

lations formulated in a general and unconditional manner.

3. In exceptional cases, as a result of the explanations given in the course of legal

proceedings, the argument that insufficient reasons were given may lose its purpose and cease to justify the annulment of the decision in question.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
13 December 1990 *

In Joined Cases T-160/89 and T-161/89,

Gregoris Evangelos Kalavros, a lawyer, residing at Athens, represented by **Antonis N. Phetokakis**, of the Athens Bar, with an address for service in Luxembourg at the chambers of **Kamitaki Thill**, 17 boulevard Royal,

applicant,

v

Court of Justice of the European Communities, represented by **Amélia Cordeiro**, acting as Agent, assisted by **Konstantinos T. Loukopoulos**, of the Athens Bar, with an address for service at the office of **Amélia Cordeiro** at the Court of Justice of the European Communities,

defendant,

APPLICATION for the annulment of the decision rejecting the applicant's candidacy for a post of director, the decision appointing another candidate to the post and the decision refusing to provide him with a copy of the latter decision, and for an order that a copy of the decision making an appointment be communicated to him,

* Language of the case: Greek.

THE COURT OF FIRST INSTANCE (Fifth Chamber),

composed of: C. P. Briët, President of Chamber, D. P. M. Barrington and J. Biancarelli, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 21 November 1990,

gives the following

Judgment

The facts of the case

- 1 The Court of Justice of the European Communities (hereinafter referred to as the 'Court') initiated a recruitment procedure in order to fill the vacant post of Director of the Library, Research and Documentation Directorate. It first published on 2 May 1988 a notice of vacancy (CJ/3/88), approved on 16 March 1988, to which interested officials in Grades A 2 or A 3 were invited to reply before 17 May 1988. In an administrative meeting on 8 June 1988, after taking note of the applications received, the Court then decided to turn directly to the recruitment procedure provided for in Article 29(2) of the Staff Regulations of Officials of the European Communities (hereinafter referred to as the 'Staff Regulations').
- 2 To that end a notice was published in Official Journal C 196 of 26 July 1988, p. 11 (Notice 88/C/196/13), and notices of the opening of a recruitment procedure, CJ/180/88, were also published in the press, stating that interested persons should submit their applications to the Court before 30 September 1988 using the form provided for the purpose and attaching a full curriculum vitae. The conditions required as regards the candidates' qualifications, diplomas and professional experience were set out in Notices CJ/3/88 and 88/C/196/13 as follows:

- '(i) full legal education attested by a university degree,
 - (ii) thorough knowledge of Community law,
 - (iii) ability to manage and coordinate the work of a large administrative unit,
 - (iv) sound knowledge of the problems of legal research, legal documentation and the management of a law library,
 - (v) substantial relevant experience.'
- 3 Having learned of the competition through the press in Greece, the applicant asked for the official vacancy notice and sent his application on 25 August 1988. 92 other applications from Community officials and external candidates were also sent to the Court. Advocate General Mischo, acting on behalf of the administrative committee, concluded that only 12 applications fulfilled the conditions set out in the notice of vacancy and the Official Journal notice.
- 4 At its administrative meeting on 18 January 1989, the Court examined the applications from the 12 candidates, with brief summaries of their degrees and qualifications attached, and decided to short-list eight, of whom four candidates were internal and four external, including the applicant; the Court then authorized the administrative committee to re-examine the applications and submit to a subsequent administrative meeting its reasoned assessment of the qualifications of each candidate and perhaps to draw the Court's attention to two or three of the candidates. The Court also authorized the administrative committee to ask the candidates to prepare a statement in writing of their conception of the post for which they were applying and to interview the candidates. At its meeting on 30 January 1989 the administrative committee decided to ask all eight candidates to prepare such statements.

- 5 On 31 January 1989 the President of the Court sent the applicant a letter informing him that he was one of a smaller group of candidates who had been short-listed and asking him to submit before 1 March 1989 a statement of about five pages of his conception of the post to be filled. This was intended to allow the candidates to 'set out their ideas on the structure, duties and functioning of the Library, Research and Documentation Directorate and on the assistance that it can provide to the judicial work of the Court, their view of the role of the director and the principles and methods they would bring to bear in carrying out these duties'. Information on the Library, Research and Documentation Directorate and its duties, especially intended for the external candidates, was annexed to the letter. On 14 February 1989 the applicant sent his statement to the President of the Court. Having been asked to do so in identical letters from the President of the Court, the seven other candidates also sent their statements.

- 6 In its final report of 31 May 1989, addressed to the members of the Court, the administrative committee considered that the applicant's candidacy did not provide the necessary guarantees to warrant conferring on him the duties of director of an important administrative unit of the Court. In the committee's opinion 'even taking into account the particular difficulties faced by external candidates in preparing this statement' the applicant's statement contained 'few points of interest on the position of the directorate within the institution, between institutions or externally, or on the position and role of the director. While it is true that Mr Kalavros's statement contains some proposals of a structural nature, these in fact constitute an almost "mathematical" exercise based on the Court's organigramme'. Furthermore, the applicant's statement revealed 'a lack of experience in the organization and direction of an administrative unit' and confirmed 'the impression one had on reading the curriculum vitae . . . , that his career has essentially been that of a researcher and university teacher'. For those reasons the administrative committee decided not to invite the applicant to the interviews, which took place on 9 May 1989 and concerned only four of the eight candidates selected previously.

