Case 12/84

Ilias Kypreos
v
Council of the European Communities

'Recruitment competition — Refusal to include in the list of suitable candidates'

Summary

Officials — Recruitment — Competition — Competition based on tests — Selection board's discretion — Judicial review — Limits

OPINION OF ADVOCATE GENERAL
SIR GORDON SLYNN
delivered on 14 February 1985

My Lords,

This is an application brought by Mr Kypreos to annul a refusal by the Council to include him in a list of suitable candidates in a competition in which he took part. The Notice of Competition, which is dated 12 January 1983, indicates that its object was to establish a reserve of typists in the Greek language. It was a term of the competition that candidates should have detailed knowledge of Greek and a satisfactory knowledge of one of the other languages of the Community.

The terms of the Notice also required that the candidates should have attained a certain educational level, and have had a certain working experience. Candidates who

were accepted as having satisfied these conditions were admitted to the competition. They were then required to take obligatory written tests, and obligatory oral examinations. In addition, the Notice of Competition provided that a candidate might take an optional test in one of the specified languages, which included English.

Mr Kypreos made his application and he was admitted to the competition, as he was told on 6 July 1983. He was also successful in the written part of the competition, as he was told on 31 October 1983. He then took part in the oral examination but by letter of 2 December 1983, he was told by the President of the Selection Board that he had not been included on the list for employment as a typist in the Greek language.

As a result of that letter, on 4 January 1984, he initiated these proceedings. The Council at once realized that the letter informing him that he had not been included on the list was an insufficient explanation of what had happened. Accordingly, by a letter dated 22 February 1984, they gave him the reason why he had not been included on the list of successful candidates. That reason was that he had not attained the necessary mark in the second oral test relating to linguistic knowledge. The number of marks given for that part of the examination was 20; the minimum pass mark was fixed at 10, and the Selection Board had only awarded 5 marks to Mr Kypreos.

The Council, however, added that in view of the fact that reasons had not initially been given, they would pay his lawyer's fees to date if he discontinued his action. The applicant decided that he would go on with the case.

What he claims, in the first place, is that the requirement that he should succeed in showing an adequate knowledge of a second language was purely optional. He relies in support of this argument on those parts of the Notice offering an optional written test in a language other than Greek.

It is absolutely plain from the terms of the Notice of Competition, that the oral test in a second language was not an optional part of the competition but was one of the essential hurdles which he had to surmount.

He then says that he has an adequate knowledge of the English language. Moreover, he claims that he has very specialized knowledge in typing and that having worked freelance for the Community's Office for Official Publications in Luxembourg, he could not possibly have been rejected at this stage of the competition.

As a result of what he said, the Selection Board were invited to reconsider their marks, and having done so they wrote to say, on 23 March 1984, that they unanimously refused to revise the marks which they had given him for this part of the test, and indeed they thought, if anything, they had been generous.

Mr Kypreos says that they required a university level of knowledge of English and that that was something which it was not permissible to require of him. Moreover he was not given an adequate examination.

It must, in these cases, be essentially for the Selection Board to assess the candidates' language ability. There is nothing, in my view, shown by the papers to indicate that the Selection Board erred in any way in the approach which they adopted, and nothing to show that they were requiring of him a

university-level of education. He was apparently examined for some 30 minutes and the Selection Board found that he did not show a satisfactory knowledge of the English language.

I would reject his criticisms of the decision on that basis.

Then he says that the decision of the Selection Board in this case, which has not only deprived him of a job but has deprived the Council of an able employee, was based on political grounds. He, apparently, had been involved in political activities, particularly in connection with elections for the European Parliament. Once again, there is no evidence whatsoever to support this claim which he makes and I, for my part, would totally reject it.

His final point is that the Selection Board behaved in an inhuman way in that they failed to take account of the fact that he was approaching the upper age limit for candidates for these competitions and, accordingly, he should have been given the benefit of the doubt.

In my view, there is no merit in this point either. It was entirely for the Selection Board to assess his competence in his second language, and they quite plainly were satisfied that he did not have the requisite competence.

Accordingly, in my opinion, this application should be dismissed.

As to the costs, it seems to me that it would be fair and just in the circumstances that the Council should pay his costs up to the date when they informed him of the reasons for his rejection. They plainly should have done so in the first place. The offer which they made to him was a proper offer and it seems to me that it would be appropriate for the Court to make an order now to the same effect.

As to the costs subsequent to that date, although he was not an official of the Council, it seems to me that the appropriate order would be that he should bear his own costs and that the Council should bear their costs, by analogy with Article 70 of the Rules of Procedure of the Court.