

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

In Case T-55/91,

**Olivier Fascilla**, a former member of the auxiliary staff of the Commission of the European Communities, residing at Maisières (Belgium), represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and originally 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 in Open Competition PE/107/C refusing to admit the applicant to the tests in that competition,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: R. García-Valdecasas, President, 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

\* Language of the case: French.

## Judgment

### Facts

1 The applicant, Olivier Fascilla, was a candidate in Open Competition PE/107/C organized by the European Parliament to constitute a reserve list for the recruitment of French-language typists, the career bracket for which was C 5-4.

2 The notice of competition, which was published in Official Journal C 118 of 12 May 1990, p. 28, provided as conditions of admission to the tests:

### *III Competition — Nature and conditions of admission*

...

#### A. General conditions

...

#### B. Special conditions

##### 1. Qualifications, certificates and/or experience required

- (a) Education to a medium level (lower secondary, commercial, technical or vocational) evidenced by a diploma, or possession of experience at an equivalent level;

...

- (b) Possession of at least two years' experience, in connection with the "nature of duties" referred to in Title I, acquired subsequently to the level required at point (a) above.

Training, i. e. specialization or advanced courses or supplementary education and training in connection with the duties described under Title I, for which the appropriate certificates or diplomas have been obtained, will be taken into account as experience.'

- 3 According to Title I of the notice of competition the duties in question consisted of carrying out routine office duties, in particular, typing.
- 4 The notice of competition contained a Title V, headed 'Reconsideration of applications', the wording of which was as follows:

'Every candidate may ask for reconsideration of his application if he considers a mistake has been made. In such case he may within a period of 20 days from the date of despatch of the letter informing him that his application has not been accepted (attested by the postmark) lodge a complaint, mentioning the number of the competition on the letter and on the envelope, to the Recruitment Service, European Parliament, BAK 222, L-2929 Luxembourg.'

Within 30 days following the date of despatch of the candidate's letter requesting reconsideration (attested by the postmark) the Selection Board will reconsider the file and take into account the candidate's observations.'

- 5 The applicant holds a lower secondary school diploma, corresponding in Belgium to medium level education, an upper secondary school diploma, a certificate of fitness for higher education and a diploma of graduate in secretarial studies obtained at the end of a two-year period of study. He performed secretarial duties with a private Belgian company.

- 6 By a standard letter dated 4 March 1991 the Chairman of the Selection Board of the competition informed the applicant that he had not been admitted to the tests on the following ground (see point 7 of the letter of 4 March 1991): 'Lack of at least two years' experience (point III. B.1 of the notice of competition)'.
- 7 By letter dated 14 March 1991 the applicant submitted a complaint against that decision. He requested reconsideration of his application on the basis of the fact that he held a diploma of graduate in executive secretarial duties, obtained at the end of advanced school studies.
- 8 By letter dated 5 April 1991 the Chairman of the Selection Board acknowledged receipt of the letter of complaint of 14 March 1991 and informed the applicant as follows: 'At its meeting on 3 April 1991 the Selection Board reconsidered your file and took note of your observations. I regret to inform you that nothing enabled it to go back on its original decision. Your total training and experience is less than the minimum for admission.'
- 9 By letter dated 10 April 1991 the applicant informed the Selection Board that he had been admitted in May 1990 to tests for Competition COM/677/C organized by the Commission of the European Communities, the conditions of admission of which were similar to those of Competition PE/107/C organized by the Parliament. He requested a fresh consideration of his application and, in the event of a refusal, a 'rational explanation of the refusal'.
- 10 By letter dated 22 May 1991 the Chairman of the Selection Board informed the applicant that 'each application was the subject of scrupulous consideration on the basis of the provisions of the notice of competition'. He further 'reminded' the applicant that his letter did not amount to a complaint.

- 11 In those circumstances, by application lodged at the Registry of the Court of First Instance on 4 July 1991, the applicant brought the present action.
  
- 12 After the defence was lodged the applicant waived the right to lodge a reply. The defendant similarly waived the right to lodge a rejoinder.
  