- 7 On 31 May 1989 the President of the Court addressed a memorandum to all the members of the Court with a copy of the abovementioned report of the administrative committee, stating that: 'The candidates' applications have already been distributed and the candidates' written statements referred to in the report are attached in annex to the report. The papers will enable every member to form his own opinion on each of the candidates and to review the assessment of them made by the committee, except as regards the interviews with four of the candidates.'

- 8 At an administrative meeting on 7 June 1989 the Court decided to appoint Mrs Maggioni as director of the Library, Research and Documentation Directorate.
- 9 On 9 June 1989 the President of the Court informed the applicant that another person had been selected for the vacant post. On 16 June 1989 the applicant requested the President of the Court to send him the decision concerning the selection procedure for the post of director. On 19 June 1989 the President of the Court replied that the selection procedure was based on Article 29(2) of the Staff Regulations and that he had nothing further to add to his letter of 9 June 1989. On 26 June 1989 the applicant sent the President of the Court a further letter in which he reiterated his request for a copy of the Court's decision making an appointment to the post in question and argued that he had a personal interest in having sent to him a decision which contained sufficient reasons with respect to himself, so that if appropriate the lawfulness of the decision could be reviewed by the Court. On 6 July 1989 the President of the Court replied, stating first that under Article 29(2) of the Staff Regulations the appointing authority 'has a wide discretion and the factors involved in that discretion by their nature do not require the statement of reasons'; secondly, that it was 'not the Court's practice to send copies of individual decisions taken concerning an official to interested third parties'; thirdly, that the candidate appointed was Mrs Maggioni, hitherto head of the Court's Research and Documentation Division.
- 10 On 15 July 1989 the applicant submitted two complaints to the Court. In the first complaint he sought the annulment of the appointing authority's decision refusing to send him the decision making an appointment and, secondly, communication to him of the decision making an appointment. In the second the applicant sought the annulment of the decision of 7 June 1989 appointing another candidate and the decision of the same day rejecting his application for the post of director, and secondly, a declaration by the Court that he had been successful in recruitment procedure CJ/180/88.
- 11 In a letter of 13 November 1989 the President of the Court rejected both of the applicant's complaints. In it he stated first that Article 29(2) 'does not require the appointing authority to provide reasons for its decision either as regards the person

who has been appointed or as regards candidates who were not selected' and that 'under Article 7 of the Staff Regulations the selection of the appointing authority must be made solely in the interests of the service and without regard to nationality'; secondly, that the letter of 9 June 1989 addressed to the applicant constituted the decision bringing to an end the appointment procedure; thirdly, that the statement of the grounds for such a decision 'can only be concerned with stating that the procedure followed was in accordance with the statutory conditions imposed by the Staff Regulations and those [which the appointing authority] imposes on itself in the notice of vacancy' and that the appointing authority 'has a wide discretion which includes complex value-judgments which, by their very nature, are not subject to objective verification'.

The procedure

- 12 By applications lodged at the Court Registry on 30 November 1989, Mr Kalavros brought the present actions.
- 13 Upon application by the defendant on 21 February 1990, the President of the Fifth Chamber, after hearing the applicant, made an order on 14 March 1990 joining Cases T-160/89 and T-161/89 for the written and oral procedures and the judgment.
- 14 In accordance with the provisions of Article 44(2) and Article 45 of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the procedure before the Court of First Instance by virtue of Article 11(c) of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, on 20 June 1990 the Court of First Instance made an order requiring the defendant to produce by 1 July 1990 all the documents relating to recruitment procedure CJ/180/88 and the appointing authority's decision making an appointment, which terminated the procedure. The documents were submitted within the period prescribed.
- 15 On 16 July 1990 the Registry of the Court of First Instance sent the applicant the relevant documents from the recruitment papers, including the final decision making an appointment; it advised him that he could come and consult the whole file in the Registry of the Court of First Instance, and submit any observations he

might wish to make before 31 August 1990. The applicant examined the file at the Registry of the Court of First Instance during the month of August. He then submitted his observations on 16 August 1990. The Court submitted its own observations on 8 October 1990.

16 The oral procedure took place on 21 November 1990. At the end of the hearing the President declared the oral procedure closed.

17 In Case T-160/89, the applicant claims that the Court of First Instance should:

- (i) annul the appointing authority's decision refusing to communicate to him the decision making an appointment to the relevant post of director;
- (ii) order that the decision be communicated to him in order to enable him to exercise his right to take proceedings against the appointing authority;
- (iii) order the defendant to pay the costs.

The Court contends that the Court of First Instance should:

- (i) reject the application as lacking in precision and unfounded in both fact and law;
- (ii) rule on the costs in accordance with the applicable provisions of the Rules of Procedure.

18 In Case T-161/89, the applicant claims that the Court of First Instance should:

- (i) find his complaint admissible;

(ii) annul the Court's decision of 7 June 1989 appointing another candidate to the post of director of the Library, Research and Documentation Directorate and the Court's decision of the same date rejecting his application for the post;

(iii) declare that he has been successful in recruitment procedure CJ/180/88.

The Court contends that the Court of First Instance should:

(i) reject the application 'as lacking in precision and unfounded in both fact and law';

(ii) rule on the costs in accordance with the applicable provisions of the Rules of Procedure.

