JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
21 July 1998 *

(Officials – Admissibility – Establishment – Legitimate expectations – Equal treatment)

In Joined Cases T-66/96 and T-221/97,

John Mellett, a member of the temporary staff at the Court of Justice of the European Communities, residing at 61 Rue des Maraîchers, Plateau du Kirchberg, Luxembourg, represented by Brendan O'Donovan, Solicitor, and Conor Quigley, Barrister, with an address for service in Luxembourg at the aforementioned address,

applicant,

v

Court of Justice of the European Communities, represented by Timothy Millett, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Mr Millett, Court of Justice, Kirchberg,

defendant,

APPLICATION, in Case T-66/96, for annulment of the decision of the Court of Justice of the European Communities of 14 June 1995 and, in Case T-221/97, for annulment of the decisions of the President of the Court of Justice of 17 October 1996 and 4 December 1996 not to commence the procedure leading to the establishment of the applicant as a permanent official,

* Language of the case: English.

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

composed of: J. Azizi, President, R. García-Valdecasas and M. Jaeger, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedures and further to the hearings on 17 February 1998 and 16 June 1998,

gives the following

Judgment

Legal background

1 Point 1 of the decision concerning the recruitment and establishment of drivers of the Members of the Court, adopted by the Court on 30 June 1976 (hereinafter 'the 1976 Decision'), provides that drivers are to be engaged as temporary staff on the basis of Article 2(c) of the Conditions of Employment of Other Servants (hereinafter 'the Conditions of Employment'). Point 2 of the 1976 Decision provides that: 'La procédure de titularisation pourra être entamée après trois années de service sur proposition du Membre auprès duquel le chauffeur est affecté. Après un concours interne, les chauffeurs sont nommés fonctionnaires stagiaires dans la carrière D 3 – D 2'. [The establishment procedure may be commenced after three years' service on a proposal from the Member to whom the driver is assigned. After an internal competition, drivers shall be appointed probationary officials in career bracket D 3 – D 2.]

2 In 1995, the exercise of the powers of the appointing authority within the defendant institution was regulated by the Decision of the Court of 25 January 1995 on the

exercise of the power of appointment (hereinafter 'the Decision on the appointing authority') and by the Decision of the Court of 25 January 1995 on the Administrative Committee of the Court (hereinafter 'the Decision on the Administrative Committee'). Under those decisions, the President of the Court is given the power to appoint drivers in the Chambers of a Member of the Court (hereinafter 'drivers') as temporary staff (Article 7(3) of the Decision on the appointing authority) and to appoint them as officials (Article 5(3) of the Decision on the appointing authority). However, the Administrative Committee is competent to take any decision of an administrative nature in the name of the Court, particularly as regards the organisation and functioning of the institution (second paragraph of Article 2 of the Decision on the Administrative Committee), save that the full Court retains the competence to approve the preliminary draft budget before it is transmitted to the budgetary authority (third paragraph of Article 2 of the Decision on the Administrative Committee).

3 On 9 June 1994 the Head of the Personnel Division, Mr Pommiès, sent a memorandum to the Registrar of the Court, Mr Grass, entitled 'Avant-projet de budget 1995 – présentation du tableau des effectifs – emplois affectés aux cabinets des Membres (catégories B, C et D)'. [Preliminary draft budget 1995 – presentation of the list of posts – posts attached to the Chambers of the Members of the Court (Categories B, C and D).] He explained that 'préparation de l'avant-projet de budget destiné à couvrir les besoins de l'institution à la suite des prochaines adhésions pourrait être l'occasion de procéder à une refonte du tableau des effectifs consistant à regrouper dans les emplois temporaires, avec les emplois de référendaires, les emplois affectés aux cabinets des membres de la Cour, c'est-à-dire les emplois B et C du personnel de secrétariat et les emplois D des chauffeurs'. [Preparation of the preliminary draft budget intended to cover the institution's needs as a result of the forthcoming accessions might be an appropriate occasion for a reorganisation of the Court's list of posts consisting of regrouping in the temporary posts, along with the legal secretaries' posts, the posts attached to the Chambers of the Members of the Court, that is to say the secretarial posts in Categories B and C and the drivers' posts in Category D.] According to the author of the memorandum, that modification of the Court's list of posts had the dual advantage of, on the one hand, translating into budgetary terms the administrative practice of filling posts within the Chambers no longer by the appointment of officials but by the recruitment of members of temporary staff, thus preserving the

freedom for Members to choose their close collaborators and, on the other, it would make it easier to offer career prospects to staff in the Chambers.

