nature that the Selection Board can only verify whether they are fulfilled by making a partially subjective appraisal. A Selection Board is free to depart from the appraisal made in that regard by previous selection boards, but it must then state the special reasons which justify its decision.

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 31 January 1985

My Lords,

By application dated 19 April 1984, Mr De Santis, an official of the Court of Auditors, asks the Court to annul

(a) the decision of a Selection Board refusing to allow him to take the written and oral tests in an inter-institutional competition CC/A/5/83 for the recruitment of principal administrators in the Court of Auditors in Grades 5 and 4 of Category A;

(b) the decision of the appointing authority dated 23 January 1984 rejecting his complaint about the Selection Board's refusal to admit him to the tests; and

(c) those appointments which were made in the competition.

The applicant held three consecutive appointments as a member of the temporary staff of the Court of Auditors — from June 1978 in Grade A4 Step 2, from June 1980 in Grade A4 Step 3, and from January 1981 in Grade A6 Step 3. He was told on 8 February 1982 by the President of the Court of Auditors that his temporary appointment would not be renewed. He then made many attempts to obtain an appointment as an official. Between 1979 and 1983, he applied to take part in two competitions in Grade A3, seven competitions in Grades A5/A4 and five in Grades A7/A6, one of them being open, the others internal or inter-institutional. He was admitted as being qualified to take part in each of these competitions and it was accepted at the hearing that he was recognized as being qualified to take the tests.

He only succeeded, however, in one (CC/A/4/83 in Grade A7/A6) where he was placed third on the list and in the result received no appointment. In a further internal competition (CC/A/17/82 in Grade A5/A4), he was not admitted by the

Selection Board to the competition. Finally he succeeded in internal competition CC/B/6/82 and was appointed as from 1 January 1983 as a probationer official in Grade B 3 Step 3, becoming established as from 1 October 1983.

By notice dated 6 May 1983, the Court of Auditors announced the inter-institutional competition CC/A/5/83 which is now in question. The Selection Board was required first to decide whether a candidate was eligible to be admitted to the competition. Eligibility depended on satisfying three factors. Firstly, the candidate had to have a recognized diploma at university level in one of the specified subjects or equivalent full-time professional experience in a relevant area for at least the time it would have taken to complete the studies for such a diploma; secondly, he had to have a further six years professional experience at a responsible level in a relevant area; thirdly, he had to show a prescribed level of knowledge of two Community languages.

The competition for candidates who were admitted was to be on the basis of both qualifications and tests. The Selection Board, as a second stage, had to establish the criteria to be adopted in evaluating qualifications, and then to mark out of 45, first, the diploma or equivalent professional experience and, second, the subsequent professional experience which must have been such as to show the candidate's aptitude to direct, lead and coordinate the work of an audit team and his thorough knowledge of the principles, detailed rules and techniques of auditing. Only candidates who obtained 45 marks or more out of 90 were to be allowed to take the written and oral tests.

The President of the Selection Board informed Mr De Santis by letter dated 19 August 1983 that 'the marks given by the Selection Board in accordance with Section IV A 2 of the *avis de concours* fell short of those necessary for further tests'. The letter gave no further details, though it was obviously implicit that Mr De Santis had satisfied the first stage and had been admitted to the competition.

By letter of 17 November 1983, Mr De Santis complained to the President of the Court of Auditors under Article 90 (2) of the Staff Regulations of the refusal to admit him to the tests. He said that his 20 years experience in auditing ('comme contrôleur') were unchallengeable and that he could not possibly have failed to obtain 45 marks. He asked to be informed of the criteria by which qualifications had been judged and he further asked the President to inform ('saisir') the Selection Board of his complaint and to reverse his rejection. The President on 23 January 1984 rejected his request. The Selection Board, it was said, was independent and impartial and the appointing authority could not interfere. The Selection Board's proceedings, moreover, were secret. It was up to the applicant to bring the matter before the Selection Board and the Court in accordance with the remedies available to the applicant under the Staff Regulations.

The applicant raises five arguments in support of his claims. First, he alleges that the Selection Board failed to give a sufficient statement of reasons for his rejection, and he relies in this respect on Article 25 of the Staff Regulations and the

Court's judgment of 9 June 1983 in Case 225/82 *Verzyck* v *Commission* [1983] ECR 1991, in particular at pp. 2004-2005. Secondly, he argues that the institution, having accepted him for 14 other A-grade competitions, cannot now change its approach, unless it states reasons justifying the difference of appraisal; and in this connection he relies on the judgment of the Court of 5 April 1979 in Case 112/78 *Kobor* v *Commission* [1979] ECR 1573 in particular at p. 1579. Thirdly, he alleges misuse of power in the way the Selection Board carried out its work. Fourthly, he alleges that the Selection Board's decision infringes his legitimate expectation of impartial treatment as a candidate in a competition. Finally, he alleges an infringement of the principle of equal treatment of all candidates on the basis that the qualifications and experience of several of those who were put on the list of suitable candidates were inferior to his own.

