the selection board's decision, the desirability of bringing an action before the Court.

4. Where a candidate has failed the tests for a competition, he has no legitimate interest in obtaining the annulment, on the ground of absence or inadequacy of the reasons on which it is based, of a decision by which the selection board refused to accept him as a successful candidate. The results of tests cannot be changed following annulment of the selection board's decision, which could thus only be confirmed.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
15 July 1993 *

In Case T-27/92,

Maria Camera-Lampitelli, Claudia Castelletti, Yvonne Demory-Thyssens, Bärbel Keller, Gudrun Kreibich, Gerda Lambertz, Madeleine Lutz, Lucia Passera, Marie Seube, Antonietta Thielemans, Helga Kottowski, officials of the Commission of the European Communities, represented by Marcel Slusny and Olivier-Marie Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicants,

v

Commission of the European Communities, represented by Sean van Raepenbusch and Ana Maria Alves Vieira, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the decisions of the selection board in Competition COM/B/2/82 not to place them on the list of successful candidates in that competition and for an order that the Commission pay damages,

* Language of the case: French.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Biancarelli, President, B. Vesterdorf and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 18 May 1993,

gives the following

Judgment

Facts

1 The applicants are part of a group of officials and servants of the Commission who, in December 1984, lodged applications before the Court of Justice seeking annulment of the decisions of the selection board for internal competition COM/B/2/82 not to admit them to the tests for that competition, which had been organized for the purposes of drawing up a reserve list of administrative assistants, secretarial assistants and technical assistants for the career-bracket comprising grades 5 and 4 in category B.

2 By two judgments of 11 May 1986 in Case 293/84 *Sorani and Others* v *Commission* [1986] ECR 967 and Case 294/84 *Adams and Others* v *Commission* [1986] ECR 977, the Court of Justice annulled the said decisions on the ground that the applicants had not had the opportunity of making observations on the opinions expressed to the selection board in their regard by their immediate superiors. Following those judgments, the selection board invited the candidates in question to appear before it in June 1986 so that they could answer the same questions as those which had been raised previously with their immediate superiors. By letter of 11 July 1986, the candidates were informed that the decisions not to admit them to the tests had been confirmed.

3 Following complaints lodged by certain candidates against those decisions of 11 July 1986, the selection board invited them to appear before it a second time in order to give them the opportunity of making observations on the answers given by their immediate superiors to the questions which the selection board had put to them. By letters of 12 February 1987, the officials in question were informed that the selection board considered that there was no need to alter the decision taken in their regard, sent to them on 11 July 1986. The applicants then brought further proceedings.

4 By judgment of 28 February 1989 in Joined Cases 100/87, 146/87 and 153/87 *Basch and Others* v *Commission* [1989] ECR 447, the Court of Justice annulled the decisions of the selection board not to admit the applicants to the tests on the grounds that they did not contain an adequate statement of the reasons on which they were based and that the procedure followed by the selection board was irregular.

5 In compliance with that judgment, the Director of Personnel of the Commission decided to call on the selection board to resume its work as from the point where it had been declared irregular by the Court. By a memorandum of 26 June 1989, he informed the applicants of this, stating that the selection board would be reconstituted with its original members, unless they were 'no longer eligible'.

6 On 7 September 1989 a meeting was held between the Commission, represented by its Director of Personnel, and the representatives of the various trade unions for officials to which the candidates for competition COM/B/2/82 affected by the judgment in *Basch and Others* v *Commission* were affiliated.

7 Following that meeting, the Director of Personnel sent a memorandum dated 8 September 1989 to the trade union representatives. That memorandum reads as follows:

'The above referenced meeting has allowed us together to take stock of the situation concerning the procedure applied as regards the candidates for COM/B/2/82 affected by the judgment of the Court of 28 February 1989 (applicants).

That judgment puts those candidates back in the position they were in at the point of the procedure at which the Court found that it was vitiated (absence of a statement of reasons at the time of the decision whether or not to admit the applicants).

