

and as regards their relevance to the post to be filled.

The appointing authority does not exceed the bounds of its discretion if it decides that, for the purposes of granting additional seniority, the candidate's special experience, within the meaning of the second paragraph of Article 32 of the Staff Regulations, shall be taken into account only as from the date on which the diploma giving access to the competition which led to the official's recruitment was obtained.

5. A decision by a Community institution, communicated to all its staff, concerning the determination of grade and step on recruitment, is an internal directive which, even if it cannot be regarded as a general implementing provision within the meaning of Article 110 of the Staff

Regulations, must be regarded as a rule of practice which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equal treatment would be infringed.

There is nothing in principle to prevent the appointing authority from drawing up rules by means of an internal decision of general effect to govern the exercise of the discretion conferred on it by the Staff Regulations. The need to ensure equal treatment of all the officials recruited under the same competition when the administration makes the assessment required by the second paragraph of Article 32 of the Staff Regulations is an aim which it may legitimately pursue.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

7 February 1991 *

In Case T-2/90,

Ana Fernandes Ferreira de Freitas, an official of the Commission of the European Communities, residing in Luxembourg, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the applicant's home address, 21 boulevard Grande-Duchesse Charlotte,

applicant,

* Language of the case French.

Commission of the European Communities, represented by J. Griesmar and A. Caeiro, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION seeking to obtain additional seniority and a regrading in order to take into account the applicant's education and experience in accordance with the second paragraph of Article 32 of the Staff Regulations of Officials of the European Communities,

THE COURT OF FIRST INSTANCE (Third Chamber),

composed of: C. Yeraris, President, A. Saggio and K. Lenaerts, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 16 January 1991,

gives the following

Judgment

The facts

- 1 The applicant, who has been an official in Grade LA 5, step 1, at the Commission of the European Communities since 1 September 1988, challenges the grading she was given on the basis of her previous experience and the date on which the university qualification which enabled her to take up the post she now holds was awarded.

- 2 On 9 May 1958 the applicant passed the last examination for obtaining the degree in German philology for which she had been studying at Lisbon University since 1951. She did not submit the thesis which was necessary in order to be awarded a university diploma, regarding the certificate delivered by the university stating that she had passed the examinations as sufficient.

- 3 On completion of those studies the applicant worked for a number of years as a translator in various private organizations such as the Gulbenkian Foundation and film production companies.

- 4 On 27 July 1974 the Portuguese Minister for Education and Cultural Affairs made an order giving the boards of higher educational establishments special power to determine for the university year 1973/74 the manner in which students' aptitude and work were to be assessed. The power extended to 'decisions concerning the submission or abolition of theses or other final projects' (paragraph 1.2 of the order)

- 5 The Board of the Faculty of Arts at Lisbon University immediately made use of that power to exempt students from the requirement of submitting a thesis on the basis of the order of 27 July 1974.

- 6 On 14 January 1975 the Secretary of State for Higher Education and Scientific Research adopted a decision, published in the Portuguese Official Gazette of 20 February 1975, abolishing the thesis in arts faculties and permitting all persons who had completed a degree course during the university year 1973/74 or prior thereto to be automatically regarded as having obtained a degree.

- 7 On 30 July 1976 the Rector of Lisbon University delivered to the applicant a diploma certifying that she was a graduate in German philology since 27 July 1974.