The Court of Auditors, though initially complaining of a delay in his application, does not and cannot, contest the admissibility of the action. It asks the Court to confirm the decision of the Selection Board, the rejection of the applicant's complaint and the appointments following the competition in question; and it asks for costs. It argues first that the appointing authority had no jurisdiction to decide on whether the Selection Board's decision to refuse the applicant was correct or not. In any event, it points out the shortcomings of Mr De Santis's qualifications. It says that his accountancy diploma as a 'Ragioniere' is below university level and that although he spent two years at the University of Rome he did not obtain a university diploma; it is uncertain whether his work in the private sector was equivalent to Category A work within the Communities; his steady decline in grade and the assessment of his work in Grade B3 as merely 'satisfactory' shows that his work was not up to A-grade standard. The defendant concludes that the Selection Board therefore had legitimate reasons to question the applicant's admissibility to the competition and the appointing authority had no reason to doubt the Selection Board's decision not to admit the applicant.

To the applicant's five heads of complaint, the defendant specifically replies as follows. Firstly, the reasons given by the Selection Board were adequate. In any event, the process of judicial review is not obstructed because the Selection Board's file is at the entire disposition of the Court, having been submitted by way of an annex to the Rejoinder. Furthermore the applicant failed to ask the Selection Board for individual explanations as he was entitled to under paragraph 16 of the decision in *Verzyck*. Secondly, the principle laid down in *Kobor* only applies where the candidate has objective qualities which indisputably make him admissible to the competition, but it does not apply where, as here, the candidate does not have the requisite university diploma and the Selection Board has to assess in its discretion whether his experience can make up for it. This is a subjective decision and will vary from competition to competition, and so it is perfectly legitimate for a Selection Board not to be bound by assessments made by earlier Selection Boards in different competitions pursuing different purposes.

The Court of Auditors contends that the third, fourth and fifth arguments are groundless and do not require any substantial reply.

Mr De Santis has suggested or hinted that there was behind the events which have happened an intention to exclude him from an A-grade post, if not to get rid of him altogether, and that the result of the competition was predetermined. None of this to my mind has been made out. I would reject any suggestion of impropriety on the part of those concerned.

Nor has he established that the Selection Board could not lawfully reject his educational qualification as not being equivalent to the prescribed university diploma. His diploma as a 'Ragioniere e Perito Commerciale' from the State Technical Institute in Lucera, Italy, has not been shown to be equivalent to a university degree and he did not complete the course or obtain a diploma at the University of Rome where he subsequently studied.

The minutes of the Selection Board dated 17 August 1983 show that Mr De Santis was one of 23 candidates out of 57 who were admitted to the competition, though he was admitted by a majority vote. They also state that he did not obtain the minimum marks required. The list of marks produced shows that he obtained 25 marks under the heading 'Diplomas' (which must here mean equivalent professional experience) and 19 marks for subsequent experience, making a total of 44 marks. He was the only candidate admitted who was not allowed to proceed to the tests.

In substance he contends that no reasonable Selection Board properly evaluating his experience could properly have found that he did not have six years relevant experience over and above that needed to equate with a diploma, since clearly the same period of experience cannot be counted under both heads. He had four years as a financial analyst with a company in Australia, a short period with an American company in Italy carrying out functions including general accountancy, and then 14 years from 1964 to 1978 with the Avis Company, first in Italy, then in England, where he rose from being accounting manager in Italy to being Assistant Vice-President and Assistant Division Controller, firstly with responsibility for the accounts in the United Kingdom, Ireland and Scandinavia and then for accounting procedures in Europe, Africa and the Middle East, until he left in 1978. For four years he had A-grade posts in the Court of Auditors.

Although these are substantial periods of apparently responsible experience, it must in the end be for the Selection Board to evaluate whether they include six years of relevant experience over and above that needed to equate with the relevant diploma. This involves an informed appraisal by the members of the board of the facts and it is not enough merely to count the number of years. They must as a matter of opinion and judgment consider whether the experience does show the aptitude to direct, lead and coordinate the work of an audit team and the requisite knowledge of the principles and techniques of auditing specified. I am not satisfied that Mr De Santis has

established that the Selection Board could not properly have concluded that he had not shown the requisite length of the right experience.

