

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
7 February 1991 *

In Joined Cases T-18/89 and T-24/89,

Harissios Tagaras, a former official of the Court of Justice of the European Communities, now an official of the Commission of the European Communities, residing in Brussels, represented by E. Sakhpekidou, of the Thessaloniki Bar, and at the hearing by A. Kalogeropoulos, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Catherine Thill, 17 Boulevard Royal,

applicant,

v

Court of Justice of the European Communities, represented by Francis Hubeau, Head of the Personnel Division, acting as Agent, assisted by Konstantinos T. Loukopoulos, of the Athens Bar, with an address for service in Luxembourg at the office of its Agent, Court of Justice, Erasmus Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Court of Justice of 23 September 1986 appointing the applicant as a probationary official, in so far as it classifies him in Step 1 of Grade A 7,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

composed of: R. Schintgen, President of the Chamber, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 20 September 1990,

gives the following

* Language of the case: Greek.

Judgment

Background to the action

- 1 The applicant, Mr Harissios Tagaras, applied to take part in Open Competition No CJ 36/84 organized by the Court of Justice of the European Communities to constitute a reserve of administrators (Official Journal 1984 C 254, p. 5). In his application form, dated 22 October 1984, he stated at point 19 ('Distinctions and decorations') that he would shortly receive his doctorate in law, since his thesis had received the requisite approval on 26 June 1984 and was due to be defended in public in November 1984. Mr Tagaras was entered on the reserve list drawn up on completion of the tests in the competition. In its administrative meeting of 10 July 1985 the Court of Justice approved 'the appointment of Mr Harissios Tagaras as a probationary official to a post of administrator with Greek legal training in the Research and Documentation Division, in Grade A 7, Step 1. The date of commencement of his duties is to be fixed later'.

- 2 As appears from the exchange of correspondence between the applicant and the appointing authority, the date of his entry into service was postponed at his request on several occasions, mainly to enable him to discharge his military obligations, before being finally set for 8 September 1986.

- 3 It is apparent *inter alia* from a letter of the applicant dated 10 September 1985 that he had originally expected to be able to take up his duties on 1 November 1986. In that letter, however, he considered various possibilities of bringing that date forward. The first possibility, of which no further details are given, would have enabled him to take up his duties between 1 May and 1 June 1986. Under a second arrangement he would have done so in November 1985 for an initial period of two to three months, possibly working part-time pending the grant, in the course of 1986, of around six months' leave on personal grounds. According to a third possibility the applicant would initially have carried out research work under a free-lance contract for a period of between six and eight months before being recruited as a probationary official.

- 4 After a number of telephone conversations between various members of the Personnel Division of the Court and Mr Tagaras regarding the date of his entry into service, the Registrar of the Court wrote to him on 6 December 1985 to 'inform him that the Court of Justice [was] able to recruit [him] as a probationary official to a post of administrator in the Research and Documentation Division, in Grade A 7, Step 1' and that in the interests of the service he should take up his duties as soon as possible. As the last two arrangements proposed by the applicant were not satisfactory to the department concerned, he was told that the first possibility, entailing his entry into service in May 1986, had to be taken up.
- 5 However, in a letter sent in March 1986, the applicant stated that he could not take up his duties before the end of his military service, on 3 September 1986.
- 6 By letter of 27 June 1986 the Head of the Personnel Division informed him that 8 September 1986, finally selected as the date for his entry into the service of the Court, was mandatory and that 'any further postponement of [his] entry into service would cause [this] offer of employment to be withdrawn'. In the third paragraph of the letter he also confirmed that the applicant would be 'classified in Step 1 of Grade A 7', adding that '[his] remuneration, taxes and contributions to the pension fund and the sickness and accident insurance fund [would] be calculated according to the attached statement (subject to verification of [his] entitlements at the time of [his] entry into service)'.

- 7 Mr Tagaras took up his duties on 8 September 1986. On 26 September 1986 he was notified of a decision adopted by the Court in its capacity as appointing authority, signed by the Registrar and dated 23 September 1986, in the following terms:

'The Court, in its capacity as appointing authority, at the administrative meeting of 10 July 1985, having regard to Articles 1, 4, 7 and 27 to 34 of the Staff Regulations and to the report of the selection board for Open Competition No CJ 36/84, having regard to Vacancy Notice No CJ 51/85 and acting on the proposal of the Registrar, has decided as follows:

Mr Harissios Tagaras is hereby appointed a probationary official from 8 September 1986 as an administrator in the Research and Documentation Division, in Grade A 7, Step 1, with his next advancement in step on 1 September 1988.'

