OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 19 MAY 1983 [1]

Mr President,
Members of the Court,

Mr Rudy Verzyck has brought before the Court an action against the Commission of the European Communities for the annulment of a decision of 28 May 1982 informing him of the refusal of the selection board for Open Competition No COM/A/325 to admit him to the written tests.

I — The facts are as follows:

The Commission published in *Official Journal of the European Communities,* No C 233 of 12 September 1981 Competition Notice No COM/A/325 for an "open competition, based on qualifications and tests, to constitute a reserve of administrators in the career bracket covering grades 7 and 6 of category A."

The notice laid down conditions concerning age, certificates and diplomas and practical experience which candidates had to meet in order to be admitted to the tests. It fixed 31 October 1981 as the date by which applications had to be lodged; the period was extended to 30 November 1981, entailing publication of a further notice in *Official Journal of the European Communities,* No C 270 of 22 October 1981.

On 30 November 1981 Rudy Verzyck, a Belgian national of Dutch mother-tongue who is an assistant financial controller in the Belgian Civil Service, submitted an application, choosing the "Public finance, accounting and auditing" option.

On 1 March 1982 he was informed by the head of the Recruitment Division, who himself was a member of the selection board, that the board had "originally decided" that he fulfilled the conditions laid down for admission to the competition; that it had then proceeded to examine the qualifications of the candidates admitted to the competition in the light of the duties to be carried out "with a view to improving the present geographical spread of nationals of the various Member States on the Commission's staff"; and that, unfortunately, as a result of that examination the decision had been taken "not to invite him to take part in the tests".

On 5 March 1982 Rudy Verzyck expressed his surprise and bewilderment regarding the reasons which prompted the selection board to arrive at that negative decision. In view of the uncertainty of the position, he asked to be informed of the qualifications of the Belgian candidates admitted to the competition.

In reply the Head of the Personnel Department informed him on 26 March 1982 that the selection board would re-examine his qualifications with a view to his admission to the tests.

1 — Translated from the French.

On 28 May 1982 he learned that the result of the re-examination was unfavourable; he was in fact notified that "having compared the candidates' supporting documents" the selection board had "decided not to admit [him] to the written tests".

II — Rudy Verzyck requests the Court to annul that decision of 28 May 1982 and relies on three submissions in support of his application.

1. However, the question of the admissibility of the application must first be considered.

The Commission, without expressly raising an objection of inadmissibility, considers that the application is out of time since the candidate, by his letter of 5 March 1982, showed that he knew of the negative decision of 1 March 1981; the decision of 28 May 1982 constitutes a mere confirmation of the previous decision and the application received at the Registry on 25 August 1982 is therefore time-barred.

These arguments cannot be accepted by this Court: when the applicant was informed on 26 March 1982 that his qualifications would be re-examined he was entitled to assume, as the Commission concedes, that the period of three months laid down in Article 91 (3) of the Staff Regulations would only start to run from the date of a new decision, favourable or otherwise, which would be notified to him.

During its meetings on 26 March and 3 June 1982 the selection board re-examined the files of 818 candidates whom it had initially decided not to admit to the tests. That re-examination enabled another candidate, who had selected the same option as the applicant, subsequently to be admitted to the written tests. That fact indicates that the decision of 28 May 1982 is not merely a confirmation of the decision of 1 March but supersedes it.

2. It is thus necessary to declare the application admissible and to examine the submissions relied upon: failure to state the reasons on which the decision was based, breach of the principle of equality and manifest errors of fact and of law.

The first submission is indubitably well founded and I therefore propose that the Court annul the contested decision of 28 May 1982.

That decision confines itself to informing the unfortunate candidate that "having compared the candidates' supporting documents" the selection board had decided not to admit him to the written tests.

It is pointless to seek any "statement of reasons" in that simple phrase which is not accompanied by any further information to identify the criteria which led to the final choice.

The arguments put forward by the Commission concerning the large number of candidates, the requirement that the proceedings of the selection board must be secret and the fact that the applicant did not expressly request disclosure of the criteria of assessment adopted by the board are invalid; whilst they go a certain way towards explaining the practical difficulties encountered by the Commission in stating the reasons on which its decision was based they cannot compensate for its failure to do so.

The case-law of the Court of Justice has already provided an answer to such arguments.

