2. An action against a decision not to include a candidate's name on the list of suitable candidates drawn up by a selection board is in principle admissible. However, if the non-inclusion follows from the candidate's failure in the tests to obtain the minimum number of points required by the notice of competition, the applicant can validly put forward only one plea in law, namely manifest error by the selection board in assessing his abilities and in particular that the selection board was wrong to award him an insufficient mark at the tests. As the applicant has not argued that the selection board was wrong to award him an insufficient mark, the claim for the annulment or amendment of the list of suitable candidates is inadmissible.

# ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
6 April 1992 *

In Case T-74/91,

**Rocco Tancredi,** residing in Taranto (Italy), represented by Giuseppe Semeraro, Avvocato with right of audience before the Corte di Cassazione, whose Chambers are situated at 3 Via Mazzini, 74100 Taranto,

applicant,

v

**European Parliament,** represented by Jorge Campinos, Jurisconsult, and Kieran Bradley, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of Notice of Competition PE/52/A and/or annulment or amendment of the list of suitable candidates drawn up by the Selection Board for that competition,

* Language of the case: Italian.

THE COURT OF FIRST INSTANCE (Third Chamber),

composed of: B. Vesterdorf, President, C. Yeraris and J. Biancarelli, Judges,

Registrar: H. Jung,

makes the following

## Order

### Facts and procedure

1 On 23 November 1990 the European Parliament published in the Italian language edition of the *Official Journal of the European Communities* (C 293, p. 15) a notice of competition on the basis of qualifications and tests, with a view to making an appointment as head of division in its Rome information office (PE/52/A). Mr Tancredi submitted an application. The Selection Board held its inaugural meeting on 6 March 1991. At its meetings on 21 March and 8 and 17 April 1991 it drew up a list of 46 candidates who fulfilled the conditions stated in the notice of competition. The applicant was not on the list. The Chairman of the Selection Board informed him that he could not be admitted as a candidate, since he did not have 'recognized professional experience in the field of public relations, journalism and/or communications (title III, point B(1)(b) of the notice of competition)'. The applicant submitted a complaint against that decision. The file was re-examined and his complaint upheld.

2 At its meetings on 17 April and 6 May 1991 the Selection Board drew up the criteria for marking the qualifications of the candidates who had been admitted to the competition. Following that marking, the Selection Board drew up a list of candidates admitted to the oral tests, including the applicant. The oral tests took place in Brussels on 27 and 28 June 1991 and in Rome from 17 to 19 July 1991.

3 Following the tests, the Selection Board drew up a list of suitable candidates, with four names. The first name on the list was Mr A; the applicant was not included. It appears from the table of marks drawn up by the Selection Board that at his interview the applicant had obtained only 22 points, whereas the minimum required by the notice of competition was 24 points. The total number of points obtained by the applicant was 53, which placed him in last position on the list of candidates admitted to the oral tests.

4 In a letter dated 19 September 1991, which he received on 26 September, Mr Tancredi was informed that, contrary to the requirements of point V of the notice of competition, he had not obtained the minimum 24 points required at the interview with the Selection Board, and that consequently he had been 'eliminated'.

5 By application lodged at the Registry of the Court of First Instance on 23 October 1991, Mr Tancredi challenged the notice of competition and the list of suitable candidates drawn up by the Selection Board.

**Forms of order sought by the parties**

6 The applicant claims that the Court of First Instance should:

annul the contested notice of competition and/or annul or amend the results — list — decision of the Selection Board of that competition, with all consequences, including consequences relating to costs.

7 The Parliament contends that the Court should:

(i) declare the application inadmissible in so far as it is directed against the notice in question;

(ii) declare the application inadmissible in so far as it is directed against the drawing up of the list of suitable candidates;

(iii) as to the remainder, declare that it is manifestly ill-founded;

(iv) make an appropriate order for costs.

In addition, in its rejoinder, the Parliament asks the Court to 'declare inadmissible and unfounded the new plea in law put forward by the applicant in his reply'.

**Admissibility**

8 Mr Tancredi argues in support of his claims that the candidate who was successful in the competition did not fulfil the special conditions required in the notice of competition; that 'the principle of separation between the governments of the Member States and the administration of the European Communities' was not respected; and that there were procedural irregularities in the selection of candidates.