- 13 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory enquiry. Nevertheless, by letter from its Registrar of 20 January 1992, the Court requested the defendant to reply to several questions concerning the taking into account, as experience, of further training. The applicant was requested to produce a document evidencing the length of his employment with the company which had employed him.
  
- 14 The oral procedure took place on 17 March 1992. The parties' representatives presented oral argument and replied to questions put by the Court.
  
- 15 The applicant claims that the Court should:
  - (i) annul the decision of 5 April 1991 by the Selection Board in Competition PE/107/C not to admit him to the tests in that competition and the confirmatory decision of 22 May 1991;
  
  - (ii) order the defendant to pay the costs.

- 16 The defendant contends that the Court should:
- (i) declare the application unfounded;
  - (ii) make an order for costs in accordance with the applicable provisions.

## Substance

### *The sole plea in law based on breach of the obligation to state reasons*

- 17 In support of his application the applicant pleads infringement of the second paragraph of Article 25 of the Staff Regulations of the European Communities, according to which 'any decision relating to a specific individual which is taken under the 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.'
- 18 Relying on the case-law of the Court of Justice and the Court of First Instance in relation to the obligation to state reasons (see the judgment of the Court of Justice in Case 195/80 *Michel v Parliament* [1981] ECR 2861; the Opinion of Advocate-General Rozès in Joined Cases 316/82 and 40/83 *Kohler v Court of Auditors* [1984] ECR 667; and the 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 submits that in the present case it is necessary to consider whether the statement of the reasons for the contested decision provides him with information sufficient to allow him to ascertain whether the decision is well founded or whether it is vitiated by an error which will allow its legality to be contested and, further, whether the statement of the reasons for the decision enables the Court to review the legality of the decision.
- 19 In the first place the applicant argues that the statement of reasons for the decision of 5 April 1991 does not explain how the aggregation of his training and experience is shown to be less than the minimum period for admission and that it accordingly does not provide any information enabling him to ascertain whether it is well founded and the Court to review the legality of the decision.

- 20 The applicant alleges that he forwarded to the Selection Board, along with his application, a copy of all his certificates and also a certificate of employment drawn up by the company which had employed him. It is clear from those documents, in relation to the condition concerning education, that the applicant had received medium-level education and obtained the corresponding diploma. It is clear, furthermore, in relation to the condition concerning experience, that the Selection Board ought to have taken into account the supplementary two years' education and training in secretarial duties which the applicant had undergone.
- 21 Secondly the applicant relies on his admission to the tests for Open Competition COM/C/677, organized by the Commission, the conditions of admission for which were similar to those in Competition PE/107/C. In his view it is settled case-law (see the judgments of the Court of Justice in Case 112/78 *Kobor v Commission* [1979] ECR 1573 and in Case 108/84 *De Santis v Court of Auditors* [1985] ECR 947) that the Selection Board in a competition must give specific reasons for its assessment of the certificates of a candidate where it is less favourable than that which the candidate received in a previous competition where the conditions of admission were identical.
- 22 The applicant admits that in Case 225/87 *Belardinelli v Court of Justice* [1989] ECR 2353 the Court of Justice restricted the scope of that obligation and stated that it '... applies only if the person concerned brought the matter to the attention of the Selection Board'. In the present case the applicant drew the Selection Board's attention to the more favourable decision which had been adopted by the Selection Board in Competition COM/C/677 so that the Selection Board for Competition PE/107/C ought to have specified the reasons for which it considered that the aggregation of the applicant's educational training and experience was less than the minimum required for admission.
- 23 The applicant concludes by submitting that the contested decision is vitiated by a defect or, at least, by an insufficient statement of reasons and a manifest error of assessment and was adopted in disregard of the conditions laid down in the notice of competition.