4 On 14 June 1994 the Registrar sent a memorandum to the Members of the Court entitled 'Budget – lettre rectificative "élargissement" à l'état prévisionnel 1995' [Budget – amendment to the estimate for 1995 (enlargement)] in which he proposed that, in addition to the legal secretaries' posts, the other posts attached to the Chambers of the Members of the Court and of the Court of First Instance be included under the heading 'temporary posts', that is to say the secretarial posts in Categories B and C and the drivers' posts in Category D.

5 At its administrative meeting of 11 July 1994, the Court approved that proposal. Point 8 of the minutes of the administrative meeting of the Court of 11 July 1994 reads as follows: '... La Cour approuve également la proposition de demander à l'autorité budgétaire une modification du tableau des effectifs consistant à regrouper, dans les emplois temporaires, l'ensemble des emplois affectés aux cabinets des membres, c'est-à-dire les emplois B et C du personnel de secrétariat et les emplois D des chauffeurs (sauf ceux qui sont actuellement occupés par des fonctionnaires affectés aux cabinets). ...' [... The Court also approves the proposal to ask the budgetary authority for a modification of the Court's list of posts consisting of regrouping, in the temporary posts, all of the posts attached to the Chambers of the Members, that is to say the secretarial posts in Categories B and C and the drivers' posts in Category D (except those which are currently held by officials assigned to the Chambers of the Members). ...] (hereinafter 'the Court's decision of 11 July 1994').

6 The Court's request was accepted by the budgetary authority when the 1998 budget was adopted.

Facts and procedure

7 In 1970, the applicant, Mr Mellett, joined the Irish Defence Forces. His duties mainly entailed work as a driver, bodyguard and courier.

8 Soon after his appointment as a Judge of the Court in October 1991, Judge Murray asked Mr Mellett to become his personal driver. The applicant claims, and the Court does not dispute this, that he told Judge Murray that he would be willing to accept this new career on condition that he had some prospect of becoming a permanent member of staff at the Court. On the basis of information received from officials at the Court, Judge Murray informed him that he would be a member of the temporary staff for his first three years of service, on the completion of which he would become a permanent member of staff, provided that Judge Murray made a proposal to that effect. Mr Mellett claims that he accepted the position as driver on that basis. He states that a Category C official of the Personnel Division, acting in the course of her duties, explained to him that, as a matter of practice, drivers on temporary contracts were established as permanent officials after completing three years' satisfactory service. He adds that the Deputy Registrar, Mr Cranfield, confirmed that information and stated that any change in that practice would only apply to those drivers who entered into service after the date of any such change.

9 In order to assist Mr Mellett in obtaining leave of absence from the Irish Army, the Deputy Registrar, Mr Cranfield, wrote to the Secretary of the Department of Defence on 22 April 1992. In that letter he confirmed that Mr Mellett would be engaged as a member of the temporary staff and, after pointing out that the Staff Regulations limited the duration of such contracts to a maximum of three years, he added: 'In the normal course of events, we would expect Mr Mellett to participate in an internal competition to become a permanent member of staff in the third year of his appointment if all works out correctly.' On the basis of that request, Mr Mellett was granted leave of absence for a period of three years; that leave was subsequently extended.

10 By letter dated 14 April 1992, Mr Mellett was offered a contract as a member of the temporary staff for an indefinite period from 16 May 1992. By letter dated 23 April 1992 Mr Mellett indicated that he accepted that offer. On 14 May 1992, Mr Mellett and the Head of the Personnel Division signed a contract by which Mr Mellett was engaged as a member of the temporary staff on the basis of Article 2(c) of the Conditions of Employment.

