JUDGMENT OF THE COURT (THIRD CHAMBER)
1 OCTOBER 1981 [1]

Anna Guglielmi
v European Parliament

(Official — Annulment of a competition)

Case 268/80

Officials — Recruitment — Competition based on tests — Written test — Choice of subject — Observance of criteria mentioned in the notice of competition — No breach of the principle of equal treatment of candidates — Consideration of the degree of difficulty of the test on marking — Assessment by the Selection Board — Review by the Court — Limits

In Case 268/80

ANNA GUGLIELMI, an official of the European Parliament, of 21 Via Adda, Rome, represented by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18a Rue des Glacis,

applicant,

v

EUROPEAN PARLIAMENT, represented by M. Schmidt, Director for Personnel and Social Affairs, acting as Agent, assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of the said Alex Bonn, 22 Côte d'Eich,

defendant,

APPLICATION for the annulment of a competition,

1 — Language of the Case: French.

THE COURT (Third Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, A. Touffait and U. Everling, Judges,

Advocate General: F. Capotorti
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments put forward by the parties during the written procedure may be summarized as follows:

I — Facts

By Vacancy Notice No 1981 of 30 October 1978 the European Parliament informed its staff that seven posts as Administrators in Career Brackets A 7/A 6 were vacant in the Directorate-General for Information and Public Relations in the Information Offices in Belgium, Denmark, France, Ireland, Italy, the Netherlands and the United Kingdom.

Only the posts in the Information Offices in London, The Hague and Copenhagen could be filled by means of transfer and the European Parliament published for the other posts the following notices of internal competition based on qualifications and tests:

— Notice No A/65 of 25 June 1979 for the post in Paris;

— Notice No A/66 of 25 June 1979 for the post in Rome;

— Notice No A/67 of 25 June 1979 for the post in Brussels;

— Notice No A/68 of 15 October 1979 for the post in Dublin.

The notices of competition, worded identically except as regards the language requirements and references to the particular countries of posting, described the nature of the duties as follows:

"Official to carry out, under the authority of the head of division responsible for the [reference to country of posting] sector, various information

and public relations duties (contacts with the press and specialized circles, talks, lectures, drafting work, etc.)."

Under the heading "qualifications and experience required" the following requirements were listed:

— "Thorough knowledge of the operation of the information media and the parliamentary systems in ... [there followed a reference to the country of posting];

— Thorough knowledge of the structure and activities of the European Community."

The compulsory written tests consisted of an "essay on a general subject bearing directly on the duties involved", lasting four hours and marked out of 30 (any mark lower than 18 resulting in elimination from the test) and, the "drafting of a statement, press release or article on the basis of documents supplied to the candidate".

The applicant, Mrs Anna Guglielmi, who since 1954 had been an official in Category B, at present Grade B 1, in the European Parliament and employed in the Information Office in Rome since its creation in 1967, applied to take part in Competition No A/66 in relation to the post in the Information Office in Rome.

For that competition there were seven applicants, including one from Category A, four from Category L/A and two from Category B, and after considering their qualifications the Selection Board admitted to the test the applicant from Category A and two applicants from Category B, including the applicant.

The question put to the applicants for the first written test for that competition was, as for the competitions for the posts in Paris, Brussels and Dublin, as follows: "Describe in the form of an article for a magazine having a wide circulation the advantages or disadvantages of your country's belonging to the Community."

The applicant obtained 15 marks for that test. She was therefore eliminated from subsequent tests.

After the first test of the competition and before learning that she had been eliminated, the applicant, along with two candidates for the posts in Brussels and Paris, sent a letter on 26 March 1980 to the official who presided over the competitions in question claiming that the subject proposed for the first test was inappropriate and bore no relation to information, save in so far as it had to be in the form of an article for a magazine having a large circulation. By letter dated 8 April 1980 the chairman of the Selection Board answered that the proceedings of the Selection Board were confidential and that he could therefore not give particulars of the way in which the Board had discharged its functions.

By letter dated 18 April 1980 the applicant and the two other above-mentioned candidates, who had in the meantime been informed of their elimination from the competition, asked the Selection Board for a detailed explanation for their exclusion. By letter dated

14 May 1980 the chairman of the Selection Board replied that the Board could not, without breaching the confidential nature of its deliberations, give a detailed explanation of the marking of a test but that he could give an assurance that the essays had been considered by the Board from the point of view indicated in the notice of competition.

On 1 July 1980 the applicant lodged a complaint under Article 90 of the Staff Regulations against her elimination from the competition.

The applicant received no reply to that complaint.