- 24 As a preliminary point, the defendant also refers to the case-law of the Court of Justice in relation to the purpose and scope of a Selection Board's duty to state reasons (see the judgments in Joined Cases 64, 71 to 73, and 78/86 *Sergio and Others v Commission* [1988] ECR 1399, paragraph 48, Case 225/82 *Verzyck v Commission* [1983] ECR 1991 and the aforementioned case of *Michel v Parliament*).
- 25 It adds that in several judgments the Court of Justice has recognized that where there are many candidates the Selection Board may proceed in two stages in carrying out its duty to state reasons (see the judgments in Joined Cases 100/87, 146/87 and 153/87 *Basch and Others v Commission* [1989] ECR 447 and in Case 206/85 *Beiten v Commission* [1987] ECR 5301; see also the aforementioned judgments in the cases of *Belardinelli v Court of Justice*, *Michel v Parliament*, *Verzyck v Commission* and *Sergio and Others v Commission*).
- 26 Furthermore, following the complaint submitted by the applicant on 14 March 1991, the Chairman of the Selection Board provided individual explanations in his reply of 5 April 1991 when he stated that 'the aggregation of your training and experience is less than the minimum for admission'. It follows from a reading of that reply in conjunction with that contained in the letter of 4 March 1991, that in the Selection Board's opinion the candidate did not have the requisite two years' experience. The applicant himself, in pointing out in his letter of 10 April 1991 that in the competition organized by the Commission the two years of higher studies had been taken into account as constituting experience, showed that he was perfectly aware of the fact that the refusal of admission was due to the non-recognition of that diploma as evidence of experience.
- 27 The defendant then explained the way in which the Selection Board took account of the supplementary education and training provided for in the second paragraph of Title I, point B.1. b of the notice of competition, namely all the periods of practical training undertaken as part of that education and training, provided that they were actually evidenced by certificates from the undertakings in which those peri-

ods were completed or that they were noted on the diploma, in the case of a graduate for example. The Selection Board had completely discounted as experience periods of practical training which were part of advanced courses or supplementary education and training.

- 28 In reply to questions put by the Court before the oral procedure was opened the Parliament stated that the experience required had to consist of practical experience 'on the ground'. Supplementary education and training which did not consist of genuine periods of practical training was not to be regarded as such practical experience. In the present case the fact that the courses attended by Mr Fascilla which led to a diploma of graduate in secretarial duties was spread over a two-year period of studies and that typing was only one course among many others had induced the Parliament to accept under that head only an inclusive period of three months. Those three months, aggregated with the 10 months of experience in a private company, gave the applicant experience of 13 months. The Parliament added that the notice of competition did not require the Selection Board to take into account the entire 'supplementary education and training' as such, since the second paragraph of Point B.1. b was confined to stating that this would be 'taken into account'.
- 29 In consequence the Selection Board had rightly rejected the applicant's candidature when it refused to take into account the whole of his graduate studies as supplementary education and training in connection with the duties described in Title I namely: performance of routine office duties including, in particular, typing.
- 30 As regards the argument based on the similarity of the conditions for admission to the tests in competitions PE/107/C and COM/C/677, the defendant maintains that that similarity, the reality of which is not disputed, does not in itself mean that the Selection Board in Competition PE/107/C ought to have arrived at the same conclusion as the Selection Board in Competition COM/C/677, in view of the discretion which each Selection Board is recognized as having.
- 31 Nor does the defendant deny that in such a situation the Selection Board is required to give special reasons for its decision, but it maintains that there was no

such obligation in the present case, since the information concerning the applicant's admission to the tests in the competition organized by the Commission had been brought to the Selection Board's attention only by the letter of 10 April 1990, that is to say, after the Selection Board had reconsidered his case.

- 32 The Court points out that it has consistently been held (see the judgment in Case T-115/89 *González Holguera v Parliament* [1990] ECR II-831, paragraphs 42 to 45) that the purpose of the obligation to state reasons for any individual decision adopted under the Staff Regulations is to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision is well founded and to make it possible for the decision to be the subject of judicial review. As regards more particularly decisions of refusal of admission to a competition the Court of Justice has pointed out that it is necessary for that purpose for the Selection Board to state clearly the conditions in the notice of competition which it considers the candidate has not satisfied (see for example the judgments in Joined Cases 4, 19 and 28/78 *Salerno v Commission* [1978] ECR 2403, p. 2416 and in the aforementioned case of *De Santis v Court of Auditors*).
- 33 It is also necessary to point out that, where there is a large number of candidates in a competition, it has consistently been held that the Selection Board may initially confine itself to stating the reasons for its refusal in a summary manner and informing the candidates only of the criteria and the result of the selection (see the judgment in *Belardinelli*, cited above).
- 34 The Court considers that in view of the fact that the competition involved a large number of candidates the decision of 4 March 1991, which mentioned the applicant's 'lack of at least two years' experience (point III. B.1 of the notice of competition)' satisfied the requirement to state reasons under Article 25 of the Staff Regulations.