In those circumstances — of which the 28 candidates and the members of the selection board have been personally informed — the selection board will decide whether or not to admit candidates to the competition, following interviews with their respective immediate superiors. Moreover, the candidates will have the opportunity of requesting the selection board to hear such other superiors as they may specify. Subsequently, the selection board will hear the candidates themselves at an interview which will also provide it with further material on which to base its decision.

For the purposes of the conditions laid down for the competition, the candidates will be deemed to be in the situation in which they were at the time (as regards, for example, training). In so far as is possible, the selection board will be made up of all its former members, in complete accordance with the practice and case-law in this area.

The reference period to be taken into account when considering whether candidates are to be admitted to the competition shall be the period ending on 25 February 1982 or, if considered fair, on the date up to which the performance of other candidates, who either did not complain or were successful, was assessed.

I have noted the concern of the staff representatives — which I share — that the selection board should resume its work as soon as possible (*N. B.*: theoretically on 15 September 1989). I will also inform Mr P. of the request submitted for examining the possibility of adjusting the careers of such successful candidates as may be appointed in the future, so that it can be established in good time before a list of successful candidates has been drawn up.'

8 Subsequently, the candidates were again invited to appear before the selection board in October, November and December 1989 in order to be informed of the names of their assessors and of the officials responsible for supervising them. Furthermore, the selection board asked whether they wished to have other persons heard who might have assessed their professional abilities and of whom the selection board might not be aware.

9 According to the Commission, following those interviews, the selection board heard all the abovementioned persons, save in the case of their death, categorical refusal or failure to reply after three requests. Once the hearings were finished, the selection board proceeded to the stage of admission to the tests for the competition.

10 Before that stage was completed, the President of the Union of European Civil Servants, on behalf of the candidates in question and as their duly appointed representative, by memorandum of 18 September 1989 lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), against the Director of Personnel's memorandum of 26 June 1989 announcing the resumption of the procedure for internal competition COM/B/2/82; the complainants further requested to be admitted to the competition without further formality and to be awarded compensation for the damage which they considered they had suffered.

11 On 20 December 1989, the Commission rejected those complaints in decisions notified to the complainants by memoranda dated 22 December 1989.

12 By memoranda of 8 August 1990, the applicants Ms Camera-Lampitelli, Ms Kottowski, Ms Lutz and Ms Seube, together with a number of other candidates, were notified that they had been refused admission to the tests for the competition. The candidates who had not been admitted lodged complaints between 31 October and 6 November 1990, registered between 31 October and 7 November 1990 at the General Secretariat of the Commission, seeking annulment of the decisions of the selection board refusing to admit them to the competition and annulment of the decision of the administration of 26 June 1986.

13 Those complaints were not given an explicit answer. However, the interdepartmental group responsible for considering the said complaints noted at its meeting of 6 March 1991 that the candidates had not been informed, before being heard by the selection board, of the content of the opinions expressed by their immediate superiors or the persons whom they had themselves designated to be heard by the selection board. For that reason, the administration informed the candidates, by letter of 13 March 1991, that they were to be invited to a further interview with the selection board.

14 Those interviews took place in April 1991. Subsequently, the selection board confirmed the previous admissions to the competition and admitted four new candidates to the tests, namely Ms Camera-Lampitelli, Ms Kottowski, Ms Lutz and Ms Seube. The written tests took place on 5 and 6 July 1991. At the end of the tests, out of the applicants, only Ms Keller was placed on the list of successful candidates.

15 The applicants were notified of the result of the competition by letter of 26 July 1991, sent to the applicants on 27 July 1991. That letter reads as follows:

'Following your participation in the written tests in the above competition which took place on 4 and 5 July 1991, I am able to inform you that the selection board has completed its work.

In view of your performance, I regret to have to inform you that the selection board was unfortunately not able to include your name on the list of suitable candidates.

...'.

16 Between 7 and 22 October 1991 the applicants lodged complaints in accordance with Article 90(2) of the Staff Regulations. With the exception of Ms Keller they claimed, *inter alia*, that the letter of 26 July 1991 had not notified them of the reasons for the negative result. They all claimed compensation for the damages which they considered they had suffered.