9 Under Article 111 of the Rules of Procedure of the Court of First Instance, where an action is manifestly inadmissible the Court may, by reasoned order, give a decision on the action, without taking further steps in the proceedings. The Court of First Instance (Third Chamber) considers that in the present case it has sufficient information from the documents before it and that it is not necessary to open the oral procedure.

*Admissibility of the claims directed against the notice of competition*

10 The Parliament argues that in so far as it is directed against the notice of competition, the application is inadmissible for two reasons: firstly, the applicant

has no interest in challenging a notice of competition whose function was defined by the Court of First Instance in its judgment in Case T-132/89 *Gallone* v *Council* [1990] ECR II-549, and secondly, the application was lodged out of time. It is settled law, according to the Parliament, that officials who have not challenged in good time the provisions of the notice of competition which adversely affect them may not plead irregularities in that notice in support of proceedings brought against a decision of the Selection Board (judgment in *Gallone* v *Council*, cited above, at paragraph 20). An official who complains of irregularities whose origin may be found in the wording of the notice of competition can indeed challenge that notice. However, according to the Parliament, that circumstance has not been relied on in the present case by the applicant, who does not allege that there was any inherent irregularity in the notice of competition, and had that been the case, the notice of competition ought to have been challenged within three months of its publication, in accordance with Article 90(3) of the Staff Regulations of Officials of the European Communities. In the present case, that period expired on 25 February 1991. In so far as it relates to the notice of competition, the application is thus manifestly out of time.

11 The applicant has not submitted any observations on this objection of inadmissibility.

12 The Court notes that it is settled case-law that 'an official may not, in support of an action brought against a decision not to admit him to a competition, rely on submissions based on the alleged irregularity of the notice of competition when he has failed to challenge in good time those provisions of the notice which he considers to affect him adversely. Were it otherwise, it would be possible to challenge a competition notice long after it had been published and after most, or all, of the operations carried out in connection with the competition had already taken place, which would be contrary to the principles of legal certainty, the protection of legitimate expectations and sound administration. The situation is not the same in the case of an official who relies on irregularities which may originate in the wording of the notice of competition but which also occur in the course of the competition' (judgment of the Court of Justice in Joined Cases 64/86, 71/86 to 73/86 and 78/86 *Sergio* v *Commission* [1988] ECR 1399, paragraphs 13 to 15; see also the judgment of the Court of Justice in Case 294/84 *Adams* v *Commission* [1986] ECR 977 and that of the Court of First Instance in Case T-133/89 *Burban* v *Parliament* [1990] ECR II-245). The same principle applies in the case of an application directed against a decision other than one not to admit a person to a competition (judgment of the Court of First Instance in

*Gallone* v *Council*, cited above). It applies in particular to proceedings challenging decisions not to enter a person's name on a list of suitable candidates (judgments of the Court of Justice in Case 164/87 *Simonella* v *Commission* [1988] ECR 3807 and Case 181/87 *Agazzi Léonard* v *Commission* [1988] ECR 3823).

13 It follows from the foregoing that the first head of claim directed against the notice of competition is inadmissible, since Mr Tancredi did not challenge the notice of competition within the period prescribed for initiating proceedings following its publication in the *Official Journal of the European Communities* and does not claim that an inherent defect in the notice of competition came to light when the tests for the competition were organized.

*Admissibility of the claims directed against the list of suitable candidates*

14 The Parliament argues that the application is also inadmissible in so far as it is directed against the drawing up by the Selection Board of the list of suitable candidates, since the applicant has not established an interest in bringing proceedings. According to the case-law of the Court of Justice and Court of First Instance, a candidate who has taken part in a competition has an interest in challenging the outcome of that competition only if he has achieved a favourable position (judgment of the Court of First Instance in Case T-37/89 *Hanning* v *Parliament* [1990] ECR II-463). The applicant does not fulfil this condition, since he did not obtain at the interview with the Selection Board the minimum number of points required by the rules of the competition. It follows, in the Parliament's opinion, that the only decision of the Selection Board which could have adversely affected the applicant was his ranking after the oral tests and his consequent exclusion from the list of suitable candidates. Only the last of the applicant's three pleas in law, namely that alleging irregularities vitiating the procedure for selecting the candidates, is relevant in this respect.

15 The applicant maintains that he does indeed have an interest, since he requested 'the annulment of the results, and the order of merit and of the Selection Board's decision on the grounds of manifest lack of impartiality and transparence in the course of the competition itself'.

