# OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 13 SEPTEMBER 1979 [1]

*Mr President,*
*Members of the Court,*

1. This Court is asked to give judgment once more on a case concerning the conditions for admission to an open competition based on tests. The applicant, Mr Szemerey, an official of the Commission of British nationality, who had applied to take part in Competition COM/A/154 published in September 1977 for the constitution of a reserve of administrators in Category A, Grades 7 and 6 (Official Journal C 213 of 7 September 1977), was not admitted to the written tests since the selection board considered that his qualifications were inadequate because they did not meet the necessary requirements. The excluded applicant then lodged a complaint against that decision within the meaning of Article 90 of the Staff Regulations of Officials; however, the Commission, by letter of 17 April 1978, rejected the complaint, stating that the contested decision was completely in accordance with the provisions of the Staff Regulations.

In the light of this negative viewpoint adopted by the institution, Mr Szemerey lodged an appeal to the Court of Justice by application lodged at the Registry on 24 August 1978, maintaining that the notice of competition was incompatible with the second subparagraph of Article 5 (1) and Article 27 of the Staff Regulations of Officials and that the decision not to admit him, in addition to being invalid because of the absence of a statement of the reasons upon which it was based, had also infringed one of the headings of the notice. Mr Szemerey therefore requested primarily the annulment of the notice within the limits of the above-mentioned provisions and in the alternative the annulment of the decision not to admit him to the tests and, consequently, of the whole competition procedure. The applicant also requested the Court to recognize that he possesses the necessary and sufficient qualifications for admission to the competition.

2. I shall first of all examine the submissions concerning the alleged unlawfulness of the notice of competition. The applicant complains that the conditions of the possession of a university degree and that of at least one year's practical experience in the field chosen by the applicant have been laid down jointly. In his opinion the combined stipulation of the two requirements is contrary to the provision laid down in the second subparagraph of Article 5 (1) of the Staff Regulations of Officials which provides for "university education" and "equivalent professional experience" in the alternative as the necessary requirements for admission to the career brackets in Category A.

According to Mr Szemerey, this argument is confirmed by Article 29 (2) of the Staff Regulations which, for the purposes of the highest posts, in other words for Grades A 1 and A 2, permits the engagement of officials without the competition procedure and therefore regardless of whether the persons to be

1 — Translated from the Italian.

engaged do or do not possess the necessary requirements for the competitions. If therefore the Staff Regulations of Officials permit the highest posts to be filled by applicants without a universtiy degree it is necessary to consider, according to the applicant, that the criterion according to which practical experience is adequate applies *a fortiori* to the posts filled by competition by interpreting the above-mentioned second subparagraph of Article 5 (1) of the Staff Regulations to that effect.

In my opinion, this complaint is not justified. I have already had an opportunity to observe in a similar case (my opinion in Case 117/78, *Orlando* v *Commission)* that as a general rule it is necessary to consider as lawful a notice which, as in this case, lays down for the purposes of taking part in the competition tests conditions of admission which are more difficult or more restrictive than those laid down in general in the Staff Regulations of Officials. This opinion is based on two considerations. In the first place it seems to me to be significant that Article 5 does not refer directly to the subject of the requirements for admission to the competitions but only to the classification of the posts in four categories and to the criteria on which such classification is based. I therefore consider it hasty to draw from the wording of the second subparagraph of Article 5 (1), the provision in question, and precisely from the fact that that provision links the two requirements with the disjunctive conjunction "or", strict implications on the subject of the engagement of staff, a subject for which rules are laid down elsewhere and precisely in Article 27 *et seq* of the Staff Regulations of Officials. In addition, it is necessary to bear in mind that the principle by which the administration must be guided in the choice of staff is that of the interests of the service: to ensure this an institution may indeed, in publishing a competition, lay down conditions for admission which are more severe than those minimum conditions indicated in the Staff Regulations of Officials. In the case with which we are dealing, the Commission itself adhered to the latter criterion when it prepared the notice and the selection board correctly adhered to the same principle in interpreting the notice and in putting it into effect.

Nor does it seem to me that the reference to Article 29 of the Staff Regulations alters the terms of the problem. This provision in fact does no more than establish that for the purposes of filling the highest posts and in exceptional cases also those which require "special qualifications", the administration may adopt a procedure other than the competition procedure. However a similar very restricted possibility which corresponds to the systems of the Member States has nothing to do with the minimum standard of knowledge and experience required for the purpose of taking part in the competitions in order to fill, by the ordinary procedures, the great majority of the posts available.

3. Another complaint is based upon Article 27 of the Staff Regulations of Officials. The first paragraph of that provision provides that staff must be recruited so as "[to secure] for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest geographical basis from among nationals of Member States of the Communities".

According to the argument put forward by the applicant, the Commission, by providing for the purpose of admission to the competition in question for the possession of a university degree in

addition to specific practical experience, automatically did not obtain the services of first-class officials who have wide practical experience at least equivalent to university education; in this way it acted in breach of the guiding principles of the system of appointment laid down in Article 27.

It is impossible to agree with such an argument. I admit however that in some cases applicants who have no university degree but good practical experience are stronger than other competitors who have both these requirements; this does not alter the fact that in general the possession of both requirements guarantees a higher level of ability and that in preparing a notice of competition the institutions must take into account the normal case and not any exceptions thereto. I do not consider however that the notice, which provided for the two conditions of a university degree and practical experience jointly, was in breach of Article 27 of the Staff Regulations.

The applicant then relies upon Article 27 also from another viewpoint. He observes that in the United Kingdom essentially the possession of knowledge acquired through experience is required for admission to the professions, as is shown by the fact that for the purpose of enrolment with certain professional organizations there is a requirement that the applicant should have been in practice in the profession for a certain time and not that he should possess a specific educational qualification. The fact that, on the contrary, for the purposes of admission to some competitions for Community posts an educational qualification is required in addition to practical experience might, in the opinion of the applicant, put candidates from the United Kingdom at a disadvantage. This would again be in breach of Article 27 of the Staff Regulations, which provides that recruitment must be made "on the broadest possible geographical basis from among nationals of Member States of the Communities", and would, from a wider point of view, be in breach of the very principle of equality, in that it would lead to discrimination by the institutions against citizens of the United Kingdom in the recruitment procedures.

None of these arguments seems to me to be convincing. To require specific conditions for the admission of applicants to the competition tests is a normal exercise of the discretion of the administration. Whether or not they are in accordance with the criteria adopted in a specific Member State seems to me to be irrelevant.

It is prohibited for the Community Court to adopt as yardsticks of appraisal the criteria for the organization of the professions accepted in the Member States and on the other hand it is not its task to check the methods of recruitment of staff employed by the institutions from the point of view of their appropriateness.

I do not therefore accept that in the case in question the assumption may seriously be made that the principle of equality has been violated. The important factor in this connexion is that the conditions for admission to the competitions are the same for the citizens of all Member States and that this balance is not altered by the concern to follow the rules for admission to the professions and the public service characteristic of one or more Member States.

4. I shall move on to the criticisms which directly affect the measure by which the selection board excluded the applicant from taking part in the tests. Mr Szemerey maintains that that measure does not contain a sufficiently

clear statement of the reasons upon which it is based and is therefore in breach of the second paragraph of Article 25 of the Staff Regulations which provides that all decisions relating to a specific individual adversely affecting officials must state the grounds on which they are based.

The decision not to admit the applicant to the competition tests was notified to Mr Szemerey by means of a standard letter containing a list of four grounds and bearing a cross in the box against ground No 2 ("Your qualifications were not considered adequate", corresponding to the Italian formula "I vostri titoli o diplomi non sono stati giudicati conformi ai requisiti richiesti"). Such a statement of the grounds upon which the decision was based did not, in the applicant's opinion, because of its general nature show that the reason why the qualifications were not in accordance with the requirements contained in the notice was that the applicant did not possess a university degree; this jeopardized Mr Szemerey's possibilities of defence both at the administrative and at the judicial level.