17 The applicants' complaints were rejected by express decision, taken on 11 May 1992 and notified by letter of 20 May 1992. That decision includes the following paragraphs:

'Finally, the applicant challenges Mr T.'s letter of 24 (26) July 1991 on the ground that it did not inform her of the reasons for the negative result.

By that letter, the candidates in question were notified that the selection board had completed its work but, in view of their performance, was unable to include them on the list of suitable candidates.

However, it is clear from the case-law of the Court of Justice (Case 108/84 *De Santis* v *Court of Auditors* [1985] ECR 947 and Case 225/82 *Versyck* v *Commission* [1983] ECR 1991) that the Selection Board may "initially send to candidates merely information on the criteria for selection and the result thereof and not give individual explanations until later and to those candidates who expressly request them".

Since the applicant did not request individual explanations from the chairman of the selection board, she cannot in this complaint challenge the abovementioned letter on the ground that it did not state the reasons on which it was based. Nevertheless, the details of the applicant's performance in the tests for the competition will be sent to her.'

18 It is against that background that the applicants brought this action on 13 April 1992. By order of 28 April 1993 the Court of First Instance Joined Case T-27/92 to Joined Cases T-17/90, T-28/91 and T-17/92 for the purposes of the oral procedure.

19 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry. However, it called on the Commission to supply certain information regarding the composition of the selection board following the judgment in *Basch and Others* v *Commission*. The Court also requested the Commission to produce certain documents concerning the procedure for admission to the competition. The

Commission complied with the requests of the Court within the given time-limit. The parties presented oral argument and answered the oral questions of the Court at the hearing on 18 May 1993.

Forms of order sought by the parties

20 The applicants claim that the Court should:

1. declare null and void the refusal of the selection board and the administration to place the applicants (with the exception of Ms Keller) on the list of successful candidates;

2. order the Commission to accord to the applicants appropriate retroactive treatment by granting them the same benefits as those candidates appointed, or even promoted, as a result of Competition COM/B/2/82;

3. order the Commission to pay the applicants BFR 200 000, subject to increase in the course of the proceedings, as compensation for material damage;

4. order the Commission to pay the applicants BFR 100 000, subject to increase in the course of the proceedings, as compensation for non-material damage;

5. order the defendant to pay Ms Seube BFR 1 000 000, subject to increase in the course of the proceedings, as compensation for combined material and non-material damage;

6. order the Commission to pay interest at 8% on the damages, as from the first complaint in the procedure with which Case 294/84 was concerned;

7. order the Commission to pay the costs.

21 The Commission contends that the Court should:

1. declare the action unfounded;

2. make an appropriate order as to costs.

Admissibility

Arguments of the parties

22 The Commission argues that the applicants' claim for compensation for material and non-material damage suffered and default interest thereon as from the date of their first complaint in 1984 is inadmissible. The Commission refers, in that regard, to the order of 6 February 1992 in Case T-29/91 *Castelletti and Others* v *Commission* [1992] ECR II-77.

23 The Commission maintains that, since no application for damages or default interest was submitted in compliance with the Staff Regulations, those heads of claim are clearly inadmissible, as was held in the abovementioned order.

24 The applicants state in reply that 'the order of 6 February 1992 is an opinion as against any decision to be referred, even subsequently. Unless it could be demonstrated, which would seem doubtful, that the defendant could rely upon the principle of binding precedent (*stare decisis*), the applicants would remain entitled to put forward arguments against the order of 6 February 1992. The applicants consider that they may claim that, in so far as it is a new argument, recourse to

Articles 90 and 91 of the Staff Regulations does not amount to a fundamental demonstration. Whereas, previously, officials enjoying the benefit of the Staff Regulations could act on the basis of Article 90(2) of the Staff Regulations without having to start the procedure mandatorily by Article 90(1) of the Staff Regulations.'