11 Mr Mellett claims that he was informed by the Deputy Registrar, Mr Cranfield, in February 1993 that he would be the last driver to be established as a permanent official under the 1976 Decision. He also claims that Mr Cranfield told him, in April 1994, that the procedure leading to his establishment would commence in the autumn. Again according to the applicant, Judge Murray told him in July 1994 that the Registrar of the Court had assured him that his establishment as a permanent official would proceed in due course.

12 On 13 December 1994, Judge Murray sent a memorandum to the Registrar asking him to examine the question of the establishment of his driver.

13 By a memorandum dated 7 March 1995 the Registrar replied that, at its administrative meeting on 11 July 1994, the Court had ended the practice of establishing the Members' drivers and had decided that, in future, drivers would only be members of the temporary staff or seconded officials.

14 By a memorandum dated 7 April 1995 Judge Murray told the Registrar that Mr Mellett had left his previous job to come to the Court as a driver on the footing that he could be established on the basis of the practice then in force, which had been expressly confirmed to Mr Mellett and to Judge Murray by the administration at the time of Mr Mellett's engagement. Judge Murray therefore asked the Registrar 'bien vouloir procéder à sa titularisation conformément à la pratique bien établie [kindly to proceed to his establishment in accordance with the well-established practice]'.

15 By a memorandum in reply dated 19 May 1995, the Registrar stated that, by its decision of 11 July 1994, the Court intended to put an end to the possibility for Members' drivers to become established officials. As to whether that decision applied to the members of the temporary staff employed at the Court as at 11 July 1994, Mr Mellett and six other drivers referred to by name, the memorandum stated that 'M. le Président considère qu'à compter de la décision du 11 juillet 1994, la décision du 30 juin 1976 n'est plus applicable, et que, en conséquence, les chauffeurs se trouvant dans la situation d'agent temporaire à cette date n'ont plus vocation à être titularisés. Il ne lui paraît pas possible à cet égard de faire une distinction entre ces agents selon qu'ils ont ou non reçu une information de l'administration de la Cour sur une éventuelle abrogation de la décision du 30 juin 1976'. [The President considers that as from the decision of 11 July 1994, the decision of 30 June 1976 is no longer applicable and that, therefore, the drivers in the position of members of the temporary staff at that date are no longer eligible to be established. In this connection he does not consider it possible to draw a distinction between those members of the temporary staff according to whether or not they were notified by the administration of the Court about the possible repeal of the decision of 30 June 1976.] Finally, the Registrar added that, if Judge Murray wished, the question could be discussed in the Administrative Committee.

16 At the request of Judge Murray, the question was put to the Administrative Committee on 14 June 1995 together with an explanatory memorandum, dated 6 June 1995, from the Head of the Personnel Division, Mr Pommiès, entitled 'Situation des chauffeurs de membres – cas de M. John Mellett' [Situation of the drivers of Members of the Court – Case of Mr John Mellett]. That memorandum, which was prepared at the request of the Registrar, states, in particular, at point 5, that 'M. Murray a demandé que M. Mellett soit titularisé en application de la décision du 30 juin 1976' [Mr Murray requested that Mr Mellett be established as a permanent official pursuant to the Decision of 30 June 1976]. Annexed to that memorandum was, *inter alia*, a copy of a proposal for a new system of recruitment and appointment of drivers of Members of the Court, dated 1 February 1993. That proposal, which was prepared by the Head of the Personnel Division, provided as follows: 'le nouveau régime devrait s'appliquer à tous les chauffeurs de membres recrutés à compter de la date de sa mise en vigueur. ... A titre transitoire le chauffeur de membre de la Cour engagé comme agent temporaire le 16 mai 1992, sous l'empire de la décision de 1976, pourrait continuer à bénéficier de ces dispositions et donc faire l'objet d'une procédure de titularisation après trois années