II — Written procedure and conclusions of the parties

By application lodged on 3 December 1980 the applicant brought an action against the Parliament claiming that the Court should:

— Declare that the selection procedure, that is to say, the competition as a whole, is vitiated and consequently annul it together with all its subsequent effects;

— Determine *ex aequo et bono* the damages to which the applicant is entitled and order the European Parliament to pay the amount in question together with interest at 6% from the date of the application initiating the proceedings;

— Order the defendant to pay the whole of the costs.

The European Parliament contends that the Court should dismiss the applicant's claims and the action and make an order for costs in accordance with the relevant provisions of the Staff Regulations.

The written procedure followed a normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties

1. The facts

In her application the *applicant* maintains that Competitions A/65, A/66, A/67 and A/68 practically amounted to "four versions of one and the same competition". The Selection Board for all the competitions was the same, the chairman and members of the Board were the same, the tests took place on the same day and the subject to be discussed was the same. Candidates not only in Grade B 1 but also in Grades A 3, A 5 and A 6 competed.

An Irish candidate in this "competition with four versions" had written a monograph published by the Directorate-General for Research and Documentation in June 1979 under the title: "The effects on Ireland of membership of the European Communities".

In its defence the *Parliament* states that the four competitions in question were in fact separate. The Selection Board was composed only partly of the same members and met on different dates. The Parliament states the names of the members of the Selection Boards for the competition in question (A/66) and for competition A/68 for the post in Dublin, from which it appears that apart from

the chairman, two of the four other members of the first and of the five other members of the second were the same.

As regards the competition in question, the candidates included an official in Grade L/A 5, an official of Grade L/A 6, two officials of Grade L/A 7, an official of Grade A 7 and two officials of Grade B 1, including the applicant.

In her reply the applicant stresses that one of the candidates in the competition for the post in Rome, the successful candidate moreover, had been in Grade A 6 as from 1 October 1979 and was therefore in that grade when the Selection Board first met.

2. Admissibility

The *Parliament* considers that the application is admissible only in so far as it is directed against Competition A/66 in which the applicant was a candidate. The applicant cannot have been adversely affected by the other competitions, and submissions made against the regularity of those competitions are inadmissible.

The applicant concedes that she can claim annulment only of Competition A/66 for the post in Rome and that the admission of candidates in Grades A/3 and A/5 for the posts in Dublin and Paris does not adversely affect her. She stresses, however, that those facts convey the "flavour" of the proceedings and help to depict the "background" which the Court must examine, since the various measures comprising the recruitment procedure for the various Information Offices make up one whole.

3. Substance

The action is based on submissions of frustration of legitimate expectation, breach of the principle of equal treatment and misuse of power.

(a) Frustration of legitimate expectation

The *applicant* alleges that the legitimate expectation of candidates from Category B was frustrated inasmuch as the question set for the first test went beyond the level stated in the notice of competition and the nature of duties for the post in question. It is not a general question, but one of a political, economic and social nature of the highest level which may be put only to people who have taken part in research in those fields. The question is tailored to the requirements of candidates who are already in Category A and have sufficient documentation at their disposal. Since it was necessary to answer it without the aid of statistics or economic studies, it was a question specifically designed for certain candidates.

The duties in question relate to providing information under a head of division and involve contacts with the press and specialist circles but not research requiring the ability to answer a question of the kind put in the test. They do not require the official in question to be able at any time to write an essay on the advantages and disadvantages of a country's belonging to the Common Market.

The *Parliament* contends that the question set for the first test perfectly corresponds to the qualifications required and the nature of the duties to be performed. It is a classical and ideal question for an Information Office. The duties of officials in Category A involve administrative and advisory duties, and not just clerical duties.

Any notion of breach of the principle of the protection of legitimate expectation must be dismissed. The complaint made by the applicant that the Selection Board had chosen a subject inconsistent with the notice of competition has nothing to do with the concept of legitimate expectation, which relates only to the appointing authority. The Selection Board for a competition has a power of appraisal. There is no evidence that that power was exceeded or misused in the present case.

(b) Equality of treatment

The *applicant* alleges that the admission to a competition of candidates from appreciably higher grades lessens the chances of candidates seeking promotion from Category B to Category A, such as a competition of that kind ought normally to allow. No one has the right to take part in a competition for a grade lower than his own. Nevertheless the successful candidate for the Rome post was in Grade A 6 when admitted to the competition. The chances of the other candidates were adversely affected by the high level of the work done by the candidates of high grades: one of them had even done specialist research on the subject of the effect on his country (Ireland) of joining the Communities and the candidate in Grade A 6 for the post in Rome had come from the Parliament's Committee on Budgets where his work had given him a broad view of the position of the various Member States, for that committee was the ideal place for analysing the economic, financial and political problems of the Community. The applicant seeks to show by an inquiry that the candidate had taken part in studies on the advantages and disadvantages for Italy of belonging to the Community and that therefore as a result the Selection Board had not observed the principle of equality of treatment.