Findings of the Court

25 As regards the second head of claim put forward by the applicants, it should be noted that such claims are not within the jurisdiction of the Court, which has no jurisdiction to issue directions to the institutions (see Case T-53/92 *Piette de Stachelski* v *Commission* [1993] ECR II-35).

26 As regards the third, fourth, fifth and sixth heads of claim put forward by the applicants, it must be pointed out that, in the absence of an act adversely affecting the official in question, the pre-litigation procedure set up by Article 90 of the Staff Regulations is, in principle, a two-stage procedure. As is apparent from Article 90(1), any person to whom the Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. In the event of an unfavourable reply, or in the absence of a reply, the person concerned may submit a complaint to the appointing authority, challenging its express or implied decision in accordance with Article 90(2) of the Staff Regulations. The complaint procedure is intended to compel the authority having control over the official to reconsider its decision in the light of any objections which that official may make (see Case 101/79 *Vecchioli* v *Commission* [1980] ECR 3069, paragraph 31). The pre-litigation procedure prescribed by Article 90 of the Staff Regulations, as a whole, is intended to permit and encourage the amicable settlement of differences which have arisen between officials and the administration (see Case 142/85 *Schwiering* v *Court of Auditors* [1986] ECR 3177, paragraph 11).

27 Furthermore, as regards the admissibility of a claim for compensation, it is apparent from the case-law of the Court of Justice, as analysed and elaborated by the Court of First Instance (see Case T-27/90 *Latham* v *Commission* [1991] ECR II-35,

paragraph 38 and Case T-5/90 *Marcato* v *Commission* [1991] ECR II-731, paragraph 49) that is only where there is a direct link between an action for annulment and a claim for compensation that the latter is admissible as incidental to the action for annulment, without necessarily having to be preceded both by a request from the person concerned to the appointing authority for compensation for the damage allegedly suffered and by a complaint challenging the validity of the implied or express rejection of that request.

28 In this case, the claims for damages put forward by the applicants seek compensation for the material and non-material damage allegedly caused by the fact that the applicants were not admitted to the tests for a competition until eight years had elapsed and after several court actions, circumstances which caused a delay in the advancement of their careers. The action is therefore based not on a single measure whose annulment is requested but on several wrongful acts and omissions alleged against the administration. It was therefore imperative that the administrative procedure preceding the commencement of the action should have been initiated by a request by the persons concerned that the appointing authority compensate them for that damage (see *Castelletti and Others* v *Commission* [1992] ECR II-77 and *Piette de Stachelski* v *Commission*, cited above) and continued, where appropriate, by a complaint made against the decision to reject the request.

29 However, the memoranda which the applicants sent to the appointing authority between 7 and 22 October 1991 were not preceded or followed, in sufficient time, by any other approach to the administration satisfying the requirements of Article 90 of the Staff Regulations.

30 It follows that, even on the assumption that the abovementioned memoranda are to be interpreted as complaints within the meaning of the Staff Regulations, it is established that the pre-litigation procedure did not take place in two stages in accordance with Article 90 of the Staff Regulations, since those complaints were not preceded by requests. If those memoranda are to be construed as requests, it is likewise established that no complaint was lodged against the decisions to reject them. It clearly follows that the action, in so far as it seeks the award of damages, was not brought in the manner laid down by the Staff Regulations and is thus inadmissible.

31 It follows from the foregoing that the action is only admissible as regards the first head of claim by which the applicants seek the annulment of refusal of the selection board to place the applicants on the list of successful candidates.

32 However, in the specific case of Ms Keller, who was successful in the tests for the competition and has not sought the annulment of any decision of the Commission, all the heads of claim are inadmissible and the application must therefore be dismissed as inadmissible in its entirety in so far as she is concerned.