- 8 On 7 November 1986, the applicant sent the appointing authority a memorandum which was registered in accordance with his instructions as a request under Article 90(1) of the Staff Regulations of Officials of the European Communities. He asked the appointing authority to reconsider and change his classification in step on account of his training and special experience.
- 9 On 2 April 1987 the applicant sent the appointing authority an 'addendum' to his request of 7 November 1986, in which he supplied further information regarding his training and experience which he had not set out in his application form for Competition No CJ 36/84, either because he had considered it superfluous or because it covered qualifications acquired after the submission of his application.
- 10 It is clear both from his application form and from his memorandum of 7 November 1986 and the other documents before the Court that when he took up his duties at the Court of Justice in September 1986 the applicant had undergone training attested by the following diplomas:
- a diploma from the Faculty of Law of the University of Thessaloniki, granted in November 1977;
 - a specialized degree in European law granted by the Institut d'Études Européennes of the Université Libre de Bruxelles, following a two-year course (the academic years 1978/79 and 1979/80);
 - a doctorate in law awarded by the University of Thessaloniki. His thesis, prepared under the supervision of Professor Evrigenis, on the relationship between private international law and Community law, had been approved in June 1984 and, after being defended in public in November 1984, had been assessed as 'excellent'.

- 11 By the same date the applicant could point to the following experience:
- from 30 November 1977 to 18 September 1979 (21 months) he had worked as a trainee lawyer at the Chambers of Nikos Tagaras and appeared in some twenty cases before the magistrate's court of Thessaloniki and some twenty further cases before the court of first instance of Thessaloniki;
 - from 16 October 1980 to 15 April 1983 (30 months) he had been employed by the Council of the European Communities, where he had held a post of lawyer-linguist;
 - from 1 June 1983 to 30 November 1984 (18 months) he had worked as an academic assistant at the Centre for International and European Economic Law in Thessaloniki, carrying out research into a variety of issues concerning the application of Community law in Greece;
 - during the academic year 1985/86 (9 months) he had been an assistant lecturer at the School of Administrative and Economic Studies of the TEI (Institute for Technical Training) in Thessaloniki, where he had taught 'international economic institutions' and 'elements of European law' and supervised the graduating essays of six students;
 - in 1986 he had published twelve academic legal articles and notes on case-law, all concerning issues of Community law.
- 12 On 12 May 1987 the applicant lodged, in the alternative, a complaint against the implied rejection of the request contained in his memorandum of 7 November 1986, mentioned above, in case it was regarded not as a complaint for the purposes of Article 90(2) of the Staff Regulations but merely as a request for reclassification submitted under Article 90(1).
- 13 The applicant was successful in Competition No COM/A/408 organized by the Commission and was employed by that institution in 1987. On 30 September

1987 the classification committee of the Commission decided to classify Mr Tagaras in Category A, Grade A 7, Step 3, granting him additional seniority of forty-eight months — the maximum allowed under Article 32 of the Staff Regulations. On 1 October 1987 he tendered his resignation to the Court. The resignation was confirmed by decision of the appointing authority of 14 October 1987 and took effect on 31 December 1987.

Procedure

- 14 Those were the circumstances in which Mr Tagaras, by application lodged at the Registry of the Court of Justice on 2 June 1987, brought an action for the annulment of the Court's decision of 23 September 1986 appointing him as a probationary official in so far as it classified him in Step 1 of Grade A 7 and of the implied decision rejecting his complaint of 7 November 1986. The application was entered as Case 162/87.
- 15 The defendant raised an objection of inadmissibility on 26 August 1987.
- 16 By application lodged at the Registry of the Court of Justice on 18 November 1987 Mr Tagaras brought a second action in case the earlier application should be declared inadmissible; in it he sought the annulment of (a) the Court's decision of 23 September 1986 appointing him as a probationary official in so far as it classified him in Step 1 of Grade A 7, (b) the implied decision rejecting his request of 7 November 1986, and (c) the implied decision rejecting his complaint of 12 May 1987. The application was entered as Case 351/87.
- 17 In response to the second application the defendant raised a further objection of inadmissibility on 8 January 1988.
- 18 On 10 February 1988 the Court (Third Chamber) ordered Cases 162/87 and 351/87 to be joined for the purposes of the written procedure, the oral procedure and the judgment, and decided to reserve its decision on the objections of inadmissibility for the final judgment.

