

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
28 November 2002

Case T-332/01

José María Pujals Gomis
v
Commission of the European Communities

(Officials – Open competition – Rejection of candidature after the written tests
have taken place)

Full text in Spanish II - 1155

Application for: annulment of the decision of 28 September 2001 of the
Selection Board in Open Competition COM/B/1/01 not to
admit the applicant to that competition and not to mark his
written test.

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

Summary

*1. Officials – Actions – Interest in bringing proceedings – Candidate excluded from a competition seeking annulment of the whole competition procedure – Admissibility limited to the applicant's exclusion
(Staff Regulations, Art. 91)*

*2. Officials – Competitions – Competition on the basis of qualifications and tests – Admission requirements – Laid down in the notice of competition – Assessment by the selection board of the candidates' professional experience – Review by the Court – Limits
(Staff Regulations, Annex III, Art. 5)*

*3. Officials – Competitions – Competition on the basis of qualifications and tests – Admission requirements – Supporting documents – Request by selection board for additional information – Merely optional
(Staff Regulations, Annex III, Art. 2, 2nd para.)*

*4. Officials – Competitions – Competition on the basis of qualifications and tests – Admission requirements – Professional experience – Additional periods of study – Obligation of the candidate to enable the selection board to assess their appropriateness in relation to the post to be filled
(Staff Regulations, Annex III, Art. 5)*

*5. Officials – Competitions – Competition on the basis of qualifications and tests – Admission requirements – Laid down in the notice of competition – Introduction by the selection board of requirements not mentioned in the notice of competition – Not permissible
(Staff Regulations, Annex III, Art. 5)*

6. *Officials – Competitions – Competition on the basis of qualifications and tests – Decision adversely affecting an official – Obligation to state grounds – Scope (Staff Regulations, Art. 25, 2nd para.; Annex III, Art. 5)*

7. *Officials – Competitions – Competition on the basis of qualifications and tests – Ascertainment that the admission requirements set out in the notice of competition are satisfied – Decision to exclude taken after the written tests – Whether permissible (Staff Regulations, Annex III, Art. 5)*

1. An action brought by a candidate excluded from a competition, seeking annulment of the competition procedure, is admissible only in so far as it concerns the selection board's refusal to admit him to the competition.

(see para. 29)

See: T-173/99 *Elkaim and Mazuel v Commission* [2000] ECR-SC I-A-101 and II-433, para. 23, and the case-law cited therein

2. It is for the selection board in a competition based on qualifications and tests to assess in each case whether the certificates produced or the professional experience of each candidate correspond to the level required by the Staff Regulations and by the notice of competition. Under the relevant provisions of the Staff Regulations, it enjoys a discretion when assessing candidates' previous professional experience with regard both to its nature and duration and to its relevance to the requirements of the post to be filled.

In its review of legality, the Court of First Instance must confine itself to ascertaining that the exercise of that power was not vitiated by a manifest error.

(see paras 39-41)

See: T-158/89 *Van Hecken v ESC* [1991] ECR II-1341, para. 23; T-244/97 *Mertens v Commission* [1999] ECR-SC I-A-23 and II-91, para. 44; T-214/99 *Carrasco Benítez v Commission* [2000] ECR-SC I-A-257 and II-1169, paras 69 to 71

3. A competition selection board is obliged to take into account only the information provided and documents submitted by candidates when assessing their professional experience in the light of the requirements laid down in the notice of competition. It is under no obligation to ask a candidate to produce additional documents or to undertake research itself in order to ascertain whether the candidate meets all the conditions of the notice of competition.

In that regard, it is clear from the provisions of the second paragraph of Article 2 of Annex III to the Staff Regulations that they merely enable the Selection Board to request additional information from candidates if it is in doubt as to the exact significance of a document submitted, and there can be no question of turning into an obligation what the Community legislature viewed as a mere possibility open to the selection board.

(see paras 42-44)

See: T-133/89 *Burban v Parliament* [1990] ECR II-258, paras 31 and 34; T-54/91 *Almeida Antunes v Parliament* [1992] ECR II-1739, para. 40; T-215/97 *Jouhki v Commission* [1998] ECR-SC I-A-503 and II-1513, para. 58; *Carrasco Benítez v Commission*, cited above, paras 76 and 77

4. Where, in a competition based on qualifications and tests, candidates may claim, by way of professional experience which they must have, periods of study complementary to those evidenced by the certificates qualifying them for admission to the competition, in so far as such periods of study relate to fields which prepare students for the performance of the duties which the successful candidates in the competition will be required to perform, it is for those candidates, where the certificates to which they refer may cover a wide variety of academic profiles, to provide the selection board with detailed particulars to enable it to ascertain the degree of correspondence between the course followed and the duties in question and to quantify that further training in terms of length of relevant professional experience.

(see paras 50-55)

See: *Carrasco Benítez v Commission*, cited above, paras 81 to 84

5. It is the function of the notice of competition 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. It follows that the selection board in a competition based on qualifications and tests is not empowered to exclude a candidate from the tests on the ground that he does not satisfy a requirement which was not mentioned in the notice of competition.

(see para. 67)

See: *Van Hecken v ESC*, cited above, paras 23 and 25; T-299/97 *Alonso Morales v Commission* [1999] ECR-SC I-A-249 and II-1227, paras 56 and 57

6. The duty to state the grounds for a decision adversely affecting an official 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 legality of the decision. As regards a selection board's decision not to admit a candidate to the tests, it is the duty of the selection board to state clearly

which of the conditions laid down in the notice of competition were found not to have been satisfied by the candidate. Although, where there is a large number of candidates in a competition, the selection board may initially give only summary reasons for its refusal and notify the candidates only of the criteria and of the outcome of the selection process, it must nevertheless subsequently provide an individual explanation to those candidates who expressly request it.

(see paras 73-75)

See: 69/83 *Lux v Court of Auditors* [1984] ECR 2447, para. 36; 225/87 *Belardinelli and Others v Court of Justice* [1989] ECR 2353, para. 7; *Almeida Antunes v Parliament*, cited above, paras 33 and 35; T-115/89 *González Holguera v Parliament* [1990] ECR II-831, paras 42 and 43; *Carrasco Benítez v Commission*, paras 172 and 173

7. Although it is, admittedly, desirable that the comparison of candidates' files with the admission requirements set out in the notice of competition should take place, in so far as is possible, before the pre-selection tests and written tests are held, the fact remains that the appointing authority must be able, in competition procedures involving a large number of candidates, to satisfy itself at any stage of the recruitment procedure that the particulars in the candidate's file meet the admission requirements set out in the notice of competition, and to exclude, if necessary, the candidate concerned from the competition.

(see para. 84)