The attitude of this Court to the question expressed most recently in the judgments of 30 November 1978 (Joined Cases 4, 19 and 28/78, *Enrico M. Salerno, Xavier Authié and Giuseppe Massangioli* v *Commission of the European Communities)* and the judgment of 5 April 1979 (Case 112/78, *Kobor* v *Commission)* is that when a condition for admission represents in fact the sum of several requirements, it is not sufficient for the measure stating that the applicant is not admitted to the tests to refer to the conditions as a whole for the purpose of indicating which precisely of the necessary condition was considered in each case to be lacking (see paragraph 15 of the decision in the judgment in the *Kobor* case). The consequence of this premise *a contrario* is that if the condition for admission corresponds to a single and easily identifiable fact, a statement of the reasons upon which the measure not admitting the applicant is based consisting merely of a reference to the condition itself without further details must be considered as sufficient and therefore in accordance with the provisions laid down in the second paragraph of Article 25 of the Staff Regulations. In fact, in such a case, the person concerned is able to understand clearly which deficiency was found by the selection board and has therefore the opportunity to put forward, if he thinks fit, an appropriate defence.

In the present case precisely the latter situation has occurred. It is an uncontested fact that the applicant does not have a university degree or diploma; this emerges from the application to take part in the competition itself, under heading 12 ("Diplomas or degrees obtained and class of degree"), which, significantly, did not bear any information (see document No 4 annexed to the application), as well as from the candidate's *curriculum vitae.*

The fact that the notice of competition required in relation to the heading "Certificates, diplomas, etc." a university degree ("University education, *with degree* or *diploma"*) in a field appropriate to the option chosen (in this instance, information) is likewise incontestable. The requirement of practical experience was indicated in a separate paragraph. In the standard letter sent to the candidate to inform him that he had not been admitted to the tests, experience also appeared in a number beside a box different from those relating to qualifications.

The risk of uncertainty was therefore excluded in this instance in view of the phrase pointed out in the above-mentioned standard letter: the lacuna ascertained by the selection board could consist only in the lack of the university degree (or other diploma) which constituted the first of the two special conditions required by the notice for the

purpose of admission to the tests and the only condition which could be defined by the term "qualifications". Uncertainty might hypothetically have arisen if the applicant had possessed a university degree or diploma but this was not considered relevant to the chosen field or not classifiable as a degree or diploma, taking into account all the same the special features of the education system in the United Kingdom. However, the case with which we are dealing did not have those special features: the uncontested lack of any university degree or diploma could not give rise to misunderstandings.

Owing to these considerations, I take the view that the statement of the reasons upon which the measure excluding Mr Szemerey from the tests was based was clear and sufficient and therefore in accordance with the provisions laid down in Article 25 of the Staff Regulations. This ground of appeal must therefore also be held to be unfounded.

5. In the last ground of appeal the applicant complains that the selection board did not take into consideration in the appraisal of his qualifications the national education system in the United Kingdom, the country of which he is a national.

Part III (Eligibility), heading B (Special conditions), point 2 (Certificates, diplomas, etc. and practical experience) of the notice of competition provided that "the selection board will allow for differences in national education systems". It does not however seem to me that in this case the selection board was guilty of the omission complained of. In fact, the duty to take into account the education systems characteristic of the various Member States, in relation to the requirement of a university education, clearly pre-supposes the existence of a university qualification; it may possibly be necessary to appraise whether or not it is equivalent to a diploma or degree.

However, the essential characteristic of the case in question is, as we have seen, the fact that the applicant has no university qualification or a qualification which may in any way be considered equivalent to a university degree or diploma. The curriculum vitae produced by him states that he "started studying Law at London University (Holborn College) in 1959, but left to go into journalism". This is followed by the information that he attended evening classes (in shorthand, typing, philosophy, economics, public relations and transport economics) and a training course held by the Commission of the European Communities in co-operation with the University of Louvain. Having established this, it is impossible to understand on what basis and from what point of view the selection board should have taken into account the education system in the United Kingdom in the examination of the qualifications claimed by the applicant.

6. For all the foregoing considerations, I take the view that the application must be dismissed: it is clear in fact that both Notice of Competition No COM/A/154 and the decision adopted by the selection board not to admit Mr Szemerey to the tests are not vitiated by illegality as claimed by the applicant. Given the nature of the dispute, each party will have to bear its own costs.