19 The written procedure was conducted entirely before the Court of Justice. It followed the normal course.

20 By virtue of Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the Court of Justice (Third Chamber) made an order on 15 November 1989 referring the cases to the Court of First Instance. Case 162/87 was registered at the Court of First Instance as Case T-18/89 and Case 351/87 as Case T-24/89.

21 In Case T-18/89, the applicant claims that the Court should:

- (1) annul, withdraw or modify the decision of 23 September 1986 appointing him, in so far as it classifies him in Step 1 of Grade A 7, and the implied decision rejecting his complaint of 7 November 1986;
- (2) order the defendant, pursuant to the principle of equal treatment of Community officials and the principle of sound administration, to classify him in the correct step, namely Step 3, with retroactive effect from 8 September 1986;
- (3) order the defendant to pay him the difference in salary between the former step and the new step, together with statutory interest at 8% running from the date on which it fell due;
- (4) order the defendant to pay the costs.

22 In Case T-24/89 the applicant claims that the Court should:

- (1) annul the implied decisions rejecting his request of 7 November 1986 and his complaint of 12 May 1987 and, accordingly, declare unlawful his classification in Step 1 of Grade A 7, as fixed in the decision of 23 September 1986 appointing him;

- (2) order the defendant to pay him the difference in salary between Step 1 of Grade A 7 and the new step, which, pursuant to the principle of equal treatment of Community officials and the principle of sound administration, must be Step 3 — such difference in salary to be paid with effect retroactive to 8 September 1986, together with statutory interest at 8% running from the date on which it fell due;
- (3) order the defendant to pay the costs.

23 In both cases the defendant contends that the Court should:

- (1) dismiss the applications as inadmissible;
- (2) in the alternative, dismiss the applications as vague and unfounded in law or in fact;
- (3) make an order for costs in accordance with the relevant provisions of the Rules of Procedure.

24 Upon hearing the report of the Judge-Rapporteur the Court of First Instance decided to open the oral procedure without any preparatory inquiry.

25 However, the Court of First Instance requested the defendant to disclose the criteria which it generally applies for the initial classification of officials in Category A and the manner in which those criteria were applied in the applicant's case and in the case of four other officials named by the applicant in both applications, by comparison with whom he claims to have suffered discrimination.

26 By letter of 18 July 1990 the defendant informed the Court of First Instance that, unlike other Community institutions, the Court of Justice has not adopted a general decision on the classification in step of new officials pursuant to Article 32

of the Staff Regulations. It further explained that, in applying Article 32 of the Staff Regulations to such persons, the appointing authority assesses the training and special experience of the individual in each case. The defendant also supplied all the relevant documents relating to the classification of the officials named in the two applications.

27 The hearing took place on 20 September 1990. The Court of First Instance heard the arguments of the parties' representatives and their replies to its questions.

28 At the hearing the defendant admitted that, when adopting the decision classifying Mr Tagaras in step solely on the basis of the information contained in his application form of 22 October 1984, it had nevertheless not taken into consideration the reference to the doctorate in law, even though its imminent award was mentioned in that form, as the Court was able to observe.

29 In the course of the hearing the applicant expressly abandoned the second and third heads of claim in Case T-18/89 and the second head of claim in Case T-24/89.

Admissibility of the application in Case T-18/89

30 In support of the objection of inadmissibility which it raised in respect of the application in Case T-18/89, the defendant puts forward three pleas in law.