de service, sur proposition du membre concerné. En revanche, le nouveau régime serait appliqué aux trois agents temporaires engagés en janvier 1993. Les intéressés ont d'ailleurs été informés par écrit lors de la notification de leur engagement que la possibilité d'abroger la décision de 1976 était en cours de discussion et qu'ils ne pourraient pas s'attendre à une titularisation dans l'emploi qu'ils étaient appelés à occuper'. [The new scheme should apply to all Members' drivers recruited with effect from the date on which it enters into force. ... As a transitional measure, the driver of the Member of the Court who was recruited as a member of the temporary staff on 16 May 1992, under the 1976 Decision, could remain subject to the provisions of that decision and thus the procedure for his establishment could be commenced after three years of service, on a proposal from the Member concerned. However, the new scheme would be applied to the three members of the temporary staff recruited in January 1993. Indeed, the persons concerned were informed in writing at the time they were notified of their recruitment that the possible repeal of the 1976 Decision was under discussion and that they could not expect to become established in the posts they were called upon to fill.] By agreement with the President of the Court of Justice, that proposal, which had been approved by the Registrar, was submitted to the Administrative Committee on 15 February 1993 and should subsequently have been submitted to the administrative meeting. However, that proposal, which the administrative committee had deferred to a subsequent meeting, was not re-entered on the agenda of any administrative meeting.

17 With the exception of the applicant, all the drivers recruited between 1992 and 11 July 1994 were warned in writing, at the time when they were recruited, that discussions concerning the amendment of the 1976 Decision were taking place and that, in particular, they could not expect the system to be applied to them.

18 Point 4 of the minutes of the Administrative Committee's meeting on 14 June 1995, is entitled 'Situation des chauffeurs de membres au regard de la décision de la Cour du 11/07/1994' [Situation of the drivers of Members of the Court in the light of the Court's decision of 11 July 1994] and reads as follows: 'Il est d'abord rappelé que la Cour, par sa décision du 11/07/94 visant à demander à l'autorité budgétaire la modification du tableau des effectifs, a mis fin à la possibilité de titularisation des chauffeurs de membres prévue par la décision du 30 juin 1976. Après discussion, le Comité administratif estime que la décision du 11/07/94 doit être appliquée, sans

exception, à l'égard de tous les chauffeurs se trouvant dans la situation d'agent temporaire à cette date.' [It is first recalled that the Court, by its decision of 11 July 1994 to ask the budgetary authority for the modification of the list of posts, has put an end to the possibility of establishing the Members' drivers provided for by the decision of 30 June 1976. After discussion, the Administrative Committee takes the view that the decision of 11 July 1994 must be applied without any exceptions to all the drivers who were members of the temporary staff at that date] (hereinafter 'the Decision of 14 June 1995' or 'the contested decision'). Judge Murray informed Mr Mellett of the Administrative Committee's decision later that day.

19 On 21 June 1995, Mr Mellett addressed a memorandum to Judge Murray asking him for a copy of the Administrative Committee's decision of 14 June 1995 rejecting the proposal to set in train the procedure for establishing him as a permanent official, together with a statement of the reasons for its adoption.

20 By memorandum of 21 June 1995, Judge Murray asked the Registrar to furnish him with a copy of the Administrative Committee's decision of 14 June 1995. No reply has been received to that request.

21 On 13 September 1995, Mr Mellett made a complaint under Article 90(2) of the Staff Regulations against the decision of the Administrative Committee of the Court of 14 June 1995 not to commence the procedure leading to his establishment as an official.

22 By a decision of 22 January 1996, notified to the applicant on 13 February 1996, the Complaints Committee of the Court dismissed the complaint as inadmissible.

23 By application lodged at the Registry of the Court of First Instance on 13 May 1996, the applicant brought the action, registered under Number T-66/96, against the decision of the Administrative Committee of the Court of Justice of 14 June 1995 not to commence the procedure leading to his establishment as a permanent official.

24 In its pleadings in Case T-66/96, the Court of Justice submitted that the action was inadmissible on the ground that the contested measure did not adversely affect the applicant and that the latter had not submitted an individual request within the meaning of Article 90(1) of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations').

25 In view of that argument, Mr Mellett commenced two new preliminary procedures.

26 First, following a request from Mr Mellett, Judge Murray sent a memorandum to the President of the Court, dated 11 July 1996, stating that he was prepared to make a formal request for Mr Mellett's establishment as a permanent official. By a memorandum of 22 July 1996, the President of the Court replied to Judge Murray that he could only give a negative reply to such a request. On 1 October 1996, Judge Murray sent a further memorandum to the President of the Court requesting that Mr Mellett be established as a permanent official. By a memorandum dated 17 October 1996, the President of the Court informed Judge Murray of his decision to refuse that request. By letter dated 14 November 1996, Judge Murray sent Mr Mellett a copy of the memorandum of the President of the Court of 17 October 1996. On 9 January 1997, Mr Mellett submitted a complaint, registered under No 1/97-R, against the decision of the President of the Court of 17 October 1996 refusing to establish him as a permanent official.

