JUDGMENT OF THE COURT (Second Chamber)
27 March 1985 *

In Case 12/84

Ilias Kypreos, residing in Athens, represented by Eleni Komboti, of the Athens Bar, with an address for service in Luxembourg at the home of Mrs Eleni Alimonaki, 57/59 Rue Antoine-Meyer,

applicant,

v

Council of the European Communities, represented by John Carbery, Adviser in the Legal Department of the General Secretariat, acting as Agent, assisted by Christos Mavrakos, a member of the Legal Department of the General Secretariat, acting as co-agent, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director of the Legal Department of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

APPLICATION for the annulment of the Council's refusal to place the applicant on the list of suitable candidates established as a result of General Competition No C/255 held for the purpose of constituting a reserve list for the recruitment of Greek-language typists,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

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gives the following

* Language of the Case: Greek.

** after hearing the Opinion of the Advocate General delivered at the sitting on 14 February 1985,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 10 January 1984, Ilias Kypreos, residing in Athens, brought an action against the Council of the European Communities for the annulment of that institution's refusal to include him in the list of suitable candidates drawn up as a result of Open Competition Council/C/255 held for the purpose of constituting a reserve list for the recruitment of Greek-language typists (Official Journal, Greek Edition, C 8, 12 January 1983).

2 In the Notice of Competition, it was stated *inter alia* that candidates were required 'to possess the abilities necessary to perform those duties, as well as a thorough knowledge of the Greek language and a satisfactory knowledge of another official language of the Communities'. It is not contested that Mr Kypreos indicated in his application that he had a 'good knowledge' of the English language in terms of his ability to read, write and speak it.

3 Initially, Mr Kypreos was admitted to the competition and took part in the written tests, which took place in Athens on 6 September 1983. By letter of 31 October 1983, he was informed that he had been admitted to the oral tests, which took place on 18 November 1983, also in Athens. It emerges from the Court's examination of the case that, when the language test was held, the Selection Board noted that Mr Kypreos displayed a notable ignorance of the English language, since he was not even able to understand the questions put to him. Consequently, by a letter of 2 December 1983, which is the subject of these proceedings, the Selection Board informed Mr Kypreos that he had not been included in the list of suitable candidates. The Council admits that, as a result of an oversight, the administration omitted to inform the candidate in that letter of the reason for his exclusion.

4 On 10 January 1984, Mr Kypreos lodged an application for the annulment of the Selection Board's decision, claiming that no reasons whatever were given for it and

that in substance it was unjustified. The applicant also considers that he was excluded from the list of suitable candidates for political reasons since he had come to public notice by being a candidate in parliamentary elections in Greece and, in 1981, in the election for the European Parliament.

5 Since the application to the Court had the effect of drawing the Council's attention to the fact that no reasons had been given for its decision, it explained to the applicant, by letter of 22 February 1984, why he had been unsuccessful and offered to pay his lawyer's fees if he withdrew his application. In his reply dated 28 February 1984, Mr Kypreos insisted however that his case be reconsidered by the Selection Board and that his marks be re-examined. The Council's Director of Personnel then consulted the Selection Board for the competition again. After deliberating the Selection Board decided unanimously not to change the marks given to Mr Kypreos and to maintain its previous decision. In his letter of 23 March 1984, the Chairman of the Selection Board points out that the Board considered that it had already been too generous in giving Mr Kypreos a mark of 5 out of 20 for the oral language test. By letter of 29 March 1984, the Council informed the applicant of the Selection Board's decision.

6 After receiving those explanations, Mr Kypreos continued with his action, claiming that the language test had only been optional, contending once again that the Selection Board's assessment was not well founded and repeating his accusation that the reason for his exclusion was of a political nature.

7 Since the applicant did not appear at the hearing, the Council limited itself to confirming the arguments and conclusions contained in its pleadings.

8 It must in the first place be stated that the Council is right in its contention that, as a result of the explanations given in the course of the proceedings, the submission that no reasons were given for the decision is now devoid of purpose.

9 With regard to the nature of the tests provided for in the Notice of Competition, it must be noted that, according to the very terms of Section IV (b) of that notice, the oral language test was compulsory and only the written test was optional.

10 With regard to the applicant's observations on the result of his oral English-language test, it must be observed that he has misunderstood the requirements of multi-lingual services such as those of the Community. The requirement of a sufficient knowledge of one of the Community's official languages, other than the candidate's mother tongue, constituted a minimum requirement which the Selection Board for the competition had to assess with the rigour imposed by the needs of communication within the Community administration. It is not for the Court to review the assessments which were made in complete independence by the Selection Board on that subject and which disclose a manifest lack of linguistic ability on the part of the candidate in question.

11 Finally, the complaints of a political character which the applicant made regarding the Selection Board appear to be totally without foundation.

12 For all those reasons the application must be dismissed.

Costs

13 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

14 However, Article 70 of the Rules of Procedure provides that in proceedings commenced by servants of the Communities, institutions are to bear their own costs. As a candidate in a competition held by a Community institution, the applicant is entitled to the benefit of that provision.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to pay their own costs.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 27 March 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber