

## Case T-132/89

Vincenzo Gallone

v

Council of the European Communities

(Official — Competition — Procedure of the competition —  
Confidentiality and content of the written tests —  
Refusal of admission to the oral tests)

Judgment of the Court of First Instance (Fourth Chamber), 16 October 1990 ..... 551

### Summary of the Judgment

1. *Officials — Actions — Action against the decision of a selection board for a competition — Pleas based on an irregularity in the notice of competition not contested in good time — Inadmissibility — Limits — Irregularity appearing when the competition was being conducted*  
(Staff Regulations, Art. 91)
2. *Officials — Recruitment — Competition — Competition based on qualifications and tests — Conditions for admission and arrangements — Discretion of the appointing authority — Arrangements for and content of the tests — Discretion of the selection board — Judicial review — Limits*  
(Staff Regulations, Annex III)
3. *Officials — Recruitment — Competition — Selection board — Recourse to examiners — Whether permissible — Conditions*  
(Staff Regulations, Annex III, Art. 3, paragraph 2)
4. *Officials — Recruitment — Competition — Competition based on qualifications and tests — Equal treatment of candidates in an open competition — Translation of certain of the candidates' papers before marking — Different dates and content for oral tests — Discrimination — None*

1. An official may not, in support of an appeal directed against a decision of a selection board for a competition, put forward submissions based on an alleged irregularity in the notice of competition, when he has not challenged in good time the provisions which, in his view, adversely affect him.

Such however cannot be the case when the official pleads irregularities the origin of which may be found in the wording of the notice of competition but which occurred in the course of the latter.

2. The essential function of a notice of competition is to give those interested the most accurate information possible about the conditions of eligibility for the post in question so as to enable them to judge whether they should apply for it. The appointing authority enjoys a wide discretion in deciding upon the abilities required for posts that are to be filled and in determining, on the basis of those abilities and in the interest of the service, the rules and conditions under which a competition is organized. The selection board also has considerable discretion as regards the arrangements for and the detailed content of the tests provided for in the framework of a competition.

The Court may not review the arrangements for the conduct of a test except to the extent necessary to ensure that the candidates were treated equally and that the choice from among them made by the selection board was

objective. It is likewise not for the Court to review the detailed content of a test, unless that content is not confined within the limits laid down in the notice of competition or is not consonant with the purposes of the test or of the competition.

3. The selection board may have recourse to the assistance of examiners whenever it considers this necessary. There is no irregularity if the methods of marking do not differ from one candidate to another and the selection board retains the power to make the final assessment.
4. A competition open to candidates from all the Member States cannot proceed in accordance with the principle of equal treatment unless members of the selection board and the examiners who do not know the language of certain candidates, have at their disposal a translation of their papers. The mere fact that certain of the candidates' papers are translated before being marked does not in itself imply discrimination between candidates.

Moreover, although the principle of equality requires that the written tests be conducted on the same date for all the candidates, such a condition cannot be imposed in the case of the oral tests, which, by their very nature, cannot take place at the same time for all candidates and the content of which, moreover, is not necessarily the same for all the candidates.