OPINION OF MR ADVOCATE GENERAL GULMANN
delivered on 13 December 1991 *

Mr President,
Members of the Court,

1. This case can be briefly summarized as follows:

At the end of 1988 and early 1989 the European Parliament organized an open competition for the post of Head of Division to run the Paris Information Office.

Jean-Louis Burban, an official in Grade A 4 at the Parliament, wished to take part in the open competition and accordingly submitted an application. The selection board, however, refused to let him take part in the tests because he had not submitted documents in support of the qualifications and experience to which he laid claim in his application. After that refusal there was an exchange of several notes between the selection board and Mr Burban, who contested the correctness of the selection board's decision. Mr Burban mentioned in particular that his failure to forward supporting documents was due to the fact that he had contacted the Head of the Staff Regulations and Staff Management Service in the Parliament's Personnel Department, who had informed him that the necessary annexes, which were to be found in his personal file, would be sent directly by the Parliament's administration to the selection board. Nevertheless the selection board maintained its decision.

Mr Burban brought an action against the Parliament for the annulment of the decision of the selection board. By a judgment of 20 June 1990 the Court of First Instance found for the Parliament.[1] Mr Burban has appealed to the Court of Justice against that judgment. He considers it wrong that the mistake he committed by not sending the requisite documents with his application should have such serious consequences. The mistake was of a formal nature and easy to remedy. He considers, moreover, that there was special reason to give him, in particular, that opportunity. First, because at least one member of the selection board was fully aware that he satisfied the material conditions for taking part in the competition and, secondly, because the mistake arose as a result of his reliance upon information which he had received from the aforementioned Parliament official, who should have been aware of the proper procedure.

In Mr Burban's view the judgment is characterized by excessive formalism. He has summarized those arguments in the single plea in law which he makes in support of his appeal, namely that the judgment under appeal contains an infringement and mistaken interpretation of the principles of the administration's duty to have regard for the interests of officials and proper administration. He thinks that it follows from those principles that he should have been given the opportunity to submit the requisite documents subsequently.

* Original language: Danish.

1 — Case T-133/89 [1990] ECR 245.

For a fuller account of the facts of the case and the parties' views on the law I would refer to the judgment under appeal and the Report for the Hearing.

2. Let me say right away that I believe the Court of First Instance arrived at the correct result. The relevant paragraphs in the judgment are paragraphs 21-40 which I endorse.

It is important to emphasize that the contested judgment is not marked by excessive legal formalism, but on the contrary is based on essential principles of administrative law which also apply to the administration of competitions. In administrative matters in this area it must be ensured both that candidates are treated equally and that the competition tests proceed as expeditiously and appropriately as possible with all due respect for the candidates' need for an impartial assessment.

3. In this case the following facts are clear:

(1) at several points in the competition notice it was stated that the requisite supporting documents should be forwarded within the period allowed for submitting applications;

(2) it was in addition clearly stated in the notice that that requirement concerning supporting documents also applied to officials and other servants of the Parliament;

(3) it was stated that the legal consequence of failure to submit supporting documents in time would be refusal to admit the person concerned to take part in the competition.

It is perfectly normal for such a requirement to supply supporting documents to be laid down and that the said legal consequences should flow from non-observance of the requirement.

In competitions held by the institutions there can be hundreds and possibly many thousands of candidates. There is therefore a need for rules that are clear and easy to administer. It is obvious and a mark of a sensible division of responsibilities that it should be for the candidates to submit the necessary documentation.[2] It cannot be the selection board's task to assess what the cause of a failure to fulfil the duty to supply documentation might be. It is clear that the selection board can have no positive duty to investigate, for example, by perusing the internal candidates' personal files, whether candidates do actually fulfil the requirements in question. Nor can it be the selection board's task to assess whether it would be possible for a candidate who has not forwarded the requisite documentation to remedy that failure and if so, whether there are concrete grounds of a more or less blameless nature which make it reasonable to give the person in question such an opportunity. The selection board would thereby have a task imposed on them which could be very burdensome and which at all events would involve serious problems of delimitation.

2 — The Court of Justice has often stated that it is the applicants and not the selection board who must produce the necessary evidence on the basis of which the selection board can decide whether the applicants fulfil the material conditions for taking part in a competition, for example in its judgment in Case 225/87 Belardinelli and Others v Court of Justice [1989] ECR 2353, at p. 2384.

The notice of competition is thus properly clear on that point. It is for the candidates to submit the required documentation and the selection board is not entitled to accept candidates who have not fulfilled that requirement.

Such a clear rule is of course also a good basis for ensuring observance of the principle of the equal treatment of candidates, including the equal treatment of internal and external candidates.

In those circumstances the principles of the administration's duty to have regard for the interests of officials and of proper administration cannot be relied upon by candidates in order to obtain the right to remedy mistakes in connection with fulfilling the obligation to provide supporting documents.