27 Second, by a letter dated 9 September 1996, Mr Mellett submitted a request, within the meaning of Article 90(1) of the Staff Regulations, to the President of the Court in his capacity as appointing authority, to be appointed as a permanent official of the Court assigned to the Chambers of Judge Murray. By memorandum of

4 December 1996, the President of the Court notified his decision to refuse that request. On 9 January 1997, Mr Mellett submitted a complaint, registered under No 2/97-R, against the decision of the President of the Court of 4 December 1996 refusing his request for establishment.

28 By a single decision dated 28 April 1997, received by Mr Mellett on 2 May 1997, the Complaints Committee of the Court dismissed Complaint No 2/97-R, directed against the decision of the President of the Court of 4 December 1996, as unfounded and held that it was not necessary to rule on Complaint No 1/97-R, directed against the memorandum of 17 October 1996.

29 In those circumstances, by application lodged at the Registry of the Court of First Instance on 29 July 1997, the applicant brought the action, registered under number T-221/97, for annulment of the decisions of the President of the Court of 17 October 1996 and 4 December 1996.

30 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedures without any preparatory measures of inquiry.

31 The parties presented oral argument and gave their replies to the Court's questions at the hearings on 17 February 1998 and 16 June 1998. At the end of the hearing on 17 February 1998, the Court did not close the oral procedure and accepted that the defendant should reply, in writing, before 25 March 1998, to four questions raised during the hearing on 17 February 1998 and repeated in writing on 5 March 1998. The defendant complied with that request by letter lodged at the Registry of the Court of First Instance on 26 March 1998.

32 Having heard the views of the parties on joinder of the cases at the hearing on 16 June 1998, the Court considers that Cases T-66/96 and T-221/97 should be joined for the purposes of the judgment.

Forms of order sought

33 In Case T-66/96,

The applicant claims that the Court of First Instance should:

– annul the decision of the Administrative Committee of the Court of Justice of 14 June 1995 not to commence the procedure leading to his establishment as a permanent official;

– order the Court to pay the costs.

The defendant claims that the Court of First Instance should:

– dismiss the application as inadmissible;

– in the alternative, dismiss the application as unfounded;

– order the applicant to bear his own costs.

34 In Case T-221/97,

The applicant claims that the Court of First Instance should:

– annul the decision of the President of the Court of Justice of 17 October 1996 refusing to open a competition for the recruitment of a driver as a permanent official assigned to the Chambers of Judge Murray and/or;

– annul the decision of the President of the Court of Justice of 4 December 1996 refusing to appoint the applicant as a permanent official assigned to the Chambers of Judge Murray;

– order the Court to pay the costs.

The defendant contends that the Court of First Instance should:

– dismiss the application as inadmissible or, in the alternative, as unfounded, in so far as it seeks the annulment of the decision allegedly contained in the memorandum of 17 October 1996 from the President of the Court of Justice to Judge Murray;

– dismiss the application as unfounded, in so far as it seeks the annulment of the decision of the President of the Court of Justice of 4 December 1996 refusing the applicant's request for appointment as an established official;

– order the applicant to bear his own costs.

Admissibility

Admissibility in Case T-66/96

Arguments of the parties

35 Without having requested, by separate document, that the Court rule under Article 114 of the Rules of Procedure, the defendant claims that the action is inadmissible.

36 The defendant, after pointing out that complaints and applications to the Court may be directed only against an act of the appointing authority adversely affecting the complainant or applicant (Case 33/80 *Albini* v *Council and Commission* [1981] ECR 2141), claims that, in the present case, the measure for which annulment is sought does not constitute an act adversely affecting the applicant.