First plea in law, alleging that the document lodged by the applicant on 7 November 1986 was out of time

31 The defendant states that it was by decision of 10 July 1985 that the Court of Justice, in its capacity as appointing authority, appointed Mr Tagaras as a probationary official to a post of administrator in the Research and Documentation Division, in Grade A 7, Step 1—the date of his entry into service to be fixed later. The defendant further points out that the Registrar wrote to him on

6 December 1985 to inform him 'that the Court of Justice [was] in a position to recruit [him] as a probationary official to a post of administrator in the Research and Documentation Division, in Grade A 7, Step 1', and that in the interests of the service he was required to take up his duties at the earliest possible opportunity.

- 32 According to the defendant, Mr Tagaras became aware of his classification in Step 1 of Grade A 7 no later than on his receipt of that letter. Moreover, the classification was expressly confirmed in the letter to him of 27 June 1986 from the Head of the Personnel Division. The defendant concludes that the three-month period available to the applicant under Article 90(2) of the Staff Regulations for the submission of a complaint against the act adversely affecting him began to run on receipt of the Registrar's letter of 6 December 1985, mentioned above. Mr Tagaras failed to lodge a complaint within the prescribed period.
- 33 The defendant argues that the Court of Justice has consistently held that the time limits laid down by the Staff Regulations for the lodging of complaints and applications are a matter of public policy and cannot be extended by the institution or the official, or by consent. It adds that the Court of Justice has further held that a person covered by the Staff Regulations may not, by submitting a request, circumvent the loss of his rights resulting from the expiry of the period permitted for lodging a complaint and thereby attempt, through a form of procedural abuse, to challenge an administrative decision which has become definitive on the expiry of the period permitted for bringing an action (judgment of 12 July 1984 in Case 227/83 *Moussis v Commission* [1984] ECR 3133 and 7 May 1986 in Case 191/84 *Barcella v Commission* [1986] ECR 1541).
- 34 The defendant contends that all the measures adopted after the Court of Justice's decision of 10 July 1985, which was notified to the applicant no later than by the Registrar's letter of 6 December 1985, simply confirm that decision. It follows, in the defendant's view, that the request submitted by the applicant on 7 November 1986, which he describes in Case T-18/89 as a 'complaint', was out of time, with the result that the application is inadmissible.
- 35 The Court of First Instance considers the defendant's argument to be quite unfounded. It should be observed as a preliminary point that according to the first paragraph of Article 1 of the Staff Regulations '“official of the Communities”

means any person who has been appointed, as provided for in these Staff Regulations, to an established post on the staff of one of the institutions of the Communities by an instrument issued by the appointing authority of that institution'.

36 In that connection, regard should be had to the further details contained in the following provisions:

- Article 3 of the Staff Regulations: 'The instrument appointing an official shall state the date on which the appointment takes effect; this date shall not be prior to the date on which the official takes up his duties';
- Article 7(1) of the Staff Regulations: 'The appointing authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his category or service which corresponds to his grade.

An official may apply for a transfer within his institution';

- the first paragraph of Article 2 of the Staff Regulations: 'Each institution shall determine who within it shall exercise the powers conferred by these Staff Regulations on the appointing authority.'

37 It follows from those provisions, read together, that the decision appointing an official must:

- (a) be in writing;
- (b) have been taken by the appointing authority — that is to say, by the authority exercising within the institution the powers conferred on the appointing authority by the Staff Regulations;
- (c) specify the date on which the appointment takes effect;
- (d) assign the official to a post.