Nor do I consider that the fact that he had been admitted to previous competitions, and to have been found to have satisfied the level of qualifications in order to be able to proceed to the tests, necessarily means that he must automatically be admitted to the third stage of tests in a subsequent competition, since an independent appraisal must be made in each case by the Selection Board appointed upon the basis of the criteria which they properly establish.

In the result I can see no justification for his claims that any legitimate expectation or right to equal treatment has been violated or that the Selection Board misused its powers in carrying out its task.

So far as the giving of reasons is concerned, it is clear from the Court's previous decisions that what is required depends on the circumstances. It may be, as in Case 86/77 *Ditterich* v *Commission* [1978] ECR 1855, that the existence of earlier staff memoranda in support of a transfer decision, of which the applicant could not have been unaware, and which gave him the essential facts, were sufficient to enable him to know the basis of the decision so that he could consider whether it could be challenged, and for the Court to review the legality of the decision. It is also clear that it may be justifiable, particularly where a large number of candidates are concerned, for reasons to be given in a summary form, and that some details may be withheld on the basis of confidentiality. Yet the candidate must be given a sufficient explanation of the reasons for a decision so that he can see whether his rejection is well-founded or whether there is a defect which makes it possible to contest its legality. Merely to state that he has not satisfied a condition without more is insufficient (Joined Cases 4, 19 and 28/78 *Salerno* v *Commission* [1978] ECR 2403, at page 2417). Not to indicate the general criteria adopted by the board or to give any statement of reasons is insufficient (Case 225/83 *Verzyck*, at pages 2004 to 2005).

In the present case, in the light of the fact that he had been admitted to and allowed to proceed to the tests in A-grade competitions of the same or at a higher level (in one of which, Competition CC/A/1/80, the experience required was not 6 but 15 years) and of the experience which he was putting forward, which on the face of it was substantial, it was essential that reasons should have been given why he did not achieve the necessary marks under the second heading. There can be no argument that to do this without a subsequent request was administratively too burdensome, since he was the only candidate who had to be informed that he had failed on his qualifications, having been admitted to the tests.

I reach this result as a matter of general principle and on the specific decision of the Court in Case 112/78 *Kobor* where the Court said (at page 1579): 'A candidate cannot form the subject of a less favourable appraisal than was made of him in a previous competition, unless the statement of the reasons on which the decision is based clearly justifies such a difference of appraisal.' I do not read that judgment as

being limited to what are called decisions on objective facts such as the existence of a degree. The principle seems to me to be at least as relevant where an assessment has to be made of established facts.

Even if it be accepted that a candidate must ask for reasons before he is entitled to them (which, e.g. in the absence of a large number of candidates justifying such a course administratively, I do not consider should be accepted) it seems to me that there was here a sufficient request for reasons contained in the letter to the appointing authority dated 17 November 1983. Whilst in no way blurring the distinction between the appointing authority and the Selection Board, or impinging on the independence of the latter, it seems to me that a request to the Selection Board transmitted through the appointing authority was in this case sufficient. That request should have been passed on. I consider that the decision refusing to do so, or to transmit to the applicant the Selection Board's reasons should itself be annulled. However, such a course is supererogatory if the Selection Board's decision is itself annulled as I consider that it should be.

It has not been contended that the Selection Board in question did not know that he had been admitted to tests in other competitions. If the board did not know it, the more necessary was it for reasons to be given in answer to the applicant's letter of 17 November 1983.

The remaining claim is for the annulment of any appointments made on the basis of the competition in question. In at least three cases, the Court has rejected similar claims: in Case 31/75 *Costacurta* v *Commission* [1975] ECR 1563, in *Salerno* and in *Kobor* (both cited above). Following those cases the annulment must be limited to the decision not to admit the applicant to the tests. As it was a competition to constitute a reserve list for the future recruitment of administrators, the exclusion of the applicant did not affect the admission to the tests of the persons who, in the Selection Board's opinion, possessed the necessary requirements. Consequently, as the Court declared in the *Salerno* case, the rights of the applicant 'will be sufficiently protected if the Selection Board reconsiders its decision, without its being necessary to question the whole of the results of the competition or to annul appointments made in consequence thereof'.

Accordingly, I am of the opinion that the decision of the Selection Board refusing to admit the applicant to the tests in competition CC/A/5/83 should be annulled, and the Court of Auditors should be ordered to pay the costs.