the number of candidates competing in each of them. In the case of competitions where the candidates are more numerous, the statement of the reasons for the rejection of applications must not be so voluminous as to place an intolerable burden on the business of the Selection Boards and the work of personnel administration.

In Case 89/79

FRANCESCO BONU, an official of the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution] (I.N.P.S.), residing at Cagliari, Italy, represented by Louis Schiltz, Advocate of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Schiltz, 83 Boulevard Grande-Duchesse Charlotte,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by John Carbery, an Adviser in the Legal Department of the General Secretariat of the Council, with an address for service in Luxembourg at the Chambers of Mr van den Houten, Director at the Legal Department of the European Investment Bank, 2 Place de Metz,

defendant,

APPLICATION for the annulment of the decision whereby the Selection Board for open competition Council/LA/170 (Italian-speaking translators) refused to admit the applicant to that competition,

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

The Council caused to be published in the Official Journal of the European Communities C 231 of 29 September 1978 (p. 6) a Notification of open competition Council/LA/170 with a view to drawing up a reserve list for the recruitment of Italian-speaking translators, preceded (p. 2) by a Notice of provisions relating to the organization of open competitions.

Section IV of the Notification of open competition headed "Examination procedure and conditions of eligibility" stated:

The examination will be conducted on the basis of qualifications and tests. Candidates who fulfil the following conditions and whose applications are accepted by the Examining Board will be eligible:

(a) university-level education, attested by a diploma or certificate showing that studies have been completed, or equivalent professional experience as a translator. Candidates must supply appropriate documents to prove that they fulfil this condition of eligibility for the competition (copies of diplomas or certificates or, failing this , documents giving proof of equivalent professional experience);

(b) Italian mother tongue or a perfect command of that language, a thorough knowledge of French and adequate knowledge of one or more of the following languages: Danish, Dutch, English or German. Danish or Dutch would be especially welcome. Candidates must also supply appropriate documents to prove that they fulfil this condition of eligibility for the competition (diplomas, certificates, any employers' references, etc.);

(c) date of birth after 31 December 1937. The age limit does not apply to officials and other staff who have been employed in the institutions of the European Communities for at least one year on the final date for submission of applications. However, in order to benefit from this exemption, candidates must submit a certificate from their institution specifying their administrative status (established, temporary, etc.) and the date on which they took up their appointment;

(d) fulfilment of the general conditions set out in Section I (1), (2) and (3) of the notice preceding this notification.

The Examining Board will draw up a list of the candidates meeting the conditions of eligibility for the competition and will

select from that list those who are to be admitted to the tests. All candidates will be informed individually of the Examining Board's decision in their case.

In the notice published contemporaneously with the Notification of open competition paragraph 4 of Section II headed "Procedure" stated

After examining these files, the Selection Board will draw up a list of the applicants who meet the requirements set out in the notice of competition.

Where the competition is on the basis of tests, all candidates on the list will be admitted to the tests.

Where the competition is on the basis of qualifications, the Selection Board will, after determining how the candidates' qualifications are to be assessed, consider the qualifications of the candidates appearing on the list.

Where the competition is on the basis of both tests and qualifications, the Selection Board will state which of the candidates on the list will be admitted to the tests.

Paragraph 7 of the same Section states that:

The proceedings of the Selection Board are secret. Consequently candidates will be informed neither of the reasons for not admitting them to the tests nor of the marks obtained by them.

On 7 November 1978 the applicant sent in his application to enter this competition. The Council acknowledged receipt of his application form by a letter dated 22 November 1978.

On 5 March 1978 the Council informed the applicant that he had not been admitted to the tests in the competition in the following terms:

"With reference to your application to enter the above-mentioned competition I regret to inform you that the Selection Board has not entered your name on the list of candidates who have been admitted to the tests.

As provided for in paragraph 7 of Section II of the Notice preceding the Notification of open competition (cf. Official Journal C 231, p. 3) the proceedings of the Selection Board are secret. I am accordingly unable to make known to you the reasons for the decision not to admit you to the tests.

You will find enclosed with this letter the supporting documents which were annexed to your application . . .".

II — Written procedure

Mr Bonu brought this action on 5 June 1979.

The written procedure followed the normal course.

After hearing the views of the Advocate General the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Conclusions of the parties

The *applicant* claims that the Court should:

(a) Declare that the application is admissible and well founded;

(b) Annul the decision notified to him on 5 March 1979 whereby the Selection Board for competition Council/LA/170 refused to admit the applicant to the competition;

(c) Order the defendant to pay the costs.

The *Council* contends that the Court should:

(a) Dismiss the applicant's claims as unfounded;

(b) Order the applicant to pay the costs to the extent to which they are not borne by the defendant pursuant to Articles 70 and 95 (2) of the Rules of Procedure.