- 38 That interpretation is borne out by the case-law of the Court of Justice, according to which 'in the case of a request for reclassification the measure adversely affecting the applicant is the decision appointing him as a probationary official. It is that decision which defines the duties for which the official has been appointed and definitively fixes the corresponding grade' (judgments in Case 173/80 *Blasig v Commission* [1981] ECR 1649 and Case 191/84 *Barcella*, cited above). In the present case, only the decision dated 23 September 1986 fulfils the conditions set out above. It is that document which states, for the first time, that the applicant 'is appointed as a probationary official', specifies the date on which the appointment is to take effect and assigns the applicant to a post. The fact that the basic decision was adopted at the administrative meeting of the Court of Justice of 10 July 1985 is not relevant here, since on that date the Court was unable to fix the date for the applicant's entry into service.
- 39 Furthermore, a study of the whole exchange of correspondence between the Court of Justice and the applicant does not support the inferences which the defendant is attempting to draw. The Registrar's letter of 6 December 1985 informs the applicant that the Court 'is in a position to recruit [him] as a probationary official'. Similarly, the letter from the Head of the Personnel Division of 27 June 1986 informs him that 'the date chosen for [his] entry into service of the Court is 8 September 1986' and 'that any further postponement of [his] entry into service will cause our offer of employment to be withdrawn'. Neither of these letters records the appointment of the applicant as an official. On the contrary, the letter of 27 June 1986 makes any appointment of the applicant as an official conditional on observance of the date fixed by the defendant for his entry into service.
- 40 The defendant's argument also conflicts with the principle of legal certainty. That principle, which forms part of Community law (judgment in Joined Cases 205 to 215/82 *Deutsche Milchkontor v Germany* [1983] ECR 2633), requires that every measure of the administration having legal effects must be clear and precise and must be drawn to the attention of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and starts to produce its legal effects, particularly as regards the availability of remedies provided by legislation — in this case the Staff Regulations — for challenging it. These conditions have been enshrined in the case-law of the Court of Justice in relation to Community provisions (judgments in Case 169/80 *Administration des Douanes v Gondrand Frères* [1981] ECR 1931 and Case 70/83 *Kloppenburger v Finanzamt Leer* [1984] ECR 1075).

41 It follows from the foregoing that the act adversely affecting the official for the purposes of Article 90 of the Staff Regulations is the decision of 23 September 1986, and hence that the applicant's request of 7 November 1986 was submitted within the three-month period laid down by Article 90(2) of the Staff Regulations.

42 It follows that the plea cannot be upheld.

Second plea in law, alleging that the description given to the document of 7 November 1986 was changed in the course of the proceedings

43 The defendant points out that the applicant himself clearly described the document which he submitted on 7 November 1986 as a 'request' under Article 90(1) of the Staff Regulations. It takes the view that it should continue to be described as such for the purposes of these proceedings.

44 The defendant further states that, pursuant to the second sentence of Article 90(1) of the Staff Regulations, the appointing authority has a four-month period within which to give a decision on a request submitted in accordance with the first sentence of that paragraph. If no express reply is made, an implied decision rejecting the request is deemed, by virtue of the third sentence of Article 90(1), to have been given at the end of that four-month period, which must in this case be considered to have fallen on 7 March 1987. Under Article 90(2) the person concerned thereupon has a period of three months within which to lodge a complaint against the implied decision rejecting the request. The defendant contends that the period in this case expired on 7 June 1987. It is only on the expiry of the four-month period available to the appointing authority under the second subparagraph of Article 90(2) for giving its decision on the complaint that the official has the option, for three months, of commencing judicial proceedings against the implied rejection of his complaint (Article 91(3)). Consequently, since the application to the Court was submitted on 2 June 1987 it must, according to the defendant, be dismissed as premature.

45 The defendant also notes that the applicant in fact lodged a complaint on 12 May 1987 against the implied rejection of his request of 7 November 1986.

- 46 The first task is to ascertain the legal nature of the document delivered by Mr Tagaras to the administration on 7 November 1986. In doing so, it is necessary to begin by considering its actual appearance and wording. The document in question, drafted in the form of a 'memorandum', was registered as a request. An examination of the official form, headed 'Formulaire d'enregistrement des demandes/réclamations introduites au titre de l'Article 90 du Statut' (Registration form for requests/complaints under Article 90 of the Staff Regulations), shows that the inapplicable wording has been deleted, in accordance with the instructions on the form itself. In the heading, the term 'réclamation' is struck out. Where the form contains the alternative terms 'demandeur/réclamant' (applicant/complainant), the word 'réclamant' is struck out. Similarly, where the form uses the alternative terms 'demande/réclamation', the word 'réclamation' is deleted. Finally, where the form refers to Article 90(1) and Article 90(2) of the Staff Regulations, the reference to Article 90(2) is struck out. At the hearing the applicant admitted that he himself had deleted those words.
- 47 Similarly, if reference is had to a letter which the applicant sent to the Court of Justice on 2 April 1987 as an 'addendum to [his] request of 7 November 1986', it will be seen that in the first paragraph he has used the word 'demande' (request) six times to describe his earlier memorandum. Furthermore, Mr Tagaras himself acknowledges in that document of 2 April 1987 that, rather than pursue the procedure laid down in the Staff Regulations, he has 'chosen to return to [his] request of 7 November 1986' in order to continue the non-contentious discussion with the administration of the Court of Justice.
- 48 Although in accordance with the established case-law of the Court of Justice the Court of First Instance may restore to a document submitted as a 'request' the status of an official complaint (judgments in Case 191/84 *Barcella v Commission*, cited above, Case 302/85 *Pressler-Hoefl v Court of Auditors* [1987] ECR 513 and Case 167/86 *Rousseau v Court of Auditors* [1988] ECR 2705), that approach cannot be taken in the circumstances of this case.
- 49 The actual words used in the documents considered above leave no doubt as to the applicant's true intention of submitting a request to have his classification reconsidered. Indeed, the applicant was perfectly entitled in those circumstances to submit such a request in order to encourage an amicable settlement of the dispute by allowing the administration to reconsider its decision. The Court of Justice has already recognized that possibility (judgment in Case 266/83 *Samara v Commission* [1985] ECR 189), on condition that the practice does not have the effect of