- 8 On 6 November 1986 the Commission published a notice advertising competition No COM/LA/503 for drawing up a reserve list for the recruitment of revisers, principal translators and heads of section of Portuguese mother tongue (Official Journal (Portuguese version) C 280, p. 15). In point III of the notice, which was headed 'Conditions of admission to the competition', it was stated that candidates must have completed a full course of university education evidenced by a final diploma and must have proof of post-graduate experience.
- 9 The applicant's name was entered on the list of suitable candidates drawn up as a result of the competition. On 22 June 1988 the Commission offered her a post as a principal translator.
- 10 By a decision of 31 August 1988 the applicant was appointed a probationary official with effect from 1 September 1988, being classified provisionally in Grade LA 5, step 1, and with seniority in step dating from 1 September 1988.
- 11 The applicant requested a review of her grading to take account of all her experience, by registered letters addressed to the Commission on 15 November 1988 and 26 January 1989.
- 12 By a decision of 2 March 1989 the Commission appointed the applicant an official with effect from 1 September 1988 in Grade LA 5, step 1, but with seniority in step backdated to 1 September 1987.
- 13 The grading committee reconsidered the applicant's position at a meeting held on 13 April 1989 and drew up an opinion to the effect that she should be classified in Grade LA 5, step 1, with 12 months seniority in step, on the ground that only the experience she had acquired after obtaining the diploma giving her access to Grade 5 in the linguistic service, that is to say after 27 July 1974, the date indicated on the document delivered by Lisbon University, could be taken into account.
- 14 The appointing authority confirmed the grading determined by the decision of 2 March 1989 in a letter dated 11 May 1989.

- 15 By a letter of 1 June 1989, registered on 6 June, the applicant submitted a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), challenging the decision of 2 March 1989.
- 16 The applicant added a supplement to her complaint in a letter to the appointing authority dated 26 June 1989.
- 17 Since the administration failed to respond, the complaint was deemed to have been rejected on 1 October 1989.

Procedure

- 18 In those circumstances the applicant brought this action, lodged at the Registry of the Court of First Instance on 2 January 1990, seeking to obtain additional seniority and a regrading in order to take into account her education and experience in accordance with the second paragraph of Article 32 of the Staff Regulations.
- 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.
- 20 By letter of 4 October 1990 the Court of First Instance communicated the following question to the Portuguese Government in accordance with the second paragraph of Article 21 of the Protocol on the Statute of the Court of Justice of the European Economic Community:

'Does the decision adopted by the Secretary of State for Higher Education on 14 January 1975 have the effect of conferring on persons who passed their last examination in German philology prior to 1973, but did not submit a thesis, a graduate qualification from the date on which they passed their last examination or only from the date on which the decision came into effect? In other words, is a person who passed her last examination at Lisbon University on 9 May 1958 to be regarded as having graduated on that date or only after 20 February 1975 (the

date on which the decision of 14 January 1975 was published), or only after 27 July 1974, the date given on the diploma held by the person in question which was delivered on 30 July 1976?’

21 By a memorandum lodged at the Registry of the Court of First Instance on 10 December 1990 the Directorate-General for Higher Education of the Portuguese Ministry of Education replied as follows:

‘(1) According to the legislation which was in force on 24 April 1974, it was necessary in order to obtain the qualification of arts graduate:

(a) to have passed examinations in a set of subjects comprising the relevant course of study;

(b) to compose a thesis and have it accepted.

(2) The thesis requirement was abolished by a decision of the university authorities adopted on the basis of a general government authorization, or by the decision adopted by the State Secretary for Higher Education and Scientific Research on 14 January 1975;¹ anyone who had completed a course of undergraduate study, that is to say, the stage referred to in subparagraph (a), above, in that university year or prior thereto was henceforth to be regarded as having obtained a degree.

(3) The date on which such persons are to be regarded as having obtained a degree is the date on which the decision abolishing the requirement referred to in subparagraph (b), above, was adopted.²

(4) That date is the date which is indicated on the diploma awarded by the university.’

22 The hearing took place on 16 January 1991. The representatives of the parties submitted oral argument and replied to questions put by the Court of First Instance.

1 — Published in the Official Gazette of the Portuguese Republic, 20.2.1975, second series.

2 — ‘For obvious reasons relating to relative justice. To make the date on which studies were completed the date of graduation would be detrimental to students who had in the meantime submitted a thesis since for the latter the date of completion of studies was the date on which their thesis was accepted.’

Forms of order sought by the parties

23 The applicant claims that the Court of First Instance should:

(i) Declare the application admissible and well founded;

(ii) Consequently, annul:

the Commission's decision of 2 March 1989 in so far as it classified the applicant in Grade LA 5, step 1, with effect from 1 September 1987;

in so far as is necessary, the Commission's implied rejection of the complaint submitted under Article 90(2) of the Staff Regulations on 1 June 1989 challenging the abovementioned decision;

(iii) Order the defendant to pay the costs.