Admissibility

19 On 16 August 1990, the applicant submitted his observations on the papers communicated by the Court pursuant to the measures of inquiry ordered on 20 June 1990. In them he sets out two new pleas in law, the first based on a misuse of procedures or of powers which he maintains the Court committed in the recruitment procedure in question and the second based on a procedural irregularity deriving from translation errors and the incomplete nature of a summary of his degrees and qualifications.

20 Although the Court did not contest their admissibility, it should be observed that by virtue of Article 42(2)(1) of the Rules of Procedure of the Court of Justice, the new pleas are admissible since they are based on matters of law or fact which have come to light in the course of the written procedure.

The substance of the case

A — Case T-161/89

21 In this case, the applicant seeks the annulment of both the decision rejecting his application and the decision appointing another candidate. In support of those two

claims, the applicant, in his written pleadings, raises the same pleas: first, that the Court has committed a manifest error of assessment; secondly, that it has infringed the principle of equality; thirdly, that it has breached Article 27 of the Staff Regulations; fourthly, that it has committed a misuse of procedures or of powers; fifthly, that the translation errors and the incomplete summaries constitute an irregularity affecting the recruitment procedure; sixthly, that the Court did not state its reasons for the disputed decision rejecting his application. Those six pleas are examined together.

The first plea: manifest error of assessment

- 22 The applicant alleges that the grounds of the contested decisions are manifestly wrong since the qualifications of the person who has been appointed to the post of director are, especially from an academic point of view, lower than his own; that person, unlike himself, does not have a thorough knowledge of Community law; and the post which she held previously does not in itself prove her ability to exercise the relevant duties of director. He also states that the selection of a head of division to head a directorate in which she already worked manifestly runs counter to the interests of the service since that situation 'will unfavourably affect her relations' with the head of the Court's 'Library' division and the head of the legal data-processing service. He concludes by emphasizing that the Court should have followed the Community practice according to which 'it was better, in respect of senior management posts in the Communities, to appoint from outside persons with high abilities and new ideas rather than career officials from the Community administration bereft of imagination and resourcefulness'.
- 23 In his submissions following the measures of inquiry on 20 June 1990, the applicant added to his arguments in respect of this plea.
- 24 He maintains, in the first place, that the reasoning of the administrative committee in its final report to the effect that his statement of his ideas on the post to be filled 'contained few points of interest on the position of the directorate within the institution, between institutions or externally' was erroneous since he was not called upon to deal with those questions, having regard to the terms of the letter of 31 January 1989 from the President of the Court requesting such a statement from the 'short-listed' candidates.

- 25 In the second place, the applicant contests the assessments of his statement contained in the administrative committee's final report, considering them to be vague and without foundation. First of all, the allegation that his statement had few points of interest is manifestly erroneous since he expounded 'exceptionally interesting' ideas on the position of the directorate within the Court, its role in the context of the Court's existing and future new tasks and his ideas on the role of the director. Moreover, the assertion that his proposals of a structural nature constituted an 'almost mathematical exercise' derive from an evident failure to understand their contents and the accompanying diagrams; he was the only candidate to make such structural proposals and to attach such diagrams, which, according to him, were exceptionally simple. Finally, the opinion that his statement and diagrams gave the impression of coming from someone who was essentially a researcher and university teacher reflects a manifest error committed by the administrative committee, since the senior officials of the Community and the members of the Court have in fact traditionally come from the universities. The applicant concludes that the assessments contained in the final report reflected an evident failure to understand his qualifications and capacities.
- 26 In the third place, the applicant also contests the assessments contained in the administrative committee's final report which drew attention to the statement of the candidate finally appointed. According to the applicant, that statement did not present 'any originality' and repeated the 'commonplaces' that were to be found, moreover, in all the other essays.
- 27 The Court contends that by comparing his own qualifications with those of the person who was finally appointed the applicant is seeking to substitute himself for the appointing authority and that in any event he has not succeeded in proving a manifest error of assessment or misuse of powers. According to the Court, the applicant confines himself to restating his qualifications and downplaying those of the person appointed, and in so doing seems to believe that the mere fact that he participated in the recruitment procedure is sufficient for the post to be conferred on him. The Court furthermore observes that the person finally appointed to the post of director was so appointed after a comparative examination of the merits and qualifications of the candidates from which it emerged that her qualifications were higher than those of the applicant and that she satisfied the requirements for the post in question as laid down in the notice of vacancy.

28 In its submissions following the measures of inquiry on 20 June 1990 the Court states that the selection of a candidate must be made solely in the interests of the service, as is clear from Article 7 of the Staff Regulations. In that connection, the appointing authority has a wide discretion in assessing the professional ability of candidates and is not obliged to justify its selection in its decision. The Court adds that the applicant cannot substitute himself for the appointing authority in order to make criticisms of its final choice.

29 The Court of First Instance considers that it should be recalled at the outset that the Court of Justice has consistently held (Case 111/83 *Picciolo v European Parliament* [1984] ECR 2323) that it is for the appointing authority to assess whether a candidate fulfils the conditions required by the vacancy notice and that that assessment may be questioned only in the event of manifest error. Consequently, the Court of First Instance cannot substitute itself for the appointing authority and review the latter's assessment of the professional abilities of the candidates, except in so far as it finds a manifest error of assessment.