allowing an official to set aside the time limits laid down in the Staff Regulations for lodging a complaint and for applying to the Court, by indirectly calling in question by way of a request a previous decision which has not been challenged within the period prescribed (judgments in Case 127/84 *Esly v Commission* [1985] ECR 1437 and Case 231/84 *Valentini v Commission* [1985] ECR 3027).

50 For all those reasons the Court of First Instance holds that the document submitted by the applicant on 7 November 1986 must be regarded as a 'request' within the meaning of Article 90(1) of the Staff Regulations. Since the administration did not reply to it within the period stipulated in that provision, an implied decision rejecting that request must be deemed to have been given on 7 March 1987. In response to that implied rejection, Mr Tagaras was entitled under Article 90(2) of the Staff Regulations to lodge a complaint within three months, and he did so on 12 May 1987. The Court of Justice then had a period of four months from the receipt of that complaint within which to reply. The four-month period was due to expire on 12 September 1987. However, on 2 June 1987 Mr Tagaras brought the matter before the Court of Justice, when the defendant had not committed itself as to the action — if any — which it intended to take on the complaint. It follows that the application was premature.

51 Consequently, the application in Case T-18/89 must be declared inadmissible by virtue of Article 91(2) of the Staff Regulations, and there is no need to consider the third plea in law put forward by the defendant in support of its objection of inadmissibility.

Admissibility of the application in Case T-24/89

52 In relation to the application in this case the defendant again raised an objection of inadmissibility, repeating the submission — already put forward in Case T-18/89 — that the document lodged by the applicant on 7 November 1986 was out of time. The defendant argues that the applicant failed to comply with the three-month period running from the date on which he had become aware of the decision classifying him, within which he was entitled, under Article 90(2) of the Staff Regulations, to submit a complaint challenging that decision. It contends that the applicant became aware of the decision no later than on receipt of the letter sent to him by the Registrar on 6 December 1985.

- 53 The Court has just held, in Case T-18/89, that the request which the applicant submitted to the Court of Justice on 7 November 1986 was submitted within the three-month period laid down by the Staff Regulations.
- 54 The Court also observed that since that request had been rejected by implication on 7 March 1987, the applicant had a period of three months within which to lodge a complaint, which he did on 12 May 1987. That complaint was implicitly rejected on 12 September 1987, and thereafter the applicant had three months for bringing an action. The application lodged at the Court Registry on 18 November 1987 was therefore within the time limit set by the Staff Regulations.
- 55 It follows that the single plea in law put forward by the Court of Justice in support of its objection of inadmissibility must be rejected and that the application in Case T-24/89 must be declared admissible.

Substance of Case T-24/89

- 56 In support of his application the applicant puts forward two pleas in law alleging infringement of the principle of equal treatment, enshrined in particular in Article 5 of the Staff Regulations, and infringement of the principle of sound administration which should inform the application of Article 32 of the Staff Regulations.