- 35 Nevertheless, in accordance with the same case-law, the Selection Board must subsequently give an individual explanation to those candidates who expressly ask for it. In the present case the Court observes that the statement of reasons given in the decision of 5 April 1991, which was adopted following the request for reconsideration ('the aggregation of your education and training and experience falls below the minimum for admission') and which is the subject of the application for annulment, is also very summary.
- 36 It is true that the applicant could have inferred from the terms of the letter of 5 April 1991, read in conjunction with those of the letter of 4 March 1991, that his training and actual experience had been taken into account in assessing the two years' experience required by the notice of competition, but that for some reason not otherwise explained the Selection Board had considered that the minimum requirement of two years was not satisfied. The applicant could at most have doubted whether his diploma in executive secretarial duties, which he had obtained after two years of higher education and to which he referred in his letter of 14 March 1991, had been taken into account or had only partly been taken into account. The fact that in his letter of 10 April 1991 the applicant referred to his two years of higher education, which was taken into account as experience by the Selection Board in the competition organized by the Commission, does not mean that he was certain that it was the diploma evidencing the higher education which had not been taken into account where his application to take part in the competition organized by the Parliament was examined.
- 37 The insufficient nature of the statement of reasons given to the applicant is confirmed by the explanations provided by the Parliament both in its defence and in its argument at the hearing before the Court on 17 March 1992 as regards the terms on which the applicant's further training was taken into account. The decision of 5 April 1991 gives no indication of the fact that the Selection Board made the taking into account of supplementary education and training subject to there being practical training, duly evidenced, or of the method of calculation actually employed by the Selection Board to discount the further training and ultimately to arrive at an inclusive figure of three months by way of experience. The Court considers that even on a comparison of the documents produced by the applicant with the statements made by the Chairman of the Selection Board the applicant could not reasonably infer the grounds on which the Selection Board had considered

those certificates insufficient. It was thus impossible for him to determine whether or not the rejection of his application was well founded.

38 It follows from those considerations that the decision refusing to allow the applicant to take part in the contested competition is vitiated for inadequacy of the statement of reasons. The applicant's claim must therefore be upheld.

39 It follows from the foregoing, and without its being necessary to consider the other arguments put forward by the applicant, that the contested decision of 5 April 1991 must be annulled.

40 It should be added for good measure, as regards the Parliament's refusal to take into account the applicant's diploma of supplementary education and training in secretarial duties on the ground that these did not include practical training, that the Court considers that the Parliament unjustifiably amalgamates the two phrases of the second paragraph of Point III. B.1. b in the notice of competition, namely on the one hand 'training, specialization or advanced courses' and on the other hand 'supplementary education and training'. It is clear that the notice of competition, the terms of which the Selection Board had to observe scrupulously, does not require 'practical training' in connection with the supplementary education and training. It follows that there is no justification for taking that practical training into account in order to arrive at a period reduced to three months. In consequence the Parliament's decision would have had to be annulled also for manifest error of assessment and breach of the conditions laid down by the notice of competition.

### Costs

41 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. Since the Parliament has been unsuccessful, it must be ordered to pay the applicant's costs in addition to its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Annuls the decision of 5 April 1991 of the Selection Board in Open Competition PE/107/C not to admit Olivier Fascilla to the tests in that competition;**
2. **Orders the European Parliament to pay the costs.**

García-Valdecasas

Schintgen

Briët

Delivered in open court in Luxembourg on 21 May 1992.

H. Jung

R. García-Valdecasas

Registrar

President