The Commission claims that the Court should:

(i) Dismiss the application as unfounded;

(ii) Make an appropriate order as to costs.

Substance

24 The applicant puts forward two pleas in law in support of her application. The first is breach of Articles 2 and 3 of the Commission Decision on the criteria applicable to grade and step classification upon recruitment ('the decision') which came into effect on 1 September 1983 and was communicated to staff on 21 October 1983. The second is breach of Articles 5 and 32 of the Staff Regulations and of the general principles of non-discrimination and equal treatment as between officials.

First plea

- 25 In support of this plea the applicant argues that as she completed her university studies in 1958 she ought, by virtue of Articles 2 and 3 of the decision and Articles 5 and 32 of the Staff Regulations, to have been awarded additional seniority in her grade of 48 months, and not merely 12 months, in which case she would have been entitled to classification in the third step of her grade.
- 26 She argues that since the decision adopted by the Portuguese Secretary of State for Higher Education and Scientific Research on 14 January 1975 was retroactive, she ought to be regarded as having obtained the university diploma giving her access, under Article 5 of the Staff Regulations, to category LA in 1958, and not only in 1974 as claimed by the Commission on the basis of the diploma awarded to the applicant by Lisbon University.
- 27 The Portuguese decision provides as follows:
1. Without prejudice to the rules to be incorporated in future in the new course structure for arts faculties, the graduation thesis is hereby abolished, together with the graduate examination introduced by the 1930 Reform (Decree No 18003 of 25 February 1930), and any person who during the 1973/74 university year or prior thereto completed a course of undergraduate study shall be regarded automatically as having obtained a degree.
 2. The average mark obtained by graduates who did not submit a thesis shall be calculated as follows:
 - 2.1. 1930 Reform: the average obtained for the individual subjects comprising the course material necessary for obtaining a degree;
 - 2.2. Other reforms: the average obtained in the individual subjects of the group, to which is to be added the tutorial mark before the average is recalculated. The average obtained in individual subjects which did not form part of that group will not be taken into consideration unless it improves the final result.
 3. The diploma referred to in point 2 shall be delivered by the university in which the student completed the final element of his course.

4. The degrees obtained by the students who did not submit a thesis shall have the same status as others; however, those who submitted a thesis may re-submit it, under conditions to be established and depending on their merit, for the purposes of obtaining a supplementary level of degree, should such a level be created in the arts faculty.
5. Each case shall be examined on its merits by the faculty, taking into account the merits of the thesis, which shall be counted towards obtaining the said degree.'

28 The applicant argues that both the wording of the decision and its *ratio legis* indicate that its effect was not only to abolish *ex nunc* the obligation to submit a thesis in order to obtain the diploma attesting the award of an arts degree, but also to confer *ex tunc* the same diploma on all those who passed the examinations necessary to obtain a degree. Since the applicant passed her last examination on 9 May 1958 she considers that she ought to be regarded as having obtained her arts degree on that date.

29 In response to the Portuguese Government's reply to the question put by the Court of First Instance the applicant argued at the hearing that the reply did not settle the question at issue and was inconsistent with the Portuguese decision; she submitted that it was for the Community Court to interpret the order for the purposes of applying the relevant provisions of the Staff Regulations correctly.

30 The Commission contends that the plea is not well founded and rejects the applicant's interpretation of the decision adopted by the Portuguese Secretary of State. The Commission submits that only the date of effect indicated on the diploma is relevant. If Lisbon University, the relevant Portuguese administrative authority in this matter, had erred in that regard, the applicant could easily have had her diploma amended, in which case the Commission would have been able to satisfy her claims.

31 The Commission adds, relying on the judgments of the Court in *Cendoya v Commission* (Case 108/88 [1989] ECR 2711, paragraph 14) and *Bonazzi-Bertottilli and Others v Commission* (Joined Cases 75/88, 146/88 and 147/88 [1989] ECR 3599, paragraph 20), that in any event the question of the date on which the applicant must be regarded as having obtained a degree is a matter exclusively for

the Portuguese authorities to decide. According to point 4 of the Portuguese Government's reply to the question put by the Court, that date is 'the date which is indicated on the diploma awarded by the university', that is to say, 27 July 1974.