30 In the present case the applicant's candidacy was rejected by the administrative committee at the stage of its examination of the statement of the candidates' conceptions of the post to be filled; that decision was confirmed by the appointing authority following the administrative committee's final report, which was communicated to the members of the Court on 31 May 1989. The report stated the reasons which led the committee not to invite the applicant to the interviews on 9 May 1989. In the committee's opinion, the applicant's statement contained few points of interest on the position of the directorate within the institution, between institutions or externally, or on the position and role of the director of the Library, Research and Documentation Directorate. It did contain some proposals of a structural nature but these in fact constituted an almost mathematical statement undertaken on the basis of an examination of the Court's organigramme. Furthermore, the statement revealed a lack of experience in the organization and direction of an administrative unit and confirmed the impression that the applicant's career has essentially been that of a researcher and university teacher.

31 From a reading of the papers in the case, the statements of the eight candidates and the reasons given by the administrative committee, it does not appear that the Court committed a manifest error of assessment. What is more, it is evident from the documents in the case, especially from the administrative committee's report,

that a comparative examination of the eight remaining candidates was undertaken. In any event, the selection of an internal candidate in an open recruitment procedure does not in itself establish an error of assessment.

32 Finally, as regards the request that candidates prepare a statement, there is nothing in the wording of the President's letter of 31 January 1989 to permit the assertion that the position of the directorate within the institution and externally was not to be discussed in it — on the contrary, its wording suggests the inclusion of those matters, which are discussed by other candidates in their statements; furthermore, the request for such a statement does not run counter to the nature of the recruitment procedure followed in this case.

33 It follows from the foregoing that the plea based on a manifest error of assessment must be rejected.

The second plea: breach of the principle of equality

34 The applicant also claims that the appointing authority breached the principle of equality by making an inappropriate assessment of the abilities of the candidates, by not taking sufficiently into account the interests of the service and by requesting a statement of ideas about the post to be filled, which favoured candidates already employed in the institution. He adds that those requirements must be observed all the more strictly because the post is at a high level.

35 In his submissions following the measures of inquiry on 20 June 1990 the applicant further argues that the statement requested of the eight selected candidates favoured the six internal candidates and especially the three heads of division, since they were in a more advantageous position for assessing the features of the post to be filled within the Court. He concludes that such a request infringes the principle of equal treatment of officials and that he has been deprived, without any legal basis, of the possibility of participating in an interview.

36 The Court does not reply expressly to that plea in its written submissions. However, in its defence it states under the heading 'as regards the other pleas' that they contain 'assessments' and that they are 'vague and contradictory'. Furthermore, during the oral procedure the Court contended that such an exercise was essential in the chosen recruitment procedure and that the principle of equality was fully observed.

37 It is clear from the administrative committee's report that in examining the applicant's candidacy full account was taken of the particular difficulties which external candidates could face in preparing the requested statement. It was precisely for that reason that the President of the Court attached to his letter of 31 January 1989, for the benefit especially of candidates outside the institution, supplementary information on the Library, Research and Documentation Directorate and its functions, including an organigramme. Furthermore, it is apparent from the documents in the case that the committee's final proposal included an internal candidate and an external candidate and that according to the committee the first candidate could bring to the directorate a certain openness and new ideas. The appointing authority cannot, moreover, be criticized for requesting applicants for high-level posts to state their conception of the post in question.

38 It follows from the foregoing that this plea cannot be upheld.

The third plea: infringement of Article 27 of the Staff Regulations

39 The applicant claims that the principle that recruitment must be undertaken on the broadest possible geographical basis, which is stated in Article 27(1) of the Staff Regulations and also applies to the procedure laid down in Article 29(2) of those regulations, was not observed in the recruitment procedure in dispute.

40 The Court contends that the provisions of Article 27 did not oblige it to recruit the applicant, since there is no geographical imbalance in its departments and the

fundamental principle in this regard is that stated by Article 7 of the Staff Regulations, under which assignment to a post is made solely in the interests of the service.

- 41 In this connection, the Court of Justice held in Case 85/82 *Schlob v Council* [1983] ECR 2105 that the combined provisions of Articles 7 and 27 of the Staff Regulations provide that when any Community institution recruits, promotes or assigns its officials to posts, it must be guided on the one hand by the interests of the service without regard to nationality and on the other hand must ensure that they are recruited on the widest possible geographical basis from among nationals of the Member States of the Communities; the institution reconciles those requirements when, in those cases where the qualifications of the various candidates are clearly the same, it makes nationality the overriding criterion in order to maintain or re-establish a geographical balance among its staff. However, in any other circumstances the need to redress a geographical imbalance must be subordinated to the requirements of the interest of the service and the consideration of the personal merits of the candidates.
- 42 It appears from the report of the Court's administrative committee that the applicant's candidacy was rejected solely on the grounds of the deficiencies in the statement he produced; furthermore, the applicant has not provided any details to enable an assessment to be made of the justification of his plea alleging an imbalance in the staff of the Court.
- 43 It follows from the foregoing that the plea cannot be upheld.