The *Parliament* stresses that the only candidate from Category A admitted to the tests for the competition in question for the post in Italy did not come from a higher grade. It would have been impossible to exclude from a competition for Career Bracket A 7/A 6 a candidate who was in that very career bracket when the competition was proceeding. Moreover, a Selection Board has no right to exclude from a competition officials of higher grades since a competition cannot be restricted to certain officials.

The criticism that a candidate was favoured in the written tests by the choice of the subject cannot be accepted as regards a question phrased in such general terms. In a political institution such as the Parliament it would be

difficult to imagine a post which was not confronted in one way or another with the problem in question and that is certainly true of the post held by the applicant. As regards the advantage which, according to the applicant, a candidate for the post in Ireland had, that relates to another competition, namely A/68, and that argument is inadmissible.

(c) Misuse of power

The *applicant* alleges that the competition in question was organized with the intention of reserving the vacancies for certain candidates, namely those from Category A. It is apparent from consideration of the "background" provided by all the competitions and the objective evidence from the circumstances of the present case that the competitions, and in particular the first question, served purposes other than that of filling posts in information and public relations. The reason why certain officials in higher grades took part was so that they might return to their place of origin. The Staff Regulations make no provision for a retrogressive career and the sole aim of a competition is to allow the promotion of the most meritorious officials. There is moreover a problem of classifying candidates from higher grades since the second paragraph of Article 46 of the Staff Regulations does not apply to such situations. In disregard of the interests of the service the Selection Board had eliminated candidates with experience in the field of public relations and had not even given them an opportunity of proving their ability in the second test which specifically concerned that field. Another anomaly in the procedure was the fact that the Selection Board called in an Italian expert solely for the oral examination, for which there remained but one candidate, whereas the Board considered itself qualified to judge the written tests alone.

The *Parliament* repeats that the question put for the first written test was appropriate to the qualifications required. The work of the Selection Board was aimed only at recruiting the best qualified officials solely in the interests of the service. The Parliament denies that there was a misuse of powers in admitting to the competition officials whose only interest was to return to their place of origin. Moreover, the applicant's argument confuses once again the various competitions.

IV — Oral procedure

At the hearing on 25 June 1981 the applicant, represented by Victor Biel of the Luxembourg Bar, and the European Parliament, represented by Alex Bonn of the Luxembourg Bar, presented oral argument.

The Advocate General delivered his opinion on 16 July 1981.

Decision

1 By application lodged at the Court Registry on 3 December 1980 Mrs Anna Guglielmi, an official of the European Parliament, brought an action for the annulment of the selection procedure in Internal Competition No A/66 based on qualifications and tests for a post of Administrator (Career Bracket A 7/A 6) in the Information Office of the European Parliament in Rome, or for the annulment of the competition as a whole, and an order requiring the Parliament to pay compensation for the damage caused to the applicant by her failure in the competition.

2 The above-mentioned competition, for which the notice had been published on 25 July 1979, was one of four competitions relating to posts in the Information Offices of the European Parliament in Rome, Paris, Brussels and Dublin for which the work of selection took place simultaneously following four notices of internal competition on qualifications and tests worded in almost identical terms. The applicant, who was an official in Grade B 1, last step, employed since 1967 in the Information Office in Rome, entered Competition A/66 in relation to the post in Rome. After consideration of her qualifications she was admitted to the tests.

3 In the four above-mentioned notices of competition the first test of the competition was described in the notices as an "essay on a general subject bearing directly on the duties involved"; any candidate obtaining less than 18 marks out of 30 would be eliminated. For that test the Selection Boards gave the candidates the following subject: "Describe in the form of an article for a magazine having a wide circulation the advantages or disadvantages of your country's belonging to the Community". The applicant did not obtain the necessary marks in that test and was consequently eliminated from further tests for the competition.

4 On 1 July 1980 the applicant made a complaint under Article 90 of the Staff Regulations against her rejection as a candidate. That complaint remained unanswered and the applicant then brought the present action.

5 The applicant's first submission alleges a breach of the principle of legitimate expectation. The applicant thereby claims in substance that the subject chosen for the first test was inappropriate because it bore no relation to the nature of the duties attached to the post in question and went beyond its level. Those duties, which principally involve contacts with the press and specialist circles under the authority of a head of division, do not require the ability to answer a question of that kind at any time without the aid of documentation.

6 It must be observed that according to the second paragraph of Article 5 (1) of the Staff Regulations posts in Category A, with which the present case is concerned, involve administrative and advisory duties which require university education or equivalent experience. Among the requisite qualifications and experience Notice of Competition No A/66 demanded "a thorough knowledge of the operation of the information media and of the parliamentary systems in Italy" and a "thorough knowledge of the structure and activities of the European Community".