- 32 It must be remembered that the requirement of possession of a university degree is necessarily to be construed in the light of the definition of that phrase in the legislation of the Member State in which the candidate completed the studies on which he relies, in this case Portuguese legislation (see *Cendoya*, cited above, paragraph 14).
- 33 It was on the basis of that legislation that the competent authority, Lisbon University, fixed the date on which the applicant's degree was to become effective as 27 July 1974.
- 34 The Court has no jurisdiction to determine the lawfulness of the unequivocal application of the Portuguese legislation made by Lisbon University. That is a matter which lies exclusively within the jurisdiction of the Portuguese courts and only the parties directly concerned may refer the matter to those courts under the conditions provided for by the relevant national law (see *Bonazzi-Bertottilli*, cited above, paragraph 20). It follows that the applicant ought, if she considered it necessary, to have challenged the date on which the degree was to take effect written on her diploma before the Portuguese courts and, if necessary, have communicated to the Commission the amended version of her diploma.
- 35 Consequently, the Commission calculated the applicant's experience correctly on the basis of the date indicated on her diploma in the light of Article 2, sixth paragraph, and Article 3 of the decision.
- 36 For those reasons the first plea must be dismissed.

Second plea

- 37 In its rejoinder the Commission challenges this plea, inasmuch as it amounts to challenging the compatibility of the decision with the Staff Regulations. It submits that neither the applicant's complaint of 1 June 1989 nor her supplement thereto of 26 June 1989 referred to the decision, still less did they challenge its compatibility with the Staff Regulations.
- 38 At the hearing the applicant argued that inasmuch as her complaint challenged the manner in which the administration had proceeded to grade her it challenged — impliedly, perhaps, but nevertheless clearly — the provision on the basis of which the Commission excluded the very lengthy experience she had acquired prior to 1975. She added that she had drawn up her complaint challenging the classification decision without the benefit of a lawyer and quite informally, as is appropriate having regard to the nature of the pre-litigation procedure, which is designed to enable an amicable solution to be achieved. Finally, the applicant stressed the fact that since the Commission never replied to her complaint it ill became it to plead before the Court of First Instance that the complaint lacked legal precision.
- 39 It should be noted that in the supplement to her complaint, which the Commission does not deny forms an integral part of the latter, the applicant stated that 'I have been classified, on the basis of the normal practice, by counting my years of experience solely as from the date of the official diploma (1974) . . . I would like you to re-examine my case as that classification does not reflect the real situation, in the first place, because it does not take into account all my years of experience, and in the second place because I completed the studies which give access to that category in 1958.'
- 40 Examination of the complaint reveals that there are two 'heads of claim' (judgment of the Court in Case 133/88 *Del Amo Martinez v Parliament* [1989] ECR 689, at paragraph 10), the first being that her years of experience acquired prior to the date on which her diploma took effect were not taken into account when classifying her and the second that date on which her diploma took effect was 1958 and not 1974.

- 41 The second plea is put forward in support of the first head of claim. The Court of Justice has consistently held that the submissions and arguments made to it in support of heads of claim need not necessarily appear in the complaint, but must be closely linked to it (*Del Amo Martinez*, cited above, at paragraph 10). In that regard the Court has also emphasized that since the pre-litigation procedure is informal in character and those concerned are generally acting without the assistance of a lawyer at that stage, the administration must not interpret the complaints restrictively but, on the contrary, must consider them with an open mind (*Del Amo Martinez*, paragraph 11).
- 42 In this case, the appointing authority ought to have noted, interpreting the complaint with an open mind, that what the applicant was challenging in her first head of claim — although not in a legally detailed fashion — was the decision, which she described as a ‘practice’.
- 43 Consequently, since the appointing authority was sufficiently informed of the nature of the criticisms which the applicant was making against its decision, the pre-litigation procedure achieved its purpose.
- 44 The Commission’s objection of inadmissibility must therefore be dismissed.
- 45 As regards the substance of the second plea, it is appropriate to recall the wording of the sixth paragraph of Article 2 of the decision, which reads as follows:
- ‘... experience shall be calculated from the time when the candidate was awarded the first qualification giving access, pursuant to Article 5 of the Staff Regulations, to the category in which the post falls, and it must be of a level corresponding to that category.’
- 46 The applicant submits that, contrary to the wording of Article 2 of the decision, Article 5 of the Staff Regulations does not formally require possession of a