4. That also applies in the case of Mr Burban. The special circumstances which he sets out and which are intended to suggest that he should have been allowed to remedy the mistake made are not of such a nature that an exception may be made to the clear requirements of the competition notice.

There is no reason to linger over the fact that one of the members of the selection board was aware that Mr Burban fulfilled the requirements regarding qualifications and experience. That cannot justify an exception from the clear and appropriate requirement to submit supporting documents as specified in the competition notice. On the contrary, such an exception would create an unwarranted difference in treatment as compared with the other candidates who had to be rejected because it happened that no member of the selection board knew them.

Mr Burban claimed that there were grounds for allowing him to remedy the mistake because it arose from information which he had received from an official in the Parliament. The Court of First Instance expressed its view on that plea in law without finally deciding whether such mistaken information was given to Mr Burban, because the Court of First Instance found that the information relied upon — 'even assuming that it be proven and regrettable thought it may be' — could not form a basis for upholding his claim. I agree with the Court of First Instance on that point.

Mr Burban cannot rely on statements the content of which conflicts with clearly established rules concerning competition procedure, originating from an official who has no authority on the matter. It is clear that the official in question had no authority to alter the obligation to submit supporting documents which the appointing authority had unambiguously laid down in the notice of competition. The official's statement can neither justify nor, even less, oblige the selection board or appointing authority to act in breach of the notice. That view is, moreover, supported by the Court's case-law according to which no rights can be founded on statements which are in conflict with the Staff Regulations: I would refer here to the Court's judgment in the

Vlachou[3] case and Advocate General Warner's Opinion in the *Dautzenberg*[4] case.

5. Mr Burban has also claimed that it follows from the Court's case-law that, on the basis of the administration's duty to have regard for the interests of officials and the principle of proper administration, the selection board was bound in his case to apply the provision in the second paragraph of Article 2 of Annex III to the Staff Regulations according to which a candidate may be asked to supply further evidence of qualifications and information. Mr Burban cited the Court's judgments in *Schwiering*[5] and *Maurissen.*[6] That argument is not, in my opinion, sustainable. First, there is a presumption against that view, because such an obligation does not follow from the wording of the provision. Secondly, in its judgment in *Allgayer*[7] the Court held that a selection board does not have such an obligation. The two judgments cited by Mr Burban have not altered that legal position. They concerned situations

(i) involving an internal competition;

(ii) where there were only a few candidates;

(iii) where the officials in question had forwarded documents within the time-limit for submitting applications; and

(iv) where the selection board had decided to avail itself of the possibility of asking for additional information under the second paragraph of Article 2.

The two judgments thus turn, in fact, on the question of how the power under the second paragraph of Article 2 should be used once it has been decided to use it.

6. Mr Burban's appeal should accordingly not be upheld. As far as the costs of the case are concerned, in my view these should be paid by the appellant. However, Articles

3 — Judgment in Case 162/84 Vlachou v Court of Auditors [1986] ECR 481, at p. 491.

4 — Judgment in Case 2/80 Dautzenberg v Court of Auditors[1980] ECR 3107, at p. 3121.

5 — Case 321/85 Schwiering v Court of Auditors [1986] ECR 3199.

6 — Case 417/85 Maurissen v Court of Auditors [1987] ECR 551.

7 — Case 74/77 Allgayer v Parliament [1978] ECR 977. In that case a selection board in an open competition on the basis of qualifications and tests in the Parliament refused to allow a candidate who was an official at the Commission to take part in the written tests. The reason given was that on the basis of the evidence of qualifications which the official had forwarded the selection board was unable to award her the necessary number of points as required in the notice of competition in order for her to be allowed to take part in the written tests. The official asked to be allowed to submit additional evidence of qualifications. In paragraph 9 the Court stated:
The applicant understood that she had to lodge a full application and thus enclosed superfluous documents such as a copy of her school-leaving certificate and of her junior high school diploma which she obviously possessed in view of her university degree.
In the case of a competition based on qualifications, owing to the nature of such a competition, the evidence of candidates' qualifications must be enclosed with the application form, without its being necessary for the selection board to call upon candidates to produce such evidence.
The applicant has only herself to blame for not having enclosed with her application form the certificates which she forwarded later and she must suffer the consequences.
It is, moreover, necessary to point out that according to the objective criteria on which the selection board decided to base its assessment of the qualifications of candidates, those certificates would not have been taken into consideration.

69(2) and 122 of the Rules of Procedure state that the unsuccessful party should pay the costs of the case solely if costs have been asked for. The Parliament has asked the Court to make an order as to costs in accordance with the provisions of the Rules of Procedure. That can scarcely be interpreted as a plea to be awarded costs. Accordingly each party should bear its own costs.

7. In the light of the foregoing I would propose that the Court find for the respondent institution and order each party to bear its own costs.