JUDGMENT OF THE COURT (Third Chamber)
4 July 1996 *

In Case C-254/95 P,

European Parliament, represented by Manfred Peter and José Luis Rufas Quintana, of its Legal Service, acting as Agents, with an address for service at the Secretariat of the European Parliament, Kirchberg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities of 30 May 1995 in Case T-289/94 [1995] ECR-SC II-393 between Angelo Innamorati and the European Parliament seeking to have that judgment set aside,

the other party to the proceedings being:

Angelo Innamorati, a former member of the auxiliary staff of the Commission of the European Communities, a candidate in open competition PE/59/A, residing in Rome, represented by Jean-Noël Louis, Thierry Demaseure, Véronique Leclercq and Ariane Tornel, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

THE COURT (Third Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida and C. Gulmann, Judges,

* Language of the case: French.

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 23 May 1996,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 24 July 1995, the European Parliament brought an appeal pursuant to Article 49 of the Statute of the Court of Justice of the EC and the corresponding provisions of the ECSC and Euratom Statutes against the judgment of 30 May 1995 in Case T-289/94 *Innamorati* v *Parliament* [1995] ECR-SC II-393 (hereinafter 'the contested judgment'), in which the Court of First Instance annulled the decision by which the Selection Board in Open Competition PE/59/A awarded Mr Innamorati an eliminatory mark in the third written test in that competition and refused to admit him to the other tests (hereinafter 'the challenged decision').

2 In the contested judgment, the Court of First Instance found:

'(1) The applicant, a member of the auxiliary staff (Category A, Group II, Step 2) of the Commission, took part in an open competition (PE/59/A) held for the purpose of drawing up a reserve list of Italian-language administrators for the Secretariat of the European Parliament.

(2) Part III. B.1 of the notice of competition, published on 23 October 1992 (OJ 1992 C 275 A, p. 8), stated that the candidates were to take six eliminatory written tests. It gave the following details of Test 1(c):

"(c)Summarizing a 2-3 page document, reducing it to a tenth of its length with a maximum tolerance of 10%, in order to assess the candidate's analytical and summarizing abilities, objectivity and accuracy.

Maximum time allowed for the test: 45 minutes

Marks: from 0 to 20

Candidates obtaining a mark of less than 10 will be eliminated."

(3) On 20 April 1994 the chairman of the Selection Board informed the applicant that he had obtained a mark for the summarizing test 1(c) which was lower than the minimum required and that, consequently, the Selection Board could not mark his other written tests.

(4) By letter of 25 May 1994 the applicant asked that his test be reconsidered and that he be told the reasons for the marks awarded him for test 1(c) by the Selection Board.

(5) In a letter of 13 June 1994 addressed to the chairman of the Selection Board, the applicant's legal adviser claimed that the examiners for Test 1(c) had not eliminated candidates who failed to observe the maximum number of words allowed. He also asked the chairman of the Selection Board to explain to him, first, the criteria adopted by the Board in considering whether candidates satisfied the conditions set out in the notice of competition and in evaluating their tests, including the instructions given to the examiners with regard to

compliance with the particular conditions of Test 1(c) and, secondly, the measures taken to ensure that candidates remained anonymous.

(6) By letter of 14 June 1994 the chairman of the Selection Board gave the applicant confirmation of the Board's decision in the following terms:

"On the basis of the parameters adopted and the strict criteria decided on by the Selection Board before marking — taking into account a number of factors set out moreover in the notice of competition — I regret to confirm that your mark in Test 1(c) is lower than that required in order to go through to the next stage. As a matter of fact, you obtained 8.33 marks (minimum required 10 marks)."

(7) In a letter of 4 July 1994 to the chairman of the Selection Board, the applicant's legal adviser repeated his request of 13 June 1994 and noted that the letter of 14 June 1994 from the chairman of the Selection Board contained no statement of the reasons for the Board's decision. He also stated that he intended to bring an action before the Court of First Instance if he was not given the information which he had requested.

(8) In a letter of even date, the Head of the Competitions Unit of the Parliament answered the letter of 13 June 1994 from the applicant's legal adviser, telling him that as soon as the Board's report had been signed, the Parliament would be "in a position to give (him) the information sought, within the limits which the Court of Justice ... has set on the duty to state the reasons for the decisions of Selection Boards having regard to the secrecy of the proceedings".

(9) By letter of 19 July 1994, the Head of the Competitions Unit of the Parliament gave the applicant's legal adviser the following information:

"— All marking of the written tests in the competition concerned was done anonymously. Even though the candidates had to put their names on the answer sheets, the subsequent allocation of a secret code number and the

blacking out of the writer's personal details ensured that the marking was anonymous.

