

Alessandro Albani and Others

v

Commission of the European Communities

(Officials — Recruitment — Competition based on tests —
Irregularities in marking — Annulment)

Judgment of the Court of First Instance (Third Chamber), 12 July 1990 396

Summary of the Judgment

1. *Officials — Recruitment — Competition — Competition based on qualifications and tests — Written test — Maximum number of words imposed — Increased at the marking stage — Substantial irregularity — Annulment of the marking of the tests and of the subsequent acts in the procedure — Condition — Outcome of the competition distorted — Burden of proof*
2. *Officials — Actions — Interest in bringing proceedings — Submission based on a substantial change in the conditions under which a test in a competition is held — Candidates eliminated — Admissibility*
(Staff Regulations of Officials, Art. 91)

1. The purpose of a limit on the number of words to be used imposed by a selection board on persons taking a written test in an open competition for recruitment based on qualifications and tests, failing which their papers will not be marked, is to ensure that candidates deal with the subject of the written test on the same terms and to enable markers to apply objective criteria uniformly to comparable tasks.

In those circumstances, the instruction given to the markers by the selection board, after the tests have been held, to

increase by 50% the limit on the number of words constitutes a substantial irregularity of such a kind as to vitiate both the decision of the selection board regarding the marking of the test and the subsequent acts in the procedure; however, their annulment is justified only if that irregularity distorts the outcome of the competition.

It is for the defendant institution to prove that the outcome was not distorted. If it does not, the Court of

First Instance, which is unable to determine whether the principle that candidates must be treated equally was observed in the marking of the written test or whether that irregularity may have distorted the final outcome of the competition, must annul both the selection board's decision with regard to the marking of the tests and the subsequent acts in the procedure.

2. Applicants who failed a written test in a competition have a legitimate interest in claiming that the conditions under which the test was held were substantially modified by the instructions given to the markers by the selection board, after the tests had been held, to increase the limit on the number of words, a limit which had been imposed to ensure that only comparable papers would be marked.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
12 July 1990 *

In Case T-35/89,

Alessandro Albani, Alberto Caferri, Claudio Caruso and Bruno Buffaria, all of Brussels, represented by Gérard Collin, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 6-8 rue Origer,

applicants,

supported by

Union of International and European Civil Servants, represented by Michel Deruyver and Françoise Decoster, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 6-8 rue Origer,

intervener,

* Language of the case: French.