First plea in law, alleging infringement of Article 5 of the Staff Regulations (principle of equal treatment)

- 57 The applicant maintains that he was the subject of discrimination in relation both to his colleagues at the Court of Justice and to officials of the other institutions. He observes that during 1986 the Court appointed four other probationary officials — Spanish and Portuguese — to Grade A 7 posts, three of whom were classified in Step 2. He notes that the first of those officials had obtained his degree in the same year as himself, the second one year later and the third four years later. The fourth official, who had obtained his degree six years after the applicant, was classified in Step 1 of Grade A 7 and assigned to the same department as himself. The applicant takes the view that neither the training nor the experience of his colleagues warranted more favourable treatment.

58 The applicant argues that he was also the victim of discrimination by comparison with officials of the other Community institutions. Although Article 32 of the Staff Regulations leaves the administration some discretion, the applicant maintains that the fact that the administration of one particular institution applies a provision of the Staff Regulations quite differently from the administrations of the other institutions — above all when that provision has a direct bearing on officials' rights and obligations — gives rise in practice to discrimination which is not compatible either with the uniformity of the Staff Regulations in respect of all Community officials or with consistency in Community law. The applicant considers it self-evident that, in view of his qualifications, he would have been classified by other institutions in Step 3 and not in Step 1, as he was at the Court. He points out that thirteen months after the Court's decision fixing his classification in Grade A 7, Step 1, the Commission classified him in Grade A 7, Step 3, granting him the maximum additional seniority permitted in that grade, namely forty-eight months.

59 The defendant replies that the applicant's claim that his classification is in breach of the principle of equal treatment if regard is had to his colleagues at the Court and to officials of other institutions is incomplete and vague, and cannot therefore be the subject of judicial review.

60 According to the defendant, Article 32 of the Staff Regulations gives the administration a wide discretion in the classification of newly recruited officials, not a limited discretion as the applicant asserts. It was in the exercise of that discretion that the defendant decided on 10 July 1985, on the basis of the information set out in the application form submitted on 31 October 1984, to classify the applicant in Step 1 of Grade A 7.

61 The defendant contends that an examination of the other cases cited by the applicant shows that it did not discriminate against him but applied the same criteria to him as it applies whenever it undertakes the classification of a new official.

62 With reference to the equal treatment of officials of the various institutions, the defendant argues that at the time of the Court's recruitment of the applicant the

Commission would, on the basis of the criteria which it applies, have allowed him additional seniority of 12 months at most. It is inconceivable that the Commission would have assigned the same step in 1985 and in 1988 to an official who, like the applicant, had carried out a variety of specific duties within the Communities during the three intervening years.

- 63 Before embarking on a comparative study of the respective merits of the applicant and the other officials cited by him, it is necessary to examine whether the Court of Justice properly assessed all the training and special experience to which the applicant could point at the time of his appointment on 8 September 1986.
- 64 Under the first paragraph of Article 32 of the Staff Regulations 'an official shall be recruited at the first step in his grade'. The second paragraph goes on to state: 'However, the appointing authority may, taking account of the training and special experience for the post of the person concerned, allow additional seniority in his grade; this shall not exceed 72 months in Grades A 1 to A 4, L/A 3 and L/A 4 and forty-eight months in other Grades'.
- 65 As the Court of Justice has held on several occasions, the appointing authority has a wide discretion, within the limits laid down by the second paragraph of Article 32, to allow additional seniority in step on recruiting an official, in order to take account of the previous experience of a person appointed as an official both as regards the nature and the duration of that experience and its relationship, be it close or otherwise, to the requirements of the post to be filled (judgments in Case 190/82 *Blomefield v Commission* [1983] ECR 3981 and Case 17/83 *Angelidis v Commission* [1984] ECR 2921).
- 66 The Court holds that, although the defendant based itself wholly on the information contained in the applicant's application form of 22 October 1984 in determining his classification, it failed to give consideration to all the information contained therein. Thus it did not take into consideration the doctorate in law,

the imminent award of which had been mentioned by the applicant in his application form. Having held the decision of the Court of Justice of 23 September 1986 to constitute the instrument appointing the applicant, the Court takes the view that the applicant's training and special experience should have been appraised by reference to the training and experience which he could show at the time of appointment, not at the time of the submission of his application for employment. Between the lodging of his application for employment on 22 October 1984 and his appointment on 23 September 1986 the applicant had not only added to his specialized training a doctorate in a subject related to Community law but had also broadened his special experience by working during the academic year 1985/86 as an assistant lecturer at the School of Administrative and Economic Studies of the TEI (Institute for Technical Training) of Thessaloniki, teaching subjects connected with European law. By their nature and their specialization the training and experience in question are closely related to the requirements of the post in the Research and Documentation Division to which the applicant was assigned.