— Tests 1(c)(1) (objective tests) and 1(c)(2) (cultural tests) were marked by optical scanner under the supervision of the Selection Board. All the other tests were communicated to the seven members of the Board and marked by at least three of them.

— Mr Innamorati has asked for his tests to be reconsidered. The Selection Board undertook that reconsideration, checking that no error had crept into the marking. It thus confirmed its original decision. The marking criteria used by the members of the Selection Board had been defined prior to marking and were complied with in accordance with the terms of the notice of competition".'

3 By application lodged at the Registry of the Court of First Instance on 15 September 1994, Mr Innamorati brought an action for annulment of the challenged decision.

4 In support of his action for annulment, Mr Innamorati put forward two pleas in law. The first alleged breach of the principle of equal treatment, failure to comply with the notice of competition and failure to state reasons for the challenged decision. The second plea alleged an error of assessment, non-impartiality and breach of the principles governing the workings of the Selection Board (paragraph 17 of the contested judgment).

5 However, the applicant withdrew the second plea at the hearing. The Court of First Instance therefore considered that there was no need to give a decision on it (paragraph 18).

6 The Court of First Instance considered that the first plea fell into two parts: first, the allegation of breach of the principle of equality and failure to comply with the notice of competition, and secondly, the failure to state the reasons for the challenged decision (paragraph 19).

7 As regards the first part, the Court of First Instance held that the applicant had adduced no factual evidence in support of his assertion that the Selection Board had not eliminated other candidates who had not kept within the limits set on the length of the third written test. Since there was nothing in the file to justify such a finding, the Court rejected that part of the plea (paragraphs 22 and 23).

8 With regard to the second part of the first plea, the Court of First Instance first of all recalled that the purpose of the obligation to state the reasons for a decision was, first, to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision was well founded and, secondly, to make it possible for the decision to be the subject of judicial review. It also pointed out that, where there was a large number of candidates in a competition, the Selection Board was authorized initially to notify candidates merely of the criteria and of the result of the selection process and was not obliged until a later stage to provide individual explanations to those candidates who expressly asked for them (paragraphs 26 and 27).

9 The Court of First Instance next pointed out that, although Mr Innamorati several times asked to be told the reasons for the challenged decision and the criteria adopted by the Selection Board in assessing the third test, the Parliament's replies did not contain any explanation of the mark awarded him and did not define the criteria adopted by the Selection Board. It therefore considered that the Parliament had provided no reasons which might enable the applicant to determine whether the decision at issue was well founded or the Court of First Instance to exercise its power of review (paragraphs 28 to 30).

10 Finally, the Court of First Instance considered that the total absence of a statement of reasons could not be remedied by explanations provided by the Parliament after an action had been started, since at that stage such explanations no longer fulfilled

their intended function. Moreover the explanations given by the Parliament before the Court of First Instance, during both the written and the oral procedure, were too imprecise to constitute sufficient reasons for the challenged decision (paragraphs 31 and 32).

11 The Court of First Instance concluded that the second part of the first plea was well founded and accordingly annulled the challenged decision (paragraph 33).

12 The appeal brought by the Parliament seeks, first, to have the contested judgment set aside and, secondly, dismissal of the claims made by Mr Innamorati before the Court of First Instance.

13 Mr Innamorati contends that the appeal should be dismissed, primarily because it is manifestly inadmissible or alternatively because it is not well founded.

14 By separate document, lodged at the Registry of the Court of Justice on 24 July 1995, the Parliament made an application, under Article 53 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes and Articles 83 and 118 of the Rules of Procedure, for interim relief in the form of suspension of the effects of the contested judgment. That application was dismissed by order of the President of the Court of 15 September 1995 in Case C-254/95 P-R *Parliament* v *Innamorati* ([1995] ECR I-2707).

15 In support of its appeal, the Parliament puts forward the three following pleas in law:

— the contested judgment misinterprets the scope and limits of the requirement to state reasons for the decisions of selection boards in competitions;

— the inadequacy of the reasons provided for the challenged decision could in any event have been remedied during the procedure before the Court of First Instance;

— the absence or inadequacy of reasons provided for the challenged decision could not of itself justify the annulment of that decision.

16 Mr Innamorati maintains, primarily, that there are no legal grounds for the appeal. He asserts that the Parliament challenges the Court of First Instance's findings as to fact concerning the reasons for the challenged decision and the consequences ensuing, in this case, from the inadequacy of the reasons. In the alternative, he claims that in accordance with the case-law of the Court of Justice and the Court of First Instance, the Selection Board is required to make known the objective criteria on which it relied as well as the way in which it applied them, in particular in order to enable the candidates and, if necessary, the Community judicature to be satisfied that the competition tests were properly conducted.