16 The Court of Justice has held that 'the proceedings of the Selection Board cannot, in principle, be challenged as such since the board is not a body empowered to take decisions binding on officials; the proceedings are merely preparatory acts, so that their illegality may only be questioned in an application directed against the decision to which they were a preliminary' (judgment in Case 21/65 *Morina* v *Parliament* [1965] ECR 1033). That is settled law (judgment in Case 143/84 *Vlachou* v *Court of Auditors* [1986] ECR 459, paragraph 11), at least with respect to candidates included on the list of suitable candidates. It follows that, for such candidates, the illegality of the list 'may only be pleaded in an application challenging the decision in relation to which it constituted a preparatory step' (judgment in *Vlachou* cited above), in other words, the appointing authority's decision to appoint, taken following the work of the Selection Board.

17 With respect to candidates who, like the applicant, were not included on the list of suitable candidates drawn up by the Selection Board, it is open to them to challenge the Selection Board's decision not to include them on the list of suitable candidates (judgments of the Court of Justice in *Simonella* and *Agazzi Léonard*, cited above, and Case 133/88 *Martinez* v *Parliament* [1989] ECR 689). Similarly, the Court of First Instance has held that 'a list of suitable candidates is the result of two distinct types of decisions adopted by the Selection Board. Firstly, the Selection Board decides to include certain candidates on the list; secondly, it refuses to include on it the other candidates who took part in the competition. With regard to the candidates included on the list, the list is a measure preparatory to an appointment decision .... As regards the candidates not included on the list, the mere inclusion of the other candidates does not change their legal position, which is affected only by the actual appointment of another person to the post which the competition was held to fill. On the other hand, the decision not to include a candidate on the list of suitable candidates is an act adversely affecting the person in question .... Consequently, the claim for the annulment of all the steps [in the competition] is admissible only in so far as it concerns the refusal of the Selection Board to include the applicant on the list of suitable candidates' (judgment in Case T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-407).

18 It follows from the foregoing that the applicant is thus in principle entitled to challenge the Selection Board's decision not to include his name on the list of

suitable candidates. The second head of claim, which seeks the annulment or amendment of the list of suitable candidates drawn up by the Selection Board, is therefore to that extent capable of being declared admissible.

19 However, the non-inclusion of the applicant on the list of suitable candidates drawn up by the Selection Board followed in the present case from his failure at the interview with the Selection Board to obtain the minimum number of points required by the notice of competition. Consequently, in support of his claim for annulment of the Selection Board's decision not to include him on the list of suitable candidates, the applicant can in the present case validly put forward only one plea in law, namely that alleging a manifest error by the Selection Board in assessing his abilities, and in particular that the Selection Board was wrong to award him an insufficient mark at the oral tests. That insufficient mark was indeed the sole reason for the rejection of his application, which was contained in the decision not to include his name on the list of suitable candidates, which decision was notified to him by the Chairman of the Selection Board on 19 September 1991. As the applicant has not argued that the Selection Board was wrong to award him an insufficient mark at the oral tests, the second head of claim, seeking the annulment or amendment of the list of suitable candidates drawn up by the Selection Board for the competition, is inadmissible.

20 Examination of the applicant's pleas in law and arguments shows that he does not in any way claim that the decision not to include him on the list of suitable candidates was vitiated by an error of fact, error of law or manifest error of assessment on the part of the Selection Board. Even if it endeavours to construe the application and reply broadly, this Court can only find that all the applicant's arguments are directed against the Selection Board's decision to nominate Mr A as successful candidate in the competition, although Mr A's situation is in no way capable of affecting the applicant's own legal or material position, given that he is not on the list of suitable candidates. Moreover, even supposing that the claims in the application could be interpreted as claims for the annulment of all steps taken in the competition, they would in any event be inadmissible, since the applicant, having passed the first two stages of the competition in question, cannot argue that all the steps in the competition are of such a nature as to affect him adversely (judgment of the Court of Justice in *Simonella*, cited above).

21 The action brought by Mr Tancredi must be dismissed as manifestly inadmissible, without its being necessary to rule on the Parliament's second objection of inadmissibility.

## Costs

22 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings between the Communities and their servants, the institutions shall bear their own costs. The parties must therefore be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

**1. The application is dismissed as inadmissible.**

**2. The parties shall bear their own costs.**

Luxembourg, 6 April 1992.

H. Jung
Registrar

B. Vesterdorf
President