The substance of the first head of claim

The arguments put forward by all the applicants

Arguments of the parties

33 The applicants claim, first, that the decision of the Director of Personnel, which was communicated to them by his memorandum of 26 June 1989, did not comply with the judgment in *Basch and Others* v *Commission* and that the reconstruction of the selection board announced in the memorandum was in fact impracticable. In the latter regard, the applicants argue that not only the chairman of the selection board, who was in no way prevented from continuing to carry out her duties, but also other members of the selection board were replaced without any of them having been 'no longer eligible'. The resignation of the chairman of the selection board was not, according to the applicants, justified by her concern not to damage the work of the selection board, as the Commission claims. According to the applicants, she was unjustified in refusing to take on the chairmanship of the selection board, which only she had the capacity to take on. The applicants consider that because of its chairman's resignation, the selection board was not able to continue its assignment properly and that it was, therefore, unable to operate. As regards the case-law of the Court of Justice cited by the defendant, the applicants point out that Case 24/78 *Martin* v *Commission* [1979] ECR 603 concerned the absence of a member of the selection board. However, in this case, it was, according to the applicants, still perfectly possible for the selection board to perform its duties; the absence of its chairman is not in any way justified and stems from a purely voluntary act on her part. Furthermore, as regards Case 34/80 *Authié* v *Commission* [1981] ECR 665, the applicants point out that in this case the issue is not whether a chairman can sit once again in that capacity, but the fact that, without any valid reason, the chairman did not so do.

34 The Commission counters by saying, first, that it complied with the judgment in *Basch and Others* v *Commission*. By the decision of 26 June 1989, it reconstituted the selection board as initially composed, unless persons were 'no longer eligible'; according to the Commission that expression covers cases of death, illness, change of assignment within the administration and, as in this case, resignation of the chairman of the selection board. That resignation was justified, as regards the chairman of the selection board, by the concern not to damage the work of the selection board when accusations of 'bias' had been made against her. Relying on the judgment in *Martin* v *Commission*, cited above, the Commission argues that the reasons mentioned above are such as to justify an encroachment on the principle of equal treatment for all candidates in the same competition, since it was impossible, in this case, to ensure the operation of the selection board in any other way. According to the Commission, the judgment in *Basch and Others* v *Commission* required it to remove the defects which had vitiated the competition procedure and to put the applicants back in the position they were in prior to the annulled decision. Only the continuation of the work by a selection board deliberately composed of different members would have been such as to jeopardize that result. Furthermore, in *Authié* v *Commission*, cited above, the Court of Justice held that there was no ground for complaint where a selection board whose decision to reject a candidature was annulled by the Court of Justice on the basis of a procedural defect and an insufficient statement of reasons did not reach a new decision in a different composition.

35 Secondly, the applicants claim that the training they received by way of preparation for the written tests was not of the same standard as that which officials previously admitted to the tests for the competition had received.

36 The Commission states in this regard that the training programme in which the applicants participated was of the same standard as that which the other candidates had followed previously, since the syllabuses were identical. In that connection, the Commission, at the Court's request, produced the syllabuses for the training programmes preparing for the written tests in 1984 and 1991.

37 In reply to a question put by the Court at the hearing, the applicants stated that they could not produce specific evidence to substantiate that argument.

38 The applicants argue, thirdly, that the letter of 26 July notifying them of the result of the competition does not contain any statement of reasons for the negative result.

39 The Commission states that, by that letter, the candidates in question were informed that the selection board had completed its work, but in view of the results which they had obtained, was not able to include them on the list of suitable candidates. However, it is settled case-law that it is permissible for the selection board initially to 'send to candidates merely information on the criteria for selection and the result thereof and not give individual explanations until later and to those candidates who expressly request them'. The Commission refers in that regard to Case 225/82 *Verzyck* v *Commission* [1983] ECR 1991 and Case 108/94 *De Santis* v *Court of Auditors* [1985] ECR 947.

40 Finally, at the hearing, the applicants abandoned the plea relied upon in the application based on an alleged difference in the difficulty of the tests given to candidates in 1984 and 1987 and those given to them in 1991.