Admissibility of the appeal

17 The Court of Justice has consistently held that pursuant to Article 168a of the Treaty and Article 51 of the Statute of the Court of Justice of the EC, an appeal may be based only on grounds relating to infringement of rules of law, to the exclusion of any appraisal of the facts (see, *inter alia*, Joined Cases C-241/91 P and C-242/91 P *RTE and ITP* v *Commission* [1995] ECR I-743, paragraph 67).

18 In the three pleas put forward in support of its appeal, the Parliament challenges the Court of First Instance's interpretation of this Court's case-law as well as its own with regard, first, to the reasons given for decisions of selection boards, second, to the possibility of remedying absence or inadequacy of reasons during

the proceedings and, third, to the effects of absence or inadequacy of reasons on the validity of the decision in question. Contrary to Mr Innamorati's claims, the Parliament does not mean to challenge the Court of First Instance's findings in this case on the basis of the case-law as interpreted by that court.

19 The pleas in law relied on by the Parliament therefore relate to breach of the rules of law to which the Community institutions are subject, to the exclusion of any appraisal of the facts. Consequently they are admissible.

20 It follows that the objection of inadmissibility raised by Mr Innamorati must be rejected.

The plea concerning the scope and limits of the requirement to state reasons

21 The Parliament claims that, while the case-law of the Court of Justice requires the criteria of assessment defined by a selection board prior to selection of the candidates admitted to the competition and also the corresponding individual assessments to be communicated, they do not and cannot, on the other hand, require the criteria adopted by the selection board in marking tests to be communicated. The latter criteria fall within the selection board's absolute discretion and are covered by the secrecy of the proceedings. The Parliament maintains that communication of the result of the test, with the figures, when requested by the candidate, provides a sufficient statement of the reasons for the board's decisions.

22 Mr Innamorati maintains, to the contrary, that the administration is obliged to notify the candidate of the general criteria adopted by the selection board in its assessments and the way in which they were applied, in order to attain the objective of enabling him to ascertain whether or not the decision is well founded and of making it possible for the Community judicature to ascertain whether or not the proceedings of the selection board were properly conducted.

23 As the Court of First Instance has pointed out, in paragraph 26 of the contested judgment, the requirement that a decision adversely affecting a person should state the reasons on which it is based is intended to provide the person concerned with sufficient details to allow him to ascertain whether or not the decision is well founded and make it possible for the decision to be the subject of judicial review (see, in particular, Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22).

24 As far as concerns decisions taken by a selection board in a competition, the obligation to state reasons must be reconciled with observance of the secrecy surrounding the proceedings of selection boards by virtue of Article 6 of Annex III to the Staff Regulations of Officials. As the Court of Justice has already had occasion to state, that secrecy was introduced with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings, by protecting them from all external interference and pressures, whether these come from the Community administration itself or the candidates concerned or third parties. Observance of this secrecy therefore precludes both disclosure of the attitudes adopted by individual members of selection boards and disclosure of any factors relating to individual or comparative assessments of candidates (Case 89/79 *Bonu* v *Council* [1980] ECR 553, paragraph 5).

25 That being so, the obligation to state the reasons on which decisions of a selection board in a competition are based must take account of the nature of the proceedings concerned.

26 As the Court has already pointed out, the task of a selection board involves as a rule at least two separate stages, the first being an examination of the applications in order to select the candidates admitted to the competition and the second being an examination of the abilities of the candidates for the posts to be filled in order to draw up a list of suitable candidates (see, in particular, Case 44/71 *Marcato* v *Commission* [1972] ECR 427, paragraph 19; Case 37/72 *Marcato* v *Commission* [1973] ECR 361, paragraph 18, and Case 31/75 *Costacurta* v *Commission* [1975] ECR 1563, paragraph 10).

27 The first stage, particularly where the competition is based on formal qualifications, consists in comparing the diplomas or other certificates of qualifications

provided by the candidates with the qualifications required by the notice of competition (see the judgments cited above in Case 44/71 *Marcato* v *Commission*, paragraph 20; Case 37/72 *Marcato* v *Commission*, paragraph 19, and Case 31/75 *Costacurta* v *Commission*, paragraph 11). Since that comparison is made on the basis of objective factors which are moreover known to each candidate in his own case, observance of the secrecy surrounding the proceedings of the selection board does not preclude communication of those objective factors and in particular of the criteria for assessment upon which the selection made at the stage of the preliminary proceedings in the competition was based, a selection which enables those whose applications have been rejected even before any individual test to ascertain the possible reasons for their elimination (see *Bonu* v *Council*, cited above, paragraph 5).

28 By contrast, the second stage of the selection board's proceedings involves tasks that are primarily comparative in character and is accordingly covered by the secrecy inherent in those proceedings (see the judgments cited above in Case 44/71 *Marcato* v *Commission*, paragraph 20; Case 37/72 *Marcato* v *Commission*, paragraph 19, and *Costacurta* v *Commission*, paragraph 11).

