to give only summary reasons for the refusal and to notify candidates merely of the criteria and of the outcome of the selection process (see *Belardinelli and Others*, cited above).

34 This Court considers that, in view of the fact that this was a competition with a large number of applicants, the decision of 4 March 1991 referring to the applicant's 'lack of at least two years' practical experience (point III. B.1 of the notice of competition)' fulfilled the obligation to state reasons, laid down in Article 25 of the Staff Regulations.

35 However, that case-law also states that the Selection Board is obliged to give individual explanations at a later stage to those candidates who expressly request them. In this case, the Court considers that the reasons stated in the decision of 5 April 1991 ('the requirement of practical experience had not been satisfied in full by the closing date for applications'), which was adopted following the request for reconsideration, read in conjunction with the original letter of 4 March 1991, provided the applicant with sufficient information as to the grounds for the refusal to admit her to the competition. She was clearly informed that at the closing date for applications she had not produced sufficient documentation showing that she had two years' practical experience. This Court considers that that information was sufficient to enable the applicant to determine whether or not the decision was justified and to decide whether it was appropriate to bring proceedings, and also to enable the Court to exercise its power of judicial review.

36 While it is true that in its defence the defendant has provided further details as to the manner in which the length of the applicant's practical experience was calculated and the documents annexed to the application, it does not necessarily follow

that the information previously given was inadequate. Moreover, the Selection Board for a competition with over 2 000 applicants cannot be required to contact each candidate individually to check whether all the documents which the candidate could have produced, or which are referred to in the candidate's application, have in fact been submitted. Similarly, it is not for a Selection Board faced with incomplete or ambiguous documents — as in the present case the certificate of part-time employment with no indication of the duration of the work — to contact the candidate for the purpose of clarifying the omissions or ambiguities.

- 37 It follows from those considerations that the plea alleging failure to state reasons, or to state adequate reasons, must be rejected.

*The plea alleging a manifest error of appraisal and breach of the conditions laid down in the notice of competition*

- 38 In support of this plea, the applicant adduces the same arguments as those in support of the first plea. The defendant likewise refers to the arguments put forward on the first plea.

- 39 The Court considers, with reference to this plea, that it is necessary to verify whether the Selection Board acted in breach of the conditions for admission to the tests prescribed in the notice of competition. It should be borne in mind in this respect that, notwithstanding its discretionary power, the Selection Board is bound by the wording of the notice of competition as published. The basic function of a notice of competition, according to the Staff Regulations, is to give those interested the most accurate information possible about the conditions of eligibility for the post, in order to enable them to judge, first, whether they should apply for it and, second, what supporting documents are important for the proceedings of the Selection Board and must therefore be enclosed with the application (judgment of the Court of First Instance in Case T-158/89 *Van Hecken v Economic and Social Committee* [1991] ECR II-1341, paragraph 23).

- 40 . It is important to note at once that, in order to appraise the applicant's practical experience, as required by point III. B.1. b of the notice of competition, the Selection Board was obliged to take into account only the documents which the candidates were required to submit before the closing date for applications. It was under no obligation whatever to check through all the applications to ascertain whether all the documents required had been forwarded and to ask candidates, if necessary, to produce additional documents; nor was it obliged to take into consideration documents produced after the closing date.
- 41 In this case the Court finds that the parties are agreed that the employment certificates and 'provisional documents' referred to in paragraphs 17 and 18 above were submitted by the applicant before the closing date.
- 42 The applicant also concedes that the employment certificate relating to her work for a temporary employment agency during the period from 28 November 1989 to 31 October 1990, issued on 18 October 1990, was submitted after the closing date. In accordance with the foregoing considerations regarding the obligations of the Selection Board with respect to consideration of the documents submitted by candidates, the Selection Board for the competition in question was not, therefore, under any obligation to take account of the abovementioned period of employment.
- 43 The parties are not in agreement, however, as to whether the three certificates, duly authenticated, issued by the Institut Marie José of Liège on 30 June 1987 were submitted together with the application.
- 44 It is for the applicant to prove that she fulfilled her obligation to produce the said documents within the period specified under heading VIII of the notice of competition.
- 45 This Court finds that in the present case there is no evidence in the documents before it to support the applicant's contentions in that respect. The conclusion must

therefore be drawn that the Selection Board for the competition did not have to take into consideration the additional information contained in the certificates in question.

- 46 As to the 'provisional documents', this Court finds that they merely attest that on 30 June 1987 the applicant obtained the diplomas and certificates in question, without giving details of the studies pursued by the applicant or the length of those studies. The fact that the stamp of the Institut Marie José at the foot of the page includes *inter alia* the words 'Secretarial work — Book-keeping — Office work' does not in itself constitute proof that the applicant had attended secretarial courses.
- 47 It follows from these considerations that at the time of the closing date for the production of documents the applicant had not furnished proof of the additional training to which she refers.
- 48 It follows that the only documents which the Selection Board was obliged to take into consideration when appraising the applicant's practical experience were the employment certificates relating to her work for the Soumagne company and the Liège notary.
- 49 With respect to the first employment certificate, attesting that the applicant had been employed on a part-time basis from 1 October 1987 to 31 October 1988, this Court finds that it contains no details enabling the precise duration of the work done by the applicant each day, week or month to be determined. Moreover, the assertion at the hearing that such employment had been three-quarters-time also remains unproven. It should be noted that in her application the applicant did not even state that it was part-time employment. The Court therefore considers that in the absence of other information, the Selection Board was entitled to treat the work referred to in the certificate as half-time work and that there was no manifest error on its part. The period of 13 months' employment stated in the certificate was

therefore rightly taken into account by the Selection Board, in determining the length of the applicant's practical experience, as a period of six-and-a-half months' full-time employment.

50 It follows from the foregoing that on the closing date for applications the applicant had furnished proof of six-and-a-half months' practical experience with the Soumagne company and 15 months' practical experience with the Liège notary, making a total of 21.5 months, leaving out of account the fact that the two periods overlapped from 22 August 1988 to 31 October 1988. Accordingly, since the notice of competition required candidates to have at least two years' practical experience, the Selection Board for the competition rejected the applicant's candidature without committing an error of appraisal or infringing the terms of the notice of competition.

51 In the light of all the above considerations, the second plea must also be rejected.

### Costs

52 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, Article 88 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 (Fourth Chamber)

hereby:

**1. Dismisses the application;**

**2. Orders the parties to bear their own costs.**

García-Valdecasas

Schintgen

Briët

Delivered in open court in Luxembourg on 21 May 1992.

H. Jung

R. García-Valdecasas

Registrar

President