67 Those factors alone afford sufficient reason to annul the decision of 23 September 1986 in so far as it fixes the applicant's classification in step.

68 With regard to the breach of the principle of equal treatment alleged by the applicant, it may be observed that the Court of Justice has consistently held that there is a breach of the principle laid down in Article 5(3) of the Staff Regulations when two categories of person whose factual and legal circumstances disclose no essential difference are treated differently at the time of their recruitment (judgments in Case 119/83 *Appelbaum v Commission* [1985] ECR 2423 and Joined Cases 66/83 to 68/83 and 136/83 to 140/83 *Hattet v Commission* [1985] ECR 2459). The Court of Justice has held that there is also an infringement of the principle of equal treatment where situations which are different are treated in an identical manner (judgments in Case 817/79 *Buyl v Commission* [1982] ECR 245 and Case 1253/79 *Battaglia v Commission* [1982] ECR 297). In order to establish whether there has indeed been an infringement of the principle of equal treatment in the present case, as the applicant maintains, it is therefore necessary to compare, first, the applicant's merits and those of the officials in relation to whom he claims to have suffered discrimination and, secondly, their respective classifications.

- 69 In so doing the Court has observed that in one case an official classified in Grade A 7, Step 2, and assigned by decision of 3 October 1986 to the same division as the applicant obtained his degree in law in 1981 — four years after the applicant. His application form does not refer to any other qualification connected with any further training. As far as his experience in the legal field is concerned, he refers only to 22 months of work as a legal adviser in the regional administration of a Member State.
- 70 In a second case, an official classified in Grade A 7, Step 1, and assigned by decision of 3 October 1986 to the same division as the applicant obtained his degree in law in 1983 — six years after the applicant. As regards special training, he holds a diploma in advanced European studies from the Collège d'Europe in Bruges and, by way of experience in the legal field, has worked for a year as a probationary assistant lecturer in a faculty of law.
- 71 In a third case, an official classified in Grade A 7, Step 2, and assigned by decision of 19 November 1986 to the Information Service obtained his degree in law in 1977 — the same year as the applicant. His application form does not refer to any qualification or diploma reflecting further training; as for his experience in the legal field, he can point to only 33 months of work as a translator and 62 months as a legal adviser in a private undertaking.
- 72 It follows from the foregoing that the applicant, who can show special training at a more advanced level and significantly greater special experience than the three officials in the abovementioned cases, has suffered discrimination by comparison with those officials.
- 73 It follows from all the foregoing considerations, without there being any need to examine the other plea in law put forward by the applicant, that the contested decision must be annulled in so far as it classifies the applicant in Step 1 of Grade A 7.

- 74 In accordance with Article 176 of the EEC Treaty the Court of Justice is required to take the necessary measures to comply with this judgment.

Costs

- 75 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which apply *mutatis mutandis* to the Court of First Instance pursuant to the third paragraph of Article 11 of the abovementioned Council Decision of 24 October 1988, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the defendant has been unsuccessful in Case T-24/89 it must be ordered to pay the costs.
- 76 Under Article 69(3) of those Rules of Procedure, the Court of Justice may order even a successful party, to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur. In Case T-18/89 it must be concluded that, although the application has been dismissed as inadmissible, it was the defendant's attitude that compelled the applicant to bring the action in order to safeguard his rights. In those circumstances the defendant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- (1) Dismisses the application in Case T-18/89 as inadmissible;**
- (2) In Case T-24/89, annuls the decision of the Court of Justice of 23 September 1986 in so far as it determines the applicant's classification in step and the implied decisions rejecting his request of 7 November 1986 and his complaint of 12 May 1987;**

(3) Orders the defendant to pay all the costs.

Schintgen

Edward

García-Valdecasas

Delivered in open court in Luxembourg on 7 February 1991.

H. Jung
Registrar

R. Schintgen
President