29 The criteria for marking adopted by the selection board prior to the tests form an integral part of the comparative assessments which it makes of the candidates' respective merits. They are designed to guarantee, in the candidates' own interests, a certain consistency in the board's assessments, especially where there is a large number of candidates. Those criteria are therefore covered by the secrecy of the proceedings in the same way as the selection board's assessments.

30 The comparative assessments made by the selection board are reflected in the marks it allocates to the candidates. The marks are the expression of the value judgments made concerning each of them.

31 Having regard to the secrecy which must surround the proceedings of a selection board, communication of the marks obtained in the various tests constitutes an adequate statement of the reasons on which the board's decisions are based.

32 Such a statement of reasons is not prejudicial to the candidates' rights. It enables them to know the value set on their performance and to ascertain, if such is the case, that they have not in fact obtained the number of marks required by the notice of competition in order to be admitted to certain tests or to all the tests.

33 However, in order to take account of the practical problems facing a selection board in a competition with a large number of candidates, it is permissible for the board initially merely to notify candidates of the general result of the tests and to provide the actual figures only at a later stage to those who request them.

34 It follows from all the foregoing that in holding in paragraph 28 of the contested judgment that the Parliament was required to provide Mr Innamorati with the reasons on which the challenged decision was based and also with the criteria adopted by the Selection Board for the assessment of the third written test, the Court of First Instance was wrong in law.

35 The contested judgment must for that reason be set aside.

The claims made before the Court of First Instance by Mr Innamorati

36 In the words of the first paragraph of Article 54 of the EC Statute of the Court of Justice: 'If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment'.

37 Mr Innamorati raised two pleas in law in support of his application, the first alleging breach of the principle of equal treatment for candidates, failure to comply with the notice of competition and failure to state reasons for the contested decision, and the second alleging an error of assessment, bias and breach of the principles governing the workings of the Selection Board.

38 In support of his first plea, Mr Innamorati first of all claims that he kept scrupulously within the limits set on the length of the third written test by the notice of competition, but that owing to its failure to check the length of the summaries systematically, the Selection Board did not eliminate other candidates who had not kept within those limits. Consequently the Selection Board, he claimed, had infringed the principle of equal treatment for candidates as well as the terms of the notice of competition.

39 The Parliament acknowledges that the length of Mr Innamorati's summary was consistent with the requirements of the notice of competition, but denies that the length of all the candidates' summaries was not checked. It adds that it is for Mr Innamorati to adduce evidence to that effect.

40 As the Parliament maintains, Mr Innamorati has not adduced, as it was in principle for him to do, any factual evidence in support of his claim that the Selection Board had not eliminated other candidates in the competition in point who had failed to keep within the limits on the length of the summary set for the third test. Nor does any evidence in the file support the conclusion that the Selection Board infringed the principle of equal treatment or the provisions of the notice of competition. That part of the applicant's argument must therefore be rejected.

41 Mr Innamorati next claims that sufficient reasons were not given for the challenged decision. He asserts in particular that the criteria adopted by the Selection Board for marking the third written test were not communicated to him.

42 It is not disputed that although Mr Innamorati was initially informed only of the general results of the competition, he was at his request given the figures for his third written test.

43 It follows from paragraph 31 of this judgment that that information constituted an adequate statement of the reasons on which the decision was based and that the Parliament was entitled to refuse to communicate to him the criteria for marking adopted by the Selection Board and, more generally, the factors in the Selection Board's assessment of his performance. That part of the applicant's argument also must therefore be rejected.

44 Accordingly, the first plea in law put forward by Mr Innamorati is not well founded.

45 Since Mr Innamorati has withdrawn the second plea in his application, there is no longer any need to consider it.

46 It follows that Mr Innamorati's application must be dismissed.

Costs

47 Under Article 69(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, it follows from Article 122 in conjunction with Article 70 of those Rules that the institutions are to bear their own costs when they have brought the appeal. The parties must therefore be ordered to bear their own costs, both those incurred in these proceedings and in those before the Court of First Instance.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Sets aside the judgment of the Court of First Instance of 30 May 1995 in Case T-289/94 *Innamorati* v *Parliament*;**

2. **Dismisses Mr Innamorati's application for annulment of the decision by which the Selection Board in Open Competition PE/59/A awarded him an eliminatory mark in the third written test in that competition and refused to admit him to the other tests;**

3. **Orders the parties to bear their own costs incurred in these proceedings and in those before the Court of First Instance.**

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 4 July 1996.

R. Grass

Registrar

J.-P. Puissochet

President of the Third Chamber