37 It maintains that the only acts which may be considered as adversely affecting the person concerned are those which produce binding legal consequences such as to affect, directly and immediately, the applicant's interests by significantly changing his legal situation (Case T-562/93 *Obst* v *Commission* [1995] ECR-SC I-A-247, p. II-737, paragraph 23). A mere statement of a future intention on the part of the appointing authority is not, however, capable of creating rights and obligations on the part of officials (Joined Cases 269/84 and 292/84 *Fabbro* v *Commission* [1986] ECR 2983). Similarly, general measures for the organisation of the departments, for which the administration alone is responsible cannot constitute measures adversely affecting the applicant within the meaning of the Staff Regulations (Joined Cases 109/63 and 13/64 *Muller* v *Commission* [1964] ECR 663).

38 The defendant claims that the position adopted by the Administrative Committee on 14 June 1995 is not an individual decision relating to the applicant but concerns a category of temporary servants which, in addition to the applicant, comprises six other drivers referred to by name in the Registrar's memorandum of 19 May 1995. Furthermore, it maintains that it is clear from the minutes of the meeting of 14 June 1995, according to which 'le comité administratif estime que la décision du 11 juillet 1994 doit être appliquée, sans exception à l'égard de tous les chauffeurs se trouvant dans la situation d'agent temporaire à cette date' [the Administrative Committee considers that the decision of 11 July 1994 must be applied without any exceptions to all the drivers who were members of the temporary staff at that date] that the position adopted by the Administrative Committee does no more than confirm the general decision of the Court of 11 July 1994. The position adopted by the Administrative Committee on 14 June 1995 thus constitutes a general line of conduct applicable to all the drivers of the Members of the Court who were members of the temporary staff as at 11 July 1994. That general line of conduct has not been translated into a decision directly and immediately affecting the applicant's interests.

39 The applicant claims that the defendant's argument that the Administrative Committee's decision of 14 June 1995 does not constitute an act adversely affecting him should be rejected on three grounds and that the Administrative Committee's decision of 14 June 1995 directly changed his legal position.

40 First, the applicant submits that the issue before the Administrative Committee of the Court was at all times that of his establishment as a permanent official. Moreover, it is clear from the correspondence between Judge Murray, the Registrar and Mr Pommiès that this was the case. According to the applicant, the fact that the issue was raised at a meeting of the Administrative Committee, which has normally no role in the establishment of drivers, indicates that Judge Murray raised that issue before that body. The applicant points out that the Administrative Committee of the Court is competent to take any decision of an administrative nature in the name of the Court and that, since the President of the Court had decided to refuse Judge Murray's request of 7 April 1995 that he be established as a permanent official (as is apparent from the Registrar's memorandum of 19 May 1995), Judge Murray was obliged to bring the matter before the Administrative Committee. The matter of the establishment of the applicant was thus properly put to that body at its meeting of 14 June 1995. He points out further that the Registrar's memorandum of 19 May 1995 expressly suggested that Judge Murray refer the question of the establishment of the applicant as a permanent official to the Administrative Committee, if he so wished. Finally, in view of the disagreement as to the true nature of the Administrative Committee's decision of 14 June 1995, the applicant requests the Court to summons those Members of the Court who were present at that meeting to appear in order to give oral evidence, under Article 64(4) of the Rules of Procedure of the Court of First Instance.

41 Second, the applicant points out that since 11 July 1994 he was the only person coming within the scope of the decision of 30 June 1976 and concludes that the issue was not whether an exception was to be made to the decision of 11 July 1994, but whether he was to obtain the benefit of the regime in place from 1976. The applicant notes that, as admitted in Mr Pommiès' memorandum of 6 June 1995, all drivers recruited by the Court after him were informed by the administration that the possible repeal of the 1976 decision was being considered and that they could therefore not expect that decision to be applied to them.

42 Third, the applicant claims that it would have been futile for Judge Murray to have asked the President of the Court to commence the procedure leading to his establishment since the latter must comply with any decisions taken by the Administrative Committee.

43 The applicant goes on to claim that his legal situation was immediately and directly changed from the moment the Administrative Committee took its decision of 14 June 1995.

44 The Administrative Committee's decision of 14 June 1995 is no mere statement of future intent, but an unequivocal ruling on the effect of the decision of 11 July 1994 upon the application of the 1976 Decision.