The fourth plea: misuse of procedure or of powers

- 44 The applicant claims that the documents provided by the Court reveal that initially the Court undertook an internal recruitment procedure in which the requirements as regards qualifications, diplomas and professional experience were different from those in the subsequent external competition in which he took part. In support he refers to a proposal of 14 January 1987 from the personnel division to which was attached a draft vacancy notice for recruitment of the director of the Library, Research and Documentation Directorate. He further states that the internal

procedure was unsuccessful and deduces that the candidate appointed, who participated in that competition, must necessarily not have complied with some of the conditions contained in the first notice. At the hearing the applicant stated that it was evident from the Minutes (8/88) of the Court's administrative meeting of 8 June 1988 that the Court had decided to turn directly to the procedure laid down in Article 29(2) after having made an assessment of the internal candidates.

- 45 The applicant goes on to state that it was after that unsuccessful procedure that the Court deliberately changed the required qualifications. According to the applicant, those changes were intended to favour candidates already working in the Library, Research and Documentation Directorate and consequently infringed the principles of equal treatment and sound administration. The applicant further observes that 'all the circumstances surrounding the recruitment procedure constitute a ground for annulling the notice of open competition'. He refers in that regard to the judgments of the Court of Justice in Case 188/73 *Grassi v Council* [1974] ECR 1099 and Joined Cases 341/85, 251/86, 258/86, 259/86, 262/86 and 266/86, 222/87 and 232/87 *Van der Stijl and Cullington v Commission* [1989] ECR 511. Finally, according to the applicant, a statistical examination of the successive selections made under the recruitment procedure also demonstrates the desire of the Court to favour the candidates who were officials.
- 46 The Court contends, first, that the applicant based this new plea on a false presupposition based on incorrect facts and an incorrect interpretation of the recruitment procedure. The proposal of 14 January 1987 was simply a draft from the personnel division, and it was only at the administrative meeting on 16 March 1988 that the Court decided on the definitive wording of vacancy notice CJ/3/88. Subsequently, after having taken note of the applications which followed the notice, at its administrative meeting on 8 June 1988, the Court turned directly to the procedure in Article 29(2) without in any way altering the conditions set forth in the vacancy notice. The Court concludes that the infringement of the principle of equality and misuse of procedure alleged by the applicant are unfounded and rest on a false analysis of the documents of the case.
- 47 The Court further maintains that its decision to turn from the recruitment procedure in Article 29(1) to that in Article 29(2) of the Staff Regulations does not entitle the applicant to conclude that all the candidates in the internal procedure, in particular the candidate appointed, lacked some or all of the qualifications

required by the notice of employment vacancy CJ/3/88 or to deduce therefrom that they were not judged suitable to fill the post in question. The Court maintains that it confined itself to taking note of the internal applications that had been received and decided in accordance with the conditions laid down in the Staff Regulations to turn directly to the recruitment procedure provided for in Article 29(2), which gives the institution freedom of choice.

48 Having regard to the papers in the case, it is apparent to the Court of First Instance that the applicant bases his plea on the existence of a proposal of 14 January 1987 containing simply a draft vacancy notice in which the description of the conditions required for the post in question differed from that in the notice published on 2 May 1988. However, it is clear from the heading of the document that it was only a draft. The internal vacancy notice of 2 May 1988 (No CJ/3/88) which was later adopted and distributed is identical in its wording as regards the conditions required for the post to be filled to that of the notice published in the Official Journal on 26 July 1988 extending the recruitment procedure to external candidates. The applicant's arguments are therefore factually inaccurate.

49 It further appears from the papers in the case that the Court simply took note of the applications submitted in reply to the initial internal vacancy notice, No CJ/3/88, and did not carry out any assessment of the applications before deciding, within its very wide discretion on the matter, which is not disputed by the applicant, to turn to the procedure in Article 29(2) of the Staff Regulations. Moreover, while it is not necessary to rule on the admissibility of the plea, the Court of First Instance observes that the applicant has not furnished any details in support of his averments directed at the annulment of the notice of open competition.

50 It follows from the foregoing that the plea is without foundation.

The fifth plea: procedural irregularity vitiating the recruitment procedure, resulting from translation errors and an incomplete summary of his file

51 The applicant alleges that the summary made by the administrative committee for the Court's administrative meeting on 18 January 1989 contains serious translation

mistakes and does not accurately reflect his curriculum vitae. He also observes that the summaries of the files of the other candidates do not contain the same errors. According to the applicant his university title should have been translated as 'professeur agrégé permanent' [tenured professor] and not 'maître de conférences' [reader]; secondly, his doctorate in law did not appear in the summary of his career, unlike those of the other candidates, which contained that detail when it was necessary.

- 52 The Court observes that in any case at the administrative meetings in which it examined the applications its members had the entire files of the short-listed candidates and that the qualifications of the applicant could not therefore be ignored or distorted.
- 53 It should be observed that the summaries of the curricula vitae contested by the applicant were submitted to the Court as appointing authority at the first examination of the relevant applications, which took place on 18 January 1989. At the end of that first selection, the applicant was among the eight candidates who were short-listed. Consequently, even supposing the alleged errors were made they were not such as to cause him harm. Furthermore, during the final selection the members of the administrative committee and then the members of the Court had at their disposal the entire files of all eight candidates, as is stated in the letter of 31 May 1989 from the President of the Court.
- 54 It follows from the foregoing that this plea must be rejected.
- 55 Having reached this stage in its reasoning, the Court of First Instance observes that all the pleas directed at the annulment of the decision to appoint the candidate finally selected must be rejected. The sixth plea in the application, which concerns exclusively the decision rejecting the applicant's candidacy, remains to be examined.