7 An essay on the advantages and disadvantages for Italy of belonging to the Community required knowledge both of Community problems and political problems of Italy. The fact that the essay took the form of an article for a magazine with a wide circulation, apart from requiring a certain level of knowledge in the field of information, showed that in order to deal with the subject it was not necessary to have available detailed documentation or statistics. Therefore an essay on the subject chosen by the Selection Board for the competition constituted, both in content and in form, the appropriate means of testing whether the candidates in the competition possessed the necessary knowledge in the requisite fields.

8 The difficulty of the subject was not so great as to exceed the bounds indicated by the requirement of a thorough knowledge attaining university level in the fields in question. Moreover, the Court cannot substitute its own judgment for that of the Selection Board as regards the degree of difficulty to be taken into account in marking the tests.

9 Thus, in its choice of subject for the first test of the competition, the Selection Board may not be accused of stepping outside the confines of the criteria indicated or of manifestly abusing its discretion.

10 The second submission is concerned with the principle of equal treatment for all candidates. The applicant alleges that the choice of subject gave an unfair advantage to certain candidates who had previously made special studies of that same question. In this respect the applicant refers to the fact that one of the candidates had come from the Parliament's Committee on Budgets where he had taken part in studies relating to such problems in the course of his work; it is also alleged that a candidate in the competition for the post in Dublin is the author of a specialist study on the advantages for his country (Ireland), of belonging to the Community.

11 By virtue of its general nature the subject in question does not involve problems requiring special knowledge or specific and specialist experience. Suitable knowledge and experience for tackling such a subject may be acquired in the course of performing all kinds of duties in a Community institution. If one of the candidates in Competition No A/66 had in fact had an opportunity to acquire such knowledge or experience in the course of his work for the Parliament's Committee on Budgets, it might well have been the same for the applicant in the course of her long period of work for the Information Office in Rome.

12 The competition for the post in Dublin was distinct from the competition in issue. The fact that one of the candidates in that competition was the author of a specialist study on the subject in question and may thus have been especially well prepared for the first test in the competition is not capable of adversely affecting the applicant, who was not a candidate in that competition.

13 The applicant has therefore adduced no evidence to show that certain candidates in the competition in question were given an unfair advantage in relation to herself by virtue of the choice of the subject for the first test.

14 The applicant alleges further that certain of the candidates admitted to the competition had come from higher grades than that for which the competition in question was intended. In this respect the applicant maintains

that a candidate in the competition for the post in Rome was in Grade A 6 at the time of the test and that the above-mentioned candidate in the competition for the post in Dublin was in Grade A 4.

15 Since Competition No A/66 was for a post of administrator in Career Bracket A 7/A 6 there can be no objection to the Selection Board's admitting to that competition a candidate who was in Grade A 7 at the time of his application and in Career Bracket A 7/A 6 when the selection procedure was under way. The fact that a candidate of Grade A 4 took part in the competition for the post in Dublin cannot adversely affect the applicant and it is therefore unnecessary to give a ruling on his admission to that competition.

16 The applicant's third submission alleges misuse of powers. She maintains that it is apparent from the circumstances of the case that the various competitions for the posts in the Information Offices of the Parliament had been organized with the intention of reserving the posts in question for certain candidates; the competitions had been intended to allow candidates from higher grades, who enjoyed an advantage by virtue of the subject chosen for the first test, to return to their countries of origin.

17 There is no evidence before the Court to support the conclusion that either the appointing authority or the Selection Board for Competition No A/66 pursued any aim by means of that competition other than that of finding the best qualified candidate for the post in question. Even if it is assumed that one or more candidates in the competition in question took part for the sole purpose of being able to return to his country of origin, any such reason personal to the candidate or candidates cannot vitiate the competition procedure.

18 The action must therefore be dismissed as unfounded.

Costs

19 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Nevertheless, pursuant to Article 70 of the said Rules the institutions are to bear their own costs in actions brought against them by officials of the Communities.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Mackenzie Stuart Touffait Everling

Delivered in open court in Luxembourg on 1 October 1981.

J. A. Pompe
Deputy Registrar

A. J. Mackenzie Stuart
President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 16 JULY 1981 [1]

Mr President,
Members of the Court,

1. Allow me first of all to rehearse the facts of the present case. On 25 June 1979 the European Parliament decided to hold an internal competition on the basis of qualifications and tests for the purpose of filling a vacancy for an administrator (Career Bracket A 7/A 6) in its Information Office in Rome. The relevant notice of competition received the number A/66. At the same time three other notices of competition were published for similar posts in the Information Offices in Paris, Brussels and Dublin. Mrs Anna Guglielmi, a Category B official of the European Parliament in the Rome office since 1967, took part in Competition No A/66 but did not pass

1 — Translated from the Italian.