45 The applicant also points out that, in accordance with the decision of 30 June 1976, which provides that the procedure for the establishment of a driver is to commence on the basis of a proposal by the Member of the Court to whom the driver is assigned, Judge Murray addressed a memorandum to the Registrar to that effect on 13 December 1994.

46 Finally referring to the Opinion of Advocate General Mischo in *Fabbro* v *Commission* (cited at paragraph 37 above, point 8), the applicant claims that, in order for an action to be admissible, there is no need for an individual decision to have been taken, but it is sufficient that the applicant can show that the contested decision directly affected him and that he has a present and vested personal interest in bringing the action. First, the Administrative Committee's decision of 14 June 1995 directly affected the applicant since it prevents the 1976 Decision from being applied to him, and second, since he is the only person who can still rely on the 1976 Decision, the applicant has a vested and present interest in bringing this action.

47 The defendant rejects the three arguments put forward by the applicant to refute the view that the Administrative Committee's decision of 14 June 1995 does not constitute an act adversely affecting him.

48 First, contrary to what the applicant claims, the issue before the Administrative Committee on 14 June 1995 was not the establishment of the applicant as a permanent official but, rather, a confirmation of the general measure of organisation of the Court's services adopted on 11 July 1994 in relation to an entire category of drivers addressed in their generality. The defendant notes that the memorandum from the Head of the Personnel Division, Mr Pommiès, of 6 June 1995 is entitled: 'Situation des chauffeurs – cas de M. John Mellett' and was intended 'de vous adresser des éléments d'informations relatifs à la situation des chauffeurs de membres' [to provide you with information concerning the situation of Members' drivers]. The memorandum does not therefore deal exclusively with Mr Mellett's situation. In any event, that preparatory document could not in any way prejudge the position adopted by the Administrative Committee on 14 June 1995.

49 Second, it is clear from the heading of point 4 of the minutes that the issue put before the Administrative Committee on 14 June 1995 was not whether the applicant's case should be dealt with under the 1976 Decision but, rather, whether or not an exception could be envisaged to the Court's decision of 11 July 1994 for one or other of the drivers who were members of the temporary staff at that date.

50 Third, the defendant stresses that the applicant himself never at any time submitted a request to the appointing authority concerning his establishment but that all the steps taken at the time were taken by Judge Murray and not by the applicant. The defendant stresses that no request was submitted by the applicant under Article 90(1) of the Staff Regulations. In consequence, no decision concerning the establishment of the applicant was ever taken or addressed to him. The defendant adds that the applicant seems to acknowledge that this analysis is correct in so far as he submitted a request to the appointing authority, on 11 September 1996, under Article 90(1) of the Staff Regulations to be appointed as a permanent official assigned to the Chambers of Judge Murray.

Findings of the Court

51 The defendant maintains that the Administrative Committee's decision of 14 June 1995 does not constitute a measure adversely affecting the applicant in so far as it is not an individual decision relating to him but concerns a category of members of the temporary staff including six other drivers in addition to the applicant. The defendant adds that the decision of 14 June 1995 does no more than confirm the general decision of 11 July 1994. It stresses that the applicant himself never at any time submitted a request within the meaning of Article 90(1) of the Staff Regulations and concludes that there is no decision directly affecting the applicant's interests.

52 That argument cannot be accepted. On the one hand, the Administrative Committee's decision of 14 June 1995 must be regarded as constituting the reply to the request for the establishment of the applicant. On the other, in any event in the light of the settled case-law, the Administrative Committee's decision of 14 June 1995 must be regarded as an adverse act since it affects the applicant.

53 First, as regards the subject-matter of the Administrative Committee's decision of 14 June 1995, it is apparent from an examination of the sequence of memoranda preceding the decision of 14 June 1995 that, contrary to the defendant's assertion, the question put to the Administrative Committee on 14 June 1995 was, indeed, that of the establishment of the applicant.