The sixth plea: absence of any statement of reasons for the decision rejecting the applicant's candidacy

- 56 In the first place, the applicant claims that the contested decision infringes the second paragraph of Article 25, Article 27 and Article 29(2) of the Staff Regulations in so far as it does not provide reasons and that the defendant cannot rely on its discretion as a ground for failing to justify its decisions. The decision ought, in particular, to have indicated whether or not the candidates complied with the qualifications required by the recruitment notice. The applicant further states that he does not see how stating the reasons for the decision could cause him harm and why, therefore, the non-communication of the reasons should prevail over the right to legal protection. As he expressed it at the oral hearing, the notification of reasons is individual and personal and does not receive any publicity. He also argues that in filling a high-level post the appointing authority ought to exercise its discretion with prudence, which necessarily requires a statement by it of the reasons for its decisions after a comparative examination of the qualifications of the candidates. Finally, he claims that by failing to respect that principle, the Court has manifested a 'lack of transparency', 'unlawfulness', 'arbitrariness', 'misuse of powers' and has breached the principle of sound administration.
- 57 The applicant also observes that the negative decision rejecting his candidacy which must follow from the decision making an appointment necessarily affects him adversely; it must therefore comply with the provisions of the Staff Regulations, in particular in the second paragraph of Article 25, which requires the appointing authority to communicate the reasons for adverse decisions to their addressees. In that connection, the applicant refers to the Opinion of Advocate General Sir Gordon Slynn in Case 128/84 *Van der Stijl v Commission* [1985] ECR 3281, at p. 3286.
- 58 The applicant adds, first, that the grounds for the decision rejecting his candidacy should have been communicated to him as a matter of courtesy and in accordance with the proper administration of justice and, secondly, that in the administrative law of the Member States and in all 'civilized democratic States in the world' a discretionary power does not relieve the administration of the obligation to state the grounds for its acts.
- 59 The Court observes as a preliminary point that in its view the procedure provided for in Article 29(2) of the Staff Regulations is intended to be used in a strictly

limited class of exceptional cases for the purpose of recruiting persons to senior management posts with increased requirements and special functions. Consequently, the selection criteria for candidates to those posts implies subjective reasoning, since the main pre-condition for the posts in question is the existence of a relationship of confidence, thus restricting any review of the decisions taken on the basis of that provision. In that connection, the Court refers to the judgments of the Court of Justice in Case 306/85 *Huybrechts v Commission* [1987] ECR 629 and Case 233/85 *Bonino v Commission* [1987] ECR 739. At the hearing the Court added that under the Article 29(2) procedure, for the purpose of filling senior posts, the interests of the service take precedence over the statutory requirement to state reasons.

60 The Court goes on to contend that the decision making an appointment does not adversely affect the applicant and that the appointing authority consequently is not bound to justify itself to him (Case 306/85 *Huybrechts v Commission*, cited above and Case 104/88 *Brus v Commission* [1989] ECR 1873). Furthermore, in its judgment in Case 27/63 *Raponi v Commission* [1964] ECR 129 the Court held that reference to such assessments might well prove prejudicial to the interests of unsuccessful candidates. The Court also observes that in Case 176/82 *Nebe v Commission* [1983] ECR 2475, which concerned a decision assigning an official, the Court of Justice considered that the extent of the obligation to state the grounds must be determined on the basis of the particular facts of each case, and that in Case 125/80 *Arning v Commission* [1981] ECR 2539 the Court of Justice held that the duty to give a statement of the grounds on which a measure concerning the organization of the service is based must be related to the discretionary power which the appointing authority exercises in this connection and that there is nothing arbitrary in such a situation.

61 The Court also contends that, as in the legal systems of the Member States, the existence of a very wide discretion on the part of the administration relieves it of the obligation to state specific grounds in depth. Lastly, the Court contends that, as was stated by Advocate General Dutheillet de Lamothe in his Opinion in Case 29/70 *Marcato v Commission* [1971] ECR 243, judicial review is limited to the regularity of the procedure, to which the applicant has not objected; the material accuracy of the facts on which the appointing authority based itself; and the absence of any manifest error of assessment, error of law or misuse of powers. There can be no judicial review, conversely, of the administration's assessment of the candidates' professional abilities. The Court concludes that the applicant has not been able to demonstrate that any of the grounds for annulment is well founded.