Findings of the Court

41 As their pleadings finally stand, the applicants raise three pleas based, first, on the alleged unlawfulness of the composition of the selection board at the time of taking the contested decision, secondly, on an infringement of the principle of equal treatment, in so far as the standard of the preparatory training which they received was below that of the training received by the candidates who had previously participated, and, thirdly, on the absence of a statement of reasons for the decision of the selection board not to accept them as successful candidates in the competition in issue.

42 As to the first plea raised by the applicants, it should be pointed out that in the event of an act of an institution being annulled by one of the Community courts, it is for the institution, pursuant to Article 176 of the EEC Treaty, to take the necessary measures to comply with the judgment.

43 In the case of a competition such as that in issue, where the Court of Justice has annulled a decision taken by the selection board for breach of the obligation to give a statement of reasons and for procedural irregularity, compliance with the judgment involves restoring the situation prevailing prior to the occurrence of the facts found unlawful by the Court.

44 However, it is apparent from the documents before the Court that it was not possible, in this case, to restore the situation to exactly what it was prior to the decision annulled by the Court of Justice, since certain members of the selection board had resigned in the meantime. In those circumstances, it is necessary to determine whether the changes to the composition of the selection board were such as to make its subsequent work irregular.

45 The work of a selection board in connection with a competition procedure governed by Annex III of the Staff Regulations must take place in such a way as to ensure the proper operation of recruitment for the Community civil service. Sometimes, that work is necessarily spread out over a long period, even several years, in particular where one of its decisions is annulled by one of the Community courts. It is therefore possible that the composition of a selection board may, in such circumstances, evolve over the years, as a result of events beyond the control of the administration. In those circumstances, the administration should be recognized, for the purposes of ensuring the continuity of the Community civil service, as having the power to replace certain members of the selection board, while in so doing maintaining a situation which is as close as possible to the original situation, where it is impossible to reconstitute identically the selection board as originally composed. Such is the case in the event of serious illness, a change of assignment within the administration or the resignation of a member of the selection board, since in that latter case, the appointing authority does not have any means of compelling a member of the selection board to sit against his or her will.

46 In this case, it is apparent from the answers supplied by the Commission at the request of the Court that the chairman and a member of the selection board resigned and that the appointing authority subsequently replaced them with two new members.

47 It follows from the foregoing considerations that, on the facts of the case, the changes to the composition of the selection board were the result of its being impossible for the administration to reconstitute the said selection board as originally composed. Those changes were therefore not unlawful, since the administration acted only in order to ensure the continuity of the Community civil service, and particularly since no misuse of power is alleged.

48 The composition of the selection board, such as it was at the time of the facts in issue, was not therefore such as to invalidate the selection board's work and the first plea must therefore be dismissed.

49 As to the second plea relied upon by the applicants, based on an infringement of the principle of equal treatment, in so far as the standard of the preparatory training which they received was below that of the training received by other candidates, it is sufficient to note that the applicants have not adduced any evidence in support of their contentions and that from reading the syllabuses on the basis of which the training programmes in question were drawn up there appears to be no appreciable difference in the standard of the training programmes run in 1984 and 1991 respectively.

50 It follows from the foregoing, that the second plea must be dismissed.

51 As regards the third plea, alleging the absence of a statement of reasons in the letter of 26 July 1991 notifying the applicants of the results of the tests, it has consistently been held (see Case T-115/89 *González Holguera* v *Parliament* [1990] ECR II-831, paragraphs 42 to 45 and Case T-55/91 *Fascilla* v *Parliament* [1992] II-1757, paragraphs 32 and 33) that the purpose of the obligation to state the reasons for an individual decision adopted under the Staff Regulations is to provide the person concerned with sufficient details to allow him or her to ascertain

whether or not the decision is well founded and to make it possible for the decision to be subject to judicial review. Furthermore, where there is a large number of candidates in a competition, it has consistently been held that the selection board may initially confine itself to stating the reasons for its refusal in a summary manner and informing the candidates only of the criteria and the result of the selection (see Case 225/87 *Belardinelli and Others* v *Court of Justice* [1989] ECR 2353).

52 In the present case, the statement of reasons given in the letter of 26 July 1991 for justifying the selection board's refusal to pass the applicants in the competition referred to 'results which' the applicants had 'obtained'. Even though this was no longer a competition in which there were a 'large number of applicants' within the meaning of the case-law — at the stage in issue, no more than 11 persons were involved — the selection board was entitled initially not to send to the applicants the details of the results which they obtained in the written tests, provided that they were informed that those results were not satisfactory and retained the right to request further details from the selection board (see *Verzyck* v *Commission*, cited above). Following their complaints, moreover, the results of the tests were in fact sent to the applicants. The applicants were, therefore, in a position, during the pre-litigation procedure, to know the details of the results they obtained in the written tests and thus able to assess the desirability of bringing an action (see Joined Cases T-160/89 and T-161/89 *Kalavros* v *Court of Justice* [1990] ECR II-871).

53 Moreover, it has been consistently held that an applicant can have no legitimate interest in obtaining the annulment, on the ground of the absence or inadequacy of the reasons on which it is based, of a decision which could only be confirmed (see Case 9/76 *Morello* v *Commission* [1976] ECR 1415, Case 117/81 *Geist* v *Commission* [1983] ECR 2191 and Case 432/85 *Souna* v *Commission* [1987] ECR 2229). In this case, the applicants' results in the tests cannot be changed following annulment of the letter of 26 July 1991, on the ground of the absence of reasons. In those circumstances, even if the statement of reasons for the said decision were insufficient, there would be no need for the Court to annul it.

54 It follows from the foregoing that the third plea must also be dismissed.

The arguments which are specific to some of the applicants

Arguments of the parties

55 Ms Passera argues that although she obtained sufficient results in the tests her name was not put on the reserve list because of an identification problem which appeared during the marking of one of the tests. In that test, she had made some personal comments linked to her on-going language training. The postponement of the tests had led her to make a written request to the chairman of the selection board not to set further tests in June, since the University of Trieste was then holding an examination session for a foreign language course which she had been taking for some time. That information, known to the members of the selection board, enabled them to identify the author of the personal comments. The applicant considers that her case was not dealt with fairly by the selection board, particularly since one of the persons to have passed the competition had signed one of the written tests and the selection board had taken no account of that identification.

56 As regards the complaint put forward by Ms Passera, the Commission explains that during the marking of the tests, it turned out that the over-specific references to the applicant's training and career removed the anonymity needed for marking. Furthermore, the Commission denies that another candidate who passed the competition identified himself or herself during the written tests.

57 Ms Demory-Thyssens argues that the training which she received took no account of 'archives', a subject tested in the competition.

58 The Commission has not made any reply to that complaint.

Findings of the Court

59 As regards the complaints made by Ms Passera, examination of the application file relating to her shows, as the applicant has already acknowledged before the Court, that she gave certain information regarding her personal situation of which the members of the selection board were well aware on the paper to be marked. As a result of that information, her identity was disclosed.

60 The applicant must have been aware that it was clearly mentioned in the 'Instructions to candidates' that 'any signature, name or special sign made on the papers to be marked will automatically invalidate the test'. The selection board was therefore quite right not to take account of the test in issue.

61 It must be pointed out, finally, that an examination by the Court of the files of the three candidates who passed the competition has confirmed the Commission's statement that none of them revealed their identity during the written tests.

62 It is apparent from the foregoing findings that the principle of equal treatment was not undermined in any way and that the complaints made by Ms Passera must therefore be dismissed.

63 The complaint put forward by Ms Demory-Thyssens may be dismissed simply on the ground that it is not substantiated by any evidence that the facts alleged were such as to harm the applicant's chances.

Costs

64 In accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules, in actions brought by Community servants the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the application made by Ms Keller as inadmissible;

2. Dismisses the applications made by the other applicants;

3. Orders the parties to bear their own costs.

Biancarelli Vesterdorf García-Valdecasas

Delivered in open court in Luxembourg on 15 July 1993.

H. Jung J. Biancarelli

Registrar President