54 The whole administrative procedure, the discussions and exchanges of memoranda concerning the establishment of drivers commenced with Judge Murray's memorandum of 13 December 1994, headed 'Titularisation de M. Mellett' [Establishment of Mr Mellett], in which he asked the Registrar 'be so kind as to examine the question of the possible establishment of (my) driver, Mr John Mellett ...'. Likewise, all subsequent memoranda leading up to the decision adopted at the Administrative Committee's meeting on 14 June 1995 concerned the question of the establishment of the applicant. Thus, the memorandum in reply sent by the Registrar to Judge Murray on 7 March 1995 bears the heading 'Titularisation de M. Mellett' [Establishment of Mr Mellett]. Judge Murray's memorandum of 7 April 1995 also concerns only the question of Mr Mellett's establishment. The

Registrar's memorandum dated 19 May 1995 is again headed 'Titularisation de M. Mellett – Votre memorandum du 7 avril 1995' [Establishment of Mr Mellett – your memorandum of 7 April 1995]. It is true that, in that memorandum, the Registrar refers to the situation of six other drivers employed as members of the temporary staff at the Court as at 11 July 1994. It is, however, clear that that reference was made only in order to focus on the specific circumstances of the applicant, as is demonstrated by the statement of the President of the Court, contained in the following paragraph of the memorandum, to the effect that there is no need to draw a distinction between those members of the temporary staff according to whether or not they were notified by the administration about the possible repeal of the 1976 Decision. The memorandum ends, furthermore, with the sentence 'Si vous le souhaitiez, la question pourrait être discutée au sein du comité administratif'. [If you wish, the question could be discussed in the Administrative Committee]. Finally, Mr Pommiès' memorandum of 6 June 1995 to the Registrar, in preparation for the Administrative Committee's meeting on 14 June 1995, is headed 'situation des chauffeurs des membres – cas de M. John Mellett'. [Situation of Members' drivers – case of Mr John Mellett].

55 It thus follows from both the headings and content of those memoranda and from their sequence that the position adopted by the Administrative Committee on 14 June 1995 concerned the case of Mr Mellett, which was at the centre of the discussions even if, indirectly, it could, in some circumstances, also have concerned the six other drivers who were members of the temporary staff as at 11 July 1994.

56 Furthermore, not only did the discussions actually concern Mr Mellett's situation but, as is apparent from the Registrar's memorandum of 19 May 1995, the position adopted by the Administrative Committee on 14 June 1995 must be regarded as being the reply to the request for the establishment of the applicant submitted by Judge Murray. It must be observed here that, at paragraph 5 of his memorandum to the Registrar of 6 June 1995, preparatory to the Administrative Committee's meeting on 14 June 1995, Mr Pommiès expressly mentions, with reference to the previous memoranda, that 'Mr Murray has requested that Mr Mellett be established pursuant to the decision of 30 June 1976'.

57 Finally, it must be pointed out that the point made by the President of the Court, which is reproduced in the Registrar's memorandum of 19 May 1995, according to which it is not possible to draw a distinction between the members of staff according to whether or not they were notified about the repeal of the 1976 Decision, referred only to the case of the applicant since all the other drivers recruited after the applicant were expressly warned in writing that the amendment of the 1976 Decision was being considered and that they could therefore not expect it to be applied to them.

58 It follows from the foregoing that the question actually put to the Administrative Committee on 14 June 1995 was in point of fact that of the establishment of the applicant. Furthermore, no other request for establishment, except for that of the applicant, was put to the Administrative Committee, which therefore had no reason to consider the situation of the drivers in general.

59 The defendant's argument according to which the contested decision merely confirmed the general decision of 11 July 1994 is also unfounded. The point in question was that of the establishment of the applicant and this means that it was necessary to examine whether the decision of 11 July 1994 applied to the applicant or if he could remain subject to the previous system provided for by the 1976 Decision. Notwithstanding the fact that the decision of 14 June 1995 is couched in very general terms, there is scarcely any doubt that the true object of the discussions was the establishment of the applicant.

60 Second, even supposing that the contested decision does not constitute an individual decision concerning the applicant, but a general measure concerning all the Members' drivers who were members of the temporary staff at that time, that is to say the applicant and six other drivers, it none the less constitutes, in any event, an act adversely affecting the applicant within the meaning of Article 90(2) of the Staff Regulations.

61 It is apparent from Articles 90 and 91 of the Staