

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
9 September 2003

Case T-293/02

Éric Vranckx
v
Commission of the European Communities

(Open competition – Failure to award the minimum number of points required
for the oral test – Omission from the reserve list –
Reasons – Consistency between the complaint and the application –
Application unfounded in part and inadmissible in part)

Full text in French II - 947

Application for: annulment of the decision of the selection board in competition COM/B/1/00 awarding the applicant a mark lower than the minimum required for the oral test and not entering him on the reserve list.

Held: The application is dismissed. The parties are ordered to bear their own costs.

Summary

1. Officials – Competitions – Selection board – Rejection of candidature – Obligation to state reasons – Scope – Observance of the secrecy of the board's proceedings

(Staff Regulations, Art. 25; Annex III, Art. 6)

2. Officials – Actions – Prior administrative complaint – Requirement that subject-matter and grounds be the same – Pleas and arguments not appearing in the complaint but closely linked to it – Admissibility

(Staff Regulations, Arts 90 and 91)

3. Officials – Actions – Prior administrative complaint – Requirement that subject-matter and grounds be the same – Matter not appearing in the complaint but considered in detail in the decision rejecting the complaint – Admissibility of the arguments put forward in reply in the action

(Staff Regulations, Arts 90 and 91)

4. Officials – Competitions – Assessment of the abilities of candidates – Assessment bound to be comparative

(Staff Regulations, Annex III, Art. 5)

5. Officials – Competitions – Selection board – Drawing up the list of suitable candidates – Inclusion of candidates who have not obtained the minimum marks specified in the notice of competition – Not permissible

(Staff Regulations, Art. 27; Annex III, Art. 5, fifth subpara.)

1. The requirement that a decision adversely affecting a person should state the reasons on which it is based is intended to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision is well founded and make it possible for the decision to be the subject of judicial review.

As far as concerns decisions taken by a selection board in a competition, the obligation to state reasons must be reconciled with observance of the secrecy surrounding the proceedings of selection boards by virtue of Article 6 of Annex III to the Staff Regulations. That secrecy was introduced with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings, by protecting them from all external interference and pressures, whether these come from the Community administration itself or the candidates concerned or third parties. Observance of this secrecy therefore precludes both disclosure of the attitudes adopted by individual members of selection boards and disclosure of any factors relating to individual or comparative assessments of candidates.

When the abilities of candidates are assessed, the selection board's proceedings are primarily comparative in character and are accordingly covered by the secrecy inherent in those proceedings. Therefore, having regard to the secrecy which must surround the proceedings of a selection board, communication of the marks obtained in the various tests constitutes an adequate statement of the reasons on which the board's decisions are based. Such a statement of reasons is not prejudicial to the rights of the unsuccessful candidates and enables the Court of First Instance to carry out a judicial review appropriate for that type of dispute.

(see paras 25-28)

See: 89/79 *Bonu v Council* [1980] ECR 553, para. 5; 195/80 *Michel v Parliament* [1981] ECR 2861, para. 22; C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, paras 23, 24, 28 and the case-law cited, and 32; T-167/99 and T-174/99 *Giulietti and Others v Commission* [2001] ECR-SC I-A-93 and II-441, para. 81

2. In actions brought by officials, the claims put before the Community judicature may only have the same subject-matter as those made in the complaint and may not contain heads of claim based on matters other than those relied on in the complaint. The submissions and arguments made to the Court in support of those heads of claim need not necessarily appear in the complaint, but must be closely linked to it.

(see para. 41)

See: 52/85 *Rihoux and Others v Commission* [1986] ECR 1555, para. 15; 242/85 *Geist v Commission* [1987] ECR 2181, para. 9

3. Where, in a decision rejecting a complaint, the appointing authority states its position in great detail on a matter which was not raised in the complaint, the argument put forward by the official concerned on that matter in the action brought before the Community court following rejection of his complaint must be declared admissible.

(see para. 50)

See: T-214/99 *Carrasco Benítez v Commission* [2000] ECR-SC I-A-257 and II-1169, paras 37 and 38

4. The purpose of any competition is to select the most suitable candidates for performing the tasks involved in the posts to be filled, and selection boards must, therefore, necessarily examine the respective merits of candidates and conduct the tests in such a way that only the most capable are selected.

(see para. 53)

5. A selection board may not enter on the list of suitable candidates those who have not obtained the minimum marks required, since otherwise the notice of competition would be infringed.

(see para. 58)

See: T-53/00 *Angioli v Commission* [2003] ECR-SC I-A-13 and II-73, para. 105