- 62 The second paragraph of Article 25 of the Staff Regulations, reiterating the general obligation laid down in Article 190 of the Treaty establishing the European Economic Community, states: 'any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based.' In its judgment in Case 195/80 *Michel v European Parliament* [1981] ECR 2861 the Court of Justice held that: 'the requirement that a decision adversely affecting a person should state the reasons on which it is based is intended to enable the Court to review the legality of the decision and to provide the person concerned with details sufficient to allow him to ascertain whether the decision is well founded or whether it is vitiated by an error which will allow its legality to be contested'. Finally, the Court of Justice has confirmed the requirement to state grounds, including under Article 29(2) of the Staff Regulations, in its judgment in Case 85/82 *Schlob v Council*, cited above. The obligation to state grounds as thus laid down therefore constitutes an essential principle of Community law which can be derogated from only for reasons of an overriding nature.
- 63 Article 29 of the Staff Regulations provides for two distinct types of procedure for recruiting Community officials. The first is governed by Article 29(1) and Annex III of the Staff Regulations and is that of the competition; it is the standard recruitment procedure, subject to the possibilities of promotion, transfer, internal competitions within institutions and applications for transfer. The second, more exceptional, procedure is governed by Article 29(2) which states that: 'a procedure other than the competition procedure may be adopted by the appointing authority for the recruitment of Grade A 1 or A 2 officials and, in exceptional cases, also for recruitment to posts which require special qualifications.'
- 64 Those provisions do not relieve the appointing authority of the general obligation to state the reasons for decisions adversely affecting officials, even when they are taken on the basis of the procedure under Article 29(2). That interpretation is confirmed by the judgment in Case 176/73 *Van Belle v Council* [1974] ECR 1361, in which the Court of Justice held that by reason of its exceptional character Article 29(2) must be interpreted strictly and cannot take precedence over a rule of the Staff Regulations formulated in a general and unconditional manner, such as the second paragraph of Article 25. That case was confirmed by the judgment in Case 111/83 *Picciolo v European Parliament*, cited above, which was concerned with a recruitment procedure based on Article 29(2); in it the Court of Justice held that 'reference must be made to the settled case-law of the Court according to which the obligation to state the reasons on which a decision adversely affecting an official is based is intended on the one hand to enable the Court to review the

legality of the decision and on the other hand to provide the person concerned with the information necessary to recognize whether or not the decision (to refuse admission to the competition) is well founded'.

- 65 In the present case the recruitment procedure based on Article 29(2) took place in three stages. The first consisted in the rejection of the candidates who did not fulfil the conditions of the vacancy notice; it was carried out by the working party headed by Advocate General Mischo, on the instructions of the administrative committee, and it led to the retention of 12 candidates. The second stage consisted in the selection of two or three candidates especially deserving of attention from among the eight candidates short-listed by the appointing authority; this was done by the administrative committee, whose final report, submitted on 31 May 1989 to the members of the Court, concluded by proposing two candidates regarded as the most suitable for the post to be filled. The third stage was the final selection by the appointing authority, which decided in its administrative meeting of 7 June 1989 to appoint one of the two candidates proposed by the administrative committee.
- 66 In order to assess the obligation to state reasons in the decision rejecting the applicant's candidacy, regardless of the particular features of the procedure under Article 29(2) of the Staff Regulations, it should be observed that this three-stage procedure closely resembles the standard recruitment procedure, which also involves three successive stages in which the selection board for the competition and then the appointing authority take part. The first two stages, undertaken by the selection board under the rules set out in Annex III to the Staff Regulations, consist first in checking that the candidates' applications comply with the conditions laid down in the notice of competition and secondly in selecting the candidates admitted to the competition, after a comparative examination of their degrees, qualifications and professional experience, according to the nature of the competition and placing those that they consider to be the best on the list of suitable candidates proposed to the appointing authority. The third stage is the appointment by the appointing authority of one of the candidates included in the list; it should be observed that the appointing authority can depart from any order of merit drawn up by the selection board only on overriding grounds relating to the proper functioning of the service and must state its reasons for doing so.
- 67 It appears from the documents in the case that the applicant's candidacy was rejected by the administrative committee at a step corresponding to the second stage described above; that is to say, at the step equivalent in the standard

procedure to the decision of the selection board drawing up the list of suitable candidates. From a perusal of the Minutes of the Court's administrative meetings, in particular, it may be observed that the candidates who were not called to an interview were no longer in the running for the post in question.

- 68 It is thus unnecessary to consider what the proper approach is as regards the final choice made by the appointing authority at the third stage; the Court of Justice has consistently held that the decisions of a selection board rejecting a candidate's application in a competition have adverse effects and must be supported by reasons, whether or not the candidate is an official. That case-law is well established with regard both to decisions of selection boards at the first stage, rejecting candidates' applications which do not fulfil the conditions of the notice of competition (see in particular Case 44/71 *Marcato v Commission* [1972] ECR 427), and to decisions taken at the second stage, involving the comparative examination of candidates' degrees or qualifications so as to draw up the list of suitable candidates (see in particular Case 23/64 *Vandevyvere v European Parliament* [1965] ECR 157, Case 195/80 *Michel v European Parliament*, cited above, Case 144/82 *Detti v Court of Justice* [1983] ECR 2421 and Case 12/84 *Kypreos v Council* [1985] ECR 1005).
- 69 Regard must moreover be had, first, to the clear wording of the second paragraph of Article 25 of the Staff Regulations; secondly, to the aforementioned case-law of the Court of Justice regarding the obligation to state the reasons for decisions of selection boards, especially when they make a comparative assessment of candidates; and thirdly, to the judgment of the Court of Justice in Case 85/82 *Schloh v Council*, cited above, a case concerning an application of the procedure under Article 29(2) where the appointing authority undertook a comparative examination of candidates' applications and the Court of Justice reviewed in a very precise manner the grounds for the decision rejecting the applicant's candidacy.
- 70 It should be added that in the present case it was perfectly possible for the appointing authority, without creating an excessive workload for its staff, to communicate the reasons in letters addressed to the candidates rejected by the administrative committee, informing them in sufficiently objective terms of the grounds set out in the administrative committee's final report without in any way disregarding the duty of confidentiality due to the other candidates. Furthermore,

it is clear from the consistent case-law of the Court of Justice with regard to competitions in which many people participate, which is applicable *a fortiori* with regard to competitions or procedures under Article 29(2) in which there is restricted participation, that the appointing authority always has the possibility, in replying to requests for explanations or complaints from rejected candidates, of supplementing the initially succinct but sufficient reasons communicated to them in the decision rejecting their candidacy. Lastly, the argument that to provide such a statement of reasons could adversely affect the rejected candidates is not relevant, because the grounds of a decision adversely affecting candidates contain by their nature a negative assessment of the persons it concerns and because they are the only ones to be informed of the grounds, which are in no case made public.