IV — Submissions and arguments of the parties in the course of the written procedure

A — Admissibility

The *Council* does not deny that the applicant was justified, in accordance with the case-law of the Court, in bringing a legal action directly against the decision of the Selection Board for the competition without first submitting an administrative complaint to the appointing authority.

The applicant who was informed that he had not been admitted to the tests by the letter of 5 March 1979 had three months within which to appeal; this time-limit was complied with since the application was lodged on 5 June 1979.

B — Substance

1. The decision not to admit the applicant to the tests in the competition

The *applicant* is of the opinion that the contested decision must be annulled because it does not state the grounds upon which it is based.

(a) There is a general legal principle which requires that any decision adversely affecting a person shall state the grounds on which it is based. This principle has been restated in the second paragraph of Article 25 of the Staff Regulations of Officials of the European Communities.

The purpose of this obligation to state the grounds on which a decision is based is not solely to protect the person to whom the act is to be applied but also to afford the Court the opportunity of undertaking a review of the legality of that act, a task assigned to it by the Treaty.

The Court has consistently held in its case-law that inadequate or laconic statements of the reasons upon which decisions addressed to individuals are based, especially decisions concerning admission to competitions, are bound to lead to their annulment. It is absolutely essential that the grounds given to candidates make clear to them the reasons for their non-admission and at the same time facilitate the review of the legality of the act.

The same applies *a fortiori* if there are no grounds at all given. The candidate finds it absolutely impossible to know the reason for the refusal to admit him to the competition and a review of legality by the Court proves impossible.

(b) The Council wrongly interprets the decided cases of the Court, especially the judgment of 15 March 1973 in Case 37/72 *Antonio Marcato* v *Commission of the European Communities* [1973] ECR 361, at p. 369. It is apparent from that case that in a competition based on formal qualifications — and this action arises at that stage — the first stage of the proceedings of a Selection Board entails the matching of the qualifications offered by the candidates against the qualifications required by the notice of open competition on the basis of objective facts known to each candidate in his own case so that the results should be supported by sufficiently clear reasons.

Accordingly the judgment which has been mentioned says exactly the opposite of what the Council seeks to deduce from it; it also states that it is only at the stage during which the Selection Board draws up a list of suitable candidates for the posts to be filled that the proceedings of the Selection Board are secret.

That there is a legal obligation to state the grounds upon which a decision is based cannot be denied in this case, because, according to the fourth paragraph of Article 5 of Annex III to the Staff Regulations, where the competition is on the basis of both tests and qualifications a matching of the qualifications is necessary and takes place prior to the drawing up of a list of the candidates to be admitted to the tests.

(c) The legality of an act must be determined at the date when it is done; moreover the act must contain in itself the proof that it is lawful and in order.

Since the contested act, the letter of the Selection Board imforming the applicant of its decision, does not comply with these two elementary criteria it is impossible to "save" it and to put it right *ex post facto* by offering to bring the report drawn up by the Selection Board to the attention of the appointing authority.

While such an offer has no effect on the unlawfulness of the contested act it nevertheless has the merit of proving that the secrecy of the proceedings of the Selection Board does not now prevent production of a file containing information on all the candidates, whereas at the time the Council did not even take the trouble in its notification to the applicant to give the slightest hint of the reasons for its decision.

The existence of a reasoned report sent by the Selection Board to the appointing authority is not moreover a sufficient guarantee for the candidate who has not been accepted that the rules have been complied with since this report is addressed to the body which has arranged the competition.

The candidate does not receive an extract of the particulars concerning him in the report; he therefore remains in the dark as to the reasons for his non-admission to the tests and can never have recourse to a judicial body unconnected with and independent of the authority from which the act emanates. He is thus deprived for ever of the opportunity to claim that there has been irregularity or that a qualification or a document produced in support of his application has been wrongly assessed by the Selection Board.

The *Council* calls attention to the practice which it adopts when giving information to candidates taking part in competitions on the basis of qualifications and tests.

Selection Boards, in accordance with the provisions of the first, third and fourth paragraphs of Article 5 of Annex III to the Staff Regulations, first draw up a list of candidates who meet the requirements for admission to the competition, then determine how candidates' qualifications are to be assessed and re-examine the applications on the basis of that assessment for the purpose of drawing up a list of candidates to be admitted to the tests. The criteria for assessment laid down by the Selection Board appear in the report which it forwards to the appointing authority at the end of its proceedings (last paragraph of Article 5 of Annex III to the Staff Regulations).

The General Secretariat of the Council informs the persons who have applied if

the Selection Board has not admitted them to the competition. On the other hand candidates whom the Selection Board has admitted do not receive confirmation of this fact; they are informed of the decision which the Selection Board takes concerning them in relation to their admission to the tests, whether it be favourable or unfavourable.