university qualification in order to be appointed an official in category A but merely 'a university education' or equivalent professional experience. In her opinion it cannot be denied that she has provided evidence of having completed 'a university education' on 9 May 1958, the date on which she passed the final exam of the German philology degree course at Lisbon University.

- 47 She adds that inasmuch as Article 2 of the decision automatically discounts, without any possibility of challenge, any experience of university level gained prior to obtaining a university qualification, it is unlawful. It is too inflexible as regards staff recruitment since it does not enable the institution to take into consideration different circumstances resulting from the many types of education dispensed in the Member States. The result of its inflexibility is also that in no case may an official admitted to a competition solely on the basis of experience equivalent to a university qualification have experience gained prior to taking up his appointment taken into account, regardless of its length.
- 48 Lastly, she submits that by differentiating between candidates who had submitted a thesis and those who had not the Commission was in breach not only of the Portuguese decision of 14 January 1975 but also the general principles of non-discrimination and equal treatment between officials.
- 49 At the hearing the applicant also stated that her decision would have been different if she had decided to submit after an interval of 10 years (in 1968) the thesis necessary in order to obtain the original degree certificate. In that case, she would have been in the same situation as someone who had voluntarily and deliberately interrupted her studies, which would have been sufficient grounds for the appointing authority not to take into consideration experience other than that acquired after obtaining the diploma, in accordance with the sixth paragraph of Article 2 of the decision. However, the applicant points out that her situation is entirely different inasmuch as in her case it was the Portuguese authorities who decided to enable her to obtain a diploma, without requiring any additional contribution to be made at the university, solely in order to make her legal position coincide with the real situation. The applicant concludes that the appointing authority was not obliged to apply the sixth paragraph of Article 2 of the decision

mechanically: it was open to it, in view of the exceptional nature of her case, to take into consideration all the experience she had acquired since 1958.

50 The Commission's reply is that nothing in Article 5(1) of the Staff Regulations prevents candidates who respond to a notice of competition for category A posts to be required to have not only a 'university education' but also evidence of such education in the form of a diploma. In the Commission's view 'there is nothing to prevent the notice of competition from fixing conditions in relation to certain posts or certain categories of posts which are more rigorous than those which correspond to the minimum requirements resulting from the classification of posts' (Article 5(1) of the Staff Regulations) 'whether such conditions are fixed in order to fill a specific vacant post or for the purpose of constituting a reserve with which to fill posts in a certain category' (judgment of the Court of Justice in Case 178/78 *Szemerey v Commission* [1979] ECR 2855, at paragraph 3). What was thus held in relation to a notice of competition imposing conditions for admission more rigorous than the 'minimum conditions' set out in Article 5(1) of the Staff Regulations on the classification of posts is applicable for the same reasons in this case as regards the conditions governing classification in grade and step as defined in Article 2 of the decision. The opposite approach would lead to inconsistency within the same area, namely the recruitment of officials. The Commission concludes that it is unacceptable to permit the applicant to rely, in order to obtain additional seniority in grade, on experience which could not be taken into consideration for the purposes of gaining access to the competition which led to her recruitment.

51 As regards the alleged unlawfulness of the sixth paragraph of Article 2 of the decision, on the ground that it does not enable experience equivalent to university education acquired prior to obtaining a university diploma to be taken into account, and as regards the alleged severity of that approach, the Commission states, essentially, that reference need only be made to the eighth paragraph of Article 2 of the decision to see that in special circumstances experience gained prior to appointment may be taken into account, if 'a formal qualification is not required for access to the post to be filled' and consequently in adopting that position it did not misuse the wide discretion conferred on it by the second paragraph of Article 32 of the Staff Regulations. That is borne out by the fact that the sixth paragraph of Article 2 of the decision was adopted in order to 'ensure that identical conditions of recruitment and career prospects apply to all officials, as provided by Article 5(3) of the Staff Regulations', as stated in the third paragraph of the preamble to the decision.

- 52 At the hearing the Commission argued further that, contrary to what the applicant maintains, equal treatment as between Portuguese officials who submitted a thesis under the old arts degree scheme and those who did not requires precisely the exclusion of any experience gained prior to the date on which the formal diploma took effect. Were it otherwise, the applicant could have her experience taken into account as from 1958 whereas candidates who submitted a thesis after 1958 could only have experience gained from the date of submission of their thesis taken into account, as evidenced by a diploma delivered under the usual conditions. The result would be unequal treatment as between officials, which is not permitted by Community law.
- 53 The Court notes that the second plea seeks in essence to challenge the refusal of the appointing authority, based on the sixth paragraph of Article 2 of the decision, to take into consideration the experience gained by the applicant prior to 27 July 1974 in order to calculate additional seniority for her, on the ground that that refusal is incompatible with Articles 5 and 32, second paragraph, of the Staff Regulations.
- 54 As far as Article 5 of the Staff Regulations is concerned, it is sufficient to refer to the judgment of the Court of Justice of 2 October 1979 in *Szemerey*, cited above, at paragraph 3 of the decision, according to which the provisions of that article 'seek to provide a general definition of the minimum level required for an official of the category in question drawn up according to the nature of the duties to which the posts correspond and do not concern conditions of recruitment'. A competition notice may impose more rigorous conditions than those reflecting the minimum conditions resulting from the classification of posts. Similarly, the exercise by the appointing authority of the power it enjoys under the second paragraph of Article 32 of the Staff Regulations to allow additional seniority in grade is not subject to the description in Article 5(1) of the Staff Regulations of the 'minimum level' required of an official in the grade in question.
- 55 It must therefore be considered whether the appointing authority exceeded the limits of the discretion conferred by the second paragraph of Article 32 of the Staff Regulations when it adopted the sixth paragraph of Article 2 of the decision and when it applied it to this case.

- 56 It must be remembered that the Court of Justice has consistently held that 'the appointing authority has a wide discretion, within the limits laid down by Article 31 and the second paragraph of Article 32 of the Staff Regulations or by the internal decisions implementing those articles, in assessing the previous experience of a person recruited as an official, both as regards the nature and length of that experience and as regards the extent to which it meets the requirements of the post to be filled' (see most recently the judgment in Joined Cases 314/86 and 315/86 *De Szy-Tarisse v Commission* [1988] ECR 6028, at paragraph 26).
- 57 If the sixth and eighth paragraphs of Article 2 of the decision are read together, as suggested by the Commission, it becomes apparent that the sixth paragraph applies only to officials recruited as a result of a competition notice which — as in this case — required as a condition for admission completion of a full course of university study evidenced by a final diploma. In order to fulfil that condition, the sixth paragraph of Article 2 of the decision permits 'the candidate's special experience', within the meaning of the second paragraph of Article 32 of the Staff Regulations, to be taken into account only if it was gained after the award of the diploma on the basis of which the candidate was admitted to the competition which led to his or her recruitment.
- 58 In view of the 'wide discretion' enjoyed by the appointing authority that decision, which takes into account both the length and the nature of the experience to be taken into consideration as well as its relevance to the post (or posts) to be filled on the basis of the notice of competition in question, must be regarded as reasonable, particularly as it is apt to guarantee that the provisions contained in Article 5(3) of the Staff Regulations apply, as regards additional seniority in grade allowed under the second paragraph of Article 32, to all those recruited under the same competition. That the intention is to guarantee equal treatment as between officials recruited under the same competition is evident not only in the preamble to the decision, but also in the second paragraph of Article 10 thereof, a transitional provision according to which if, on the date of its entry into force, successful candidates had already been graded on the basis of the decision of 6 June 1973, all those recruited under the same competition would be graded on the basis of the latter decision.
- 59 It should also be remembered that the appointing authority was bound to follow the decision of the Portuguese authorities as regards the date on which the applicant's diploma took effect, so that the decision at issue correctly implemented the sixth paragraph of Article 2 and Article 3 of the decision.

- 60 Consequently, the applicant's criticism of the challenged decision can only be interpreted as seeking to have extra consideration given to her 'special experience' within the meaning of the second paragraph of Article 32 of the Staff Regulations, beyond the restrictions imposed by the sixth paragraph of Article 2 and Article 3 of the decision.
- 61 It should be noted in that regard that even though the decision at issue may not be regarded as a general implementing provision within the meaning of Article 110 of the Staff Regulations, it constitutes an internal directive which must be regarded as a rule of practice, which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equal treatment would be infringed (judgments of the Court of Justice in Case 190/82 *Blomefield v Commission* [1983] ECR 3981, at paragraph 20, and Case 343/82 *Michael v Commission* [1983] ECR 4023, at paragraph 14). In fact there is nothing in principle to prevent the appointing authority from drawing up rules by means of an internal decision of general effect, to govern the exercise of the discretion conferred on it by the Staff Regulations. The need to ensure equal treatment of all the officials recruited under the same competition when the appointing authority makes the assessment required by the second paragraph of Article 32 of the Staff Regulations is an aim which it may legitimately pursue (see the judgments of the Court of Justice in Case 266/83 *Samara v Commission* [1985] ECR 189, at paragraph 15, and in Case 146/84 *De Santis v Court of Auditors* [1985] ECR 1723, at paragraph 11).
- 62 That being so, there is no provision in the Staff Regulations entitling the applicant to more generous consideration of her 'special experience' than that which is applicable for all the officials recruited under open competition COM/LA/503 as a result of the correct application of the sixth paragraph of Article 2 and Article 3 of the decision, even if the appointing authority was entitled, if necessary, and giving reasons for doing so, to depart from those provisions.
- 63 That conclusion is not affected by the applicant's argument that the application of the sixth paragraph of Article 2 and Article 3 of the decision results in the applicant being treated less favourably than persons who, under the original Portuguese arts degree scheme, obtained their diploma after having submitted a thesis, so that they are able to have their 'special experience' taken into account from a date prior to 27 July 1974.

- 64 That is because the difference in treatment between the applicant and the other officials is not a result of the wording or the application to her case of the sixth paragraph of Article 2 or Article 3 of the decision, but of the choice deliberately made by the Portuguese authorities, as described in paragraphs 3 and 4 of the reply given by the Portuguese Government to the question asked by the Court of First Instance. It is apparent from that reply that the Portuguese authorities were concerned to ensure equal treatment by endeavouring to take into account the objectively different circumstances of those who submitted a thesis and those who did not. For that purpose, they endeavoured to ensure that those who had submitted a thesis at the end of their course were regarded as having obtained a degree prior to 27 July 1974 while those who had not submitted a thesis on that date were to be assimilated to students having completed their studies under the new rules. In addition, as regards time after that date, the Portuguese authorities allowed those who had graduated under the old system to submit a thesis in order to obtain a supplementary qualification as evidence of the fact that, unlike ordinary graduates, they had in fact submitted a thesis.
- 65 In any event, as the Commission rightly observed, the system which the applicant advocates would lead to unequal treatment under Community law inasmuch as it would oblige the appointing authority to take into consideration the applicant's special experience as from the completion of her university examinations (1958), whereas that of the other students recruited at the same time would be taken into consideration only from a date after that of the completion of their examinations, namely the date on which they submitted their thesis.
- 66 Consequently, the applicant cannot rely on any overriding rule or principle of law such as that of equal treatment to compel the appointing authority to allow her additional seniority in grade in excess of that which results from the application of the sixth paragraph of Article 2 and Article 3 of the decision. The second plea must therefore likewise be rejected.
- 67 The application must accordingly be dismissed.

Costs

68 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the procedure before the Court of First Instance, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

- (1) The application is dismissed;
- (2) Each party shall bear its own costs.

Yeraris

Saggio

Lenaerts

Delivered in open court in Luxembourg on 7 February 1991.

H. Jung
Registrar

C. Yeraris
President