(a) With regard to the large number of candidates the Court stated in *Bonu* that:

"In the case of competitions such as the present, where candidates are more numerous, the statement of the reasons for the rejection of applications must not be so voluminous as to place an intolerable burden on the business of the selection boards and the work of the personnel administration".[1]

The Court thus admits that certain "minimum" requirements must be satisfied as regards the statement of reasons; a mere "comparison of supporting documents" of the candidates, without further explanation, clearly does not satisfy those minimum requirements.

(b) Nor does the need to keep the proceedings of the selection board secret constitute sufficient justification for a failure to state the reasons on which the decision was based. In its judgment in *Costacurta,* the facts of which are very similar to those of the present case, the Court stated that the first stage entails "the matching of the qualifications offered by the candidates against the qualifications required by the notice of competition".[2]

The Court also added that:

"since these must be matched on the basis of objective facts which are moreover known to each candidate in his own case, the results must be supported by sufficiently clear reasons",[3]

and in any case that procedure is not covered by

"secrecy inherent in the task of a selection board".[2]

More recently the Court held that such a defence

"is based on a wrong interpretation of the implications of the secrecy of the proceedings of selection boards for competitions" [4]

and added that

"the scope of this secrecy cannot be widened to such an extent as to refuse disclosures of objective facts and in particular of the criteria for assessment upon which selection has been based at the stage of the preliminary proceedings of the competition, which enables those whose applications have been rejected even before any individual test to ascertain the possible reasons for their elimination".[4]

(c) Finally, in reply to the Commission's last argument, I shall merely point out that since 5 March 1982 Rudy Verzyck has expressed the wish to know the reasons for his being refused entry to the tests and has even obtained information about the qualifications of the candidates of the same nationality who were admitted to the tests.

These various circumstances clearly establish that there was no statement of reasons and consequently the decision of 28 May 1982 must be annulled. Consideration of the two other grounds relied upon by the applicant is therefore unnecessary.

III — If the Court shares my view it is important to examine the measures necessary for the implementation of its

1 — Judgment of 28 February 1980 in Case 89/79 [1980] ECR 553, paragraph 6.

2 — Judgment of 4 December 1975 in Case 31/75 [1975] ECR 1563, paragraph 11.

3 — *Costacurta* judgment, cited above, paragraph 12.

4 — *Bonu*, cited above, paragraph 5.

judgment which the Commission, by which the contested decision was adopted, is required to take pursuant to Article 176 of the EEC Treaty.

It is common ground that the annulment of a procedure involving several hundred candidates and intended to fill some 80 posts may give rise to serious problems.

Competition No COM/A/325 was intended to constitute a reserve for the recruitment of administrators, the validity of which will expire on 31 December 1983 and may be prolonged. In my opinion, in so far as the posts for which the reserve list was constituted have not been filled, the exclusion of the applicant from that list will not have affected the admission to that list of the persons selected by the selection board as fulfilling the conditions laid down in the notice of competition.[1]

The applicant's rights will thus be sufficiently protected if the selection board reconsiders the question of his suitability for admission to the tests.[2] If the applicant is admitted to the tests and is successful it will be possible to place him on the reserve list before the expiry of that period so that his rights will be safeguarded, without the choice already made by the selection board being affected or the results of the competition as a whole being called in question or the appointments made in consequence thereof being annulled.[3]

Admittedly, if a new session were organized for the applicant there might be grounds for doubts as to the true unity and comparability of the competition. However that problem is an inevitable consequence of the annulment of the measure adversely affecting the applicant.

On the basis of all the foregoing considerations I am of the opinion that:

The decision of the Selection Board refusing to admit the applicant to the written tests in Competition No COM/A/325 should be annulled, and

The Commission should be ordered to pay the costs.

1 — *Costacurta*, cited above, paragraph 16.

2 — *Costacurta*, cited above, paragraph 17.

3 — Judgment of 30 November 1978, *Salerno*, Joined Cases 4, 19 and 28/78 [1978] ECR 2403, paragraph 35; Judgment of 28 June 1979, *Anselme*, Case 255/78 [1979] ECR 2323, paragraph 15; Judgment of 13 May 1982, *Alaimo*, Case 16/81 [1982] ECR 1559, paragraph 15.