It is not disputed that in law there must be a statement of the reasons for a decision to refuse to admit a candidate to a competition. Moreover, as stated in the above-mentioned *Mercato* judgment, it is necessary to distinguish between two separate stages of the procedure. The first stage consists of an examination of the applications to select the candidates admitted to the competition; the results must be supported by sufficiently clear reasons. There is a legal duty to state reasons for non-admission to a competition. The second stage involves an examination of the abilities of the candidates for the post to be filled in order to draw up a list of suitable candidates. The second stage consists mainly of comparison and is accordingly covered by the secrecy inherent in the task of a Selection Board.

In this case the refusal to admit the applicant to the tests belongs to the second stage since he has been allowed to take part in the competition but not in the tests, pursuant to the criteria for assessment determined by the Selection Board for the purpose of considering qualifications. This part of the Selection Board's proceedings is covered by obligation of secrecy.

2. Notice of provision relating to the organization of open competitions

The *applicant* takes the view that the stipulation in paragraph 7 of Section II headed "Procedure" of the Notice of provisions relating to the organization of open competitions (Official Journal C 231, p. 3) is unlawful and, in any case, inapplicable, at least in so far as the prohibition on informing candidates of the reasons for not admitting them to the tests also applies to the candidate in question. This prohibition is not found in Article 6 of Annex III to the Staff Regulations dealing with competitions which confines itself to saying that the proceedings of the Selection Board shall be secret.

The notice supplements a regulation; for this very reason the Court cannot take it into consideration.

The impossibility of notifying a candidate of the reasons for his non-admission to the tests or of the number of marks he obtained is by no means a nessessary consequence of the secret nature of the proceedings of a Selection Board. Secrecy covers the individual assessments made and opinions expressed during the deliberations but not the final decision based on all the factors.

The *Council* maintains that the provision which is criticized is a rule laid down by the institution for all competitions specifically to guarantee that the proceedings of the Selection Board are secret, a principle contained in Article 6 of Annex III to the Staff Regulations. The stipulation is absolutely legal since it applies to the admission of candidates to the tests and not to the competition.

(a) The independence of the Selection Board requires that its proceedings shall be secret. Quite clearly a derogation from absolute secrecy is permissible as far as concerns the reasoned report

furnished by the Selection Board to the appointing authority to enable the latter to make a choice with full knowledge of the facts.

In this case the Council has complied with the rule as to secrecy laid down by the Staff Regulations; the applicant was not eliminated at the first stage of the procedure but at the one covered by secrecy.

(b) The aim of the notice, which provides information and is not of the nature of a regulation, is to explain the general conditions for competitions and to inform future candidates that the proceedings of the Selection Board are secret.

(c) It is impossible to state the reasons upon which the final decision is based without divulging the proceedings of the Selection Board. Furthermore the "final decision based on all the factors" is in fact notified to the candidate; it is information which tells him whether he has succeeded or failed.

According to the Court's judgment in the above-mentioned *Marcato* case the Selection Board does not have to state the reasons upon which a decision not to admit a candidate to the tests is based if the competition is based on qualifications and tests and the candidate has already been admitted to the competition.

However Competition Council/LA/170, which is at issue in the present case, can only be compared in part to the competition the results of which were challenged in the *Marcato* case; its first stage involving the examination of the applications is comparable but not the second stage involving the assessment for admission to the tests, which is the one at issue in this case.

The applicant is wrong not to distinguish between consideration of qualifications at the stage of admission to the competition, where the Selection Board is under an obligation to give reasons for any refusal and consideration of qualifications in a competition based on qualifications and tests for the purpose of deciding which candidates will be named as being admitted to the tests, which is a part of the proceedings of the Selection Board covered by the rule as to secrecy.

The Selection Board must clearly assess the qualifications produced in order to assess the ability of the candidates to occupy the post to be filled; this assessment takes place before admission to the tests. It is therefore at these two stages of a competition based on qualifications and tests that the Selection Board has to make its individual assessments; it is difficult to see how the Selection Board can give its reasons for the final decision without divulging its proceedings.

(d) It is true that as a general rule reasons must be given for acts of the Council in such a way that there is evidence that they are lawful and in order. Competitions are a derogation from this rule the boundaries of which have been drawn by the case-law of the Court.

(e) The obligation imposed on the Selection Board to draw up a reasoned

report for the attention of the appointing authority provides candidates with a guarantee that the procedure has been properly carried out and makes it possible for the Court to review it judicially. The production of this report to the Court of Justice is not a breach of the obligation of secrecy.

(f) Under Article 179 of the EEC Treaty the Court of Justice shall have jurisdiction in any dispute between the Community institutions and those who may claim the benefit of the Staff Regulations, even those who take part in open competitions, within the limits and under the conditions laid down in the Staff Regulations.