- 71 In the present case, it is clear that by virtue of its subject-matter and its nature the decision rejecting his candidacy in recruitment procedure CJ/180/88 addressed to the applicant on 9 June 1989 and confirmed by the letters of 19 June and 6 July 1989 from the President of the Court constitutes a decision adversely affecting the applicant. Upon reading the decision, confirmed in the same terms by the decision rejecting the complaint, it may be observed that it merely informs the applicant: first, of the rejection of his candidacy; secondly, that another person has been chosen for the post to be filled; and thirdly, that the recruitment procedure in question was that of Article 29(2), without stating the reasons, however briefly, for the rejection of his candidacy. Such a reply is not such as to satisfy the obligation laid down in the second paragraph of Article 25 of the Staff Regulations.
- 72 At this stage in the reasoning, however, and bearing in mind that it has been stated above that all the pleas directed against the decision appointing the candidate finally selected for the disputed post are without foundation, reference should be made to the judgment of the Court of Justice in Case 111/83 *Picciolo v European Parliament*, cited above, in which it held that 'since all the objections raised by the applicant in regard to the decision of the appointing authority not to accept his application for the vacant post have been shown to be ill-founded, the applicant has no legitimate interest in the annulment of the appointment of another candidate to that post which he cannot himself validly claim', and to the Court's judgment in Joined Cases 64/86, 71/86, 72/86, 73/86 and 78/86 *Sergio v Commission* [1988] ECR 1399, in which it held that 'as a result of the explanations given in the course of the proceedings the argument that insufficient reasons were given may, in exceptional cases, lose its purpose and cease to justify the annulment of the decision in question'.

- 73 In the present case, it follows from all the foregoing that the applicant has not provided any grounds for annulling the appointment of the candidate finally selected for the disputed post and that as a result of the measures of inquiry ordered by the Court of First Instance the applicant has learned all the reasons that led the appointing authority to exclude his candidacy before making its final choice.
- 74 Under those circumstances the claim for annulment of the appointing authority's decision rejecting the applicant's candidacy, on the ground that the decision is vitiated by the absence of a statement of reasons, has become nugatory.
- 75 It follows from all the foregoing that in Case T-161/89 the claim for annulment of the Court's decision of 7 June 1989 making an appointment to the post of director of the Library, Research and Documentation Directorate must be rejected and that the claim for annulment of the Court's decision rejecting the applicant's candidacy has become nugatory.
- 76 Finally, the applicant's claim that the Court of First Instance should declare that the applicant has succeeded in recruitment procedure CJ/180/88 is in any event inadmissible since the Court of First Instance cannot give instructions to institutions or substitute itself for them.

B — *Case T-160/89*

- 77 In Case T-160/89 the applicant seeks the annulment of the appointing authority's decision refusing to make available to him the decision making the appointment to the post of director in question and an order of the Court of First Instance for that decision to be made available to him.
- 78 As the applicant admitted at the hearing, the measures of inquiry ordered by the Court of First Instance on 20 June 1990 enabled him to obtain the contested decision. As a result the claim in Case T-160/89 has become nugatory.

Costs

- 79 Under the second paragraph of Article 69(3) of the Rules of Procedure of the Court of Justice, the Court of First Instance may order even a successful party to pay costs in proceedings which have arisen as a result of its own conduct.
- 80 In Case 111/83 *Picciolo v European Parliament*, referred to above, the Court held that 'although the applicant has failed in all his submissions, it is none the less necessary, in making an order as to costs, to take into account the considerations referred to above regarding the conciseness of the statement of the reasons on which the decision of the appointing authority not to accept the applicant's application was based. It was only as a result of the replies provided by the Parliament to the questions put by the Court that it was possible for the applicant fully to assess the reasons stated. In those circumstances, the applicant cannot be criticized for having brought the matter before the Court in order to obtain a review of the legality of the decisions of the appointing authority in question.'
- 81 The same reasoning is applicable in the present cases because of the repeated decisions of the Court refusing to communicate to the applicant any reasons regarding the rejection of his candidacy. There are grounds for considering that it was that conduct which led the applicant to bring the proceedings before the Court of First Instance.
- 82 Consequently, the second subparagraph of Article 69(3) of the Rules of Procedure must be applied and the Court must be ordered to pay all the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

- (1) In Case T-161/89, dismisses the application;
- (2) In Case T-160/89, rules that it is unnecessary to give a decision on the claim;
- (3) Orders the Court of Justice of the European Communities to pay all the costs, including those of the applicant.

Briët

Barrington

Biancarelli

Delivered in open court in Luxembourg on 13 December 1990.

H. Jung
Registrar

C. P. Briët
President