V — Oral procedure

At the hearing on 10 January 1980 the parties presented oral argument and gave their replies to questions put by the Court.

The Advocate General delivered his opinion at the sitting on 7 February 1980.

Decision

1 The applicant, an Italian national residing at Cagliari, Sardinia, by an application of 5 June 1979 has asked the Court, pursuant to Article 91 of the Staff Regulations of Officials of the European Communities, to annul the decision whereby the Selection Board for Open Competition Council/LA/170 (Italian-speaking translators), for which the applicant had sent in an application form, refused to admit him to the tests in this competition.

2 It is clear from the file that the applicant submitted his application on 7 November 1978 in the proper manner to enter the above-mentioned open competition which is the subject of the notice and notification published in the Official Journal of 29 September 1978 (C 231, pp. 2 and 6 respectively). The Council acknowledged receipt of his application form by a letter of 22 November 1978. The administration department of the Council informed the applicant that he had not been admitted to the tests in the following terms:

"With reference to your application to enter the above-mentioned competition I regret to inform you that the Selection Board has not entered your name in the list of candidates who have been admitted to the tests.

As provided for in paragraph 7 of Section II of the Notice preceding the Notification of open competition (cf. Official Journal C 231, p. 3) the proceedings of the Selection Board are secret. I am accordingly unable to make known to you the reasons for the decision not to admit you to the tests."

3 The applicant considers that this decision is void for infringement of an essential procedural requirement because there is no statement of the reasons upon which it was based. He also considers that the paragraph of the notice of the Council to which reference is made in the Council's letter and which reads as follows:

"The proceedings of the Selection Board are secret. Consequently candidates will be informed neither of the reasons for not admitting them to the tests nor of the marks obtained by them",

is also unlawful and in any case inapplicable.

4 The Council states that the competition in this case was "a competition on the basis of both tests and qualifications" with three successive stages of selection. As far as concerns the first stage of this competition, consisting of the examination of candidates' qualifications, the applicant was admitted to the competition. It was only during the second stage of the procedure, the purpose of which was to draw up a list of candidates admitted to the tests, that the applicant's application was rejected. The Council maintains that this stage of the Selection Board's proceedings are covered by the obligation of secrecy as the Court has consistently held in its case-law since its judgment of 14 June 1972 in Case 44/71 *Antonio Marcato* v *Commission of the European Communities* [1972] ECR 427. Since the outcome of the first stage of the competition was favourable to the applicant and the second stage, which culminated in his rejection, is covered by the secrecy attaching to the Selection Board's proceedings, the Council is of the opinion that it did not have to state the reasons for its decision.

5 This defence of the Council cannot be accepted. It is based on a wrong interpretation of the implications of the secrecy of the proceedings of Selection Boards for competitions. This secrecy was introduced by Article 6 of Annex III to the Staff Regulations of Officials 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. Consequently observance of this secrecy runs counter to divulging the attitudes adopted by individual members of Selection Boards and also to revealing all the factors relating to individual or comparative assessments of candidates. However the scope of this secrecy cannot be widened to such an extent as to refuse disclosures of objective facts and in particular of the criteria for assessment upon which selection has been based at the stage of the preliminary proceedings of the competition, which enables those whose applications have been rejected even before any individual test to ascertain the possible reasons for their elimination.

6 It should be added that the requirement to give a statement of the reasons for decisions must be evaluated having regard to the different levels and types of competition and, more particularly, to the number of candidates competing in each of them. In the case of competitions such as the present, where the candidates are more numerous, the statement of the reasons for the rejection of applications must not be so voluminous as to place an intolerable burden on the business of the Selection Boards and the work of personnel administration.

7 Even on the basis of these minimum requirements the letter sent to the applicant by the administration department of the Council must be regarded as inadequate. In the first place it does not enable an uninformed reader to grasp that it covers both the admission of the candidate at the first stage of the competition and his elimination at the second stage. In the second place the most elementary statement of the reasons for the decision is missing. The fact that in the information published in the Official Journal the Council warned candidates in advance that they would not be informed of the reasons for not admitting them to the tests, is no justification seeing that by this very warning the Council has gone far beyond the limits of the secrecy attaching to proceedings of Selection Boards.

8 The result of the foregoing is that the contested decision must be annulled for infringement of essential procedural requirements since there is no statement of the reasons for it.

Costs

9 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

10 As the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Annuls the decision by which the Selection Board for Open Competition Council/LA/170 (Italian-speaking translators) refused to admit the applicant to the tests.**

2. **Orders the Council to pay the costs.**

Touffait Pescatore Due

Delivered in open court in Luxembourg on 28 February 1980.

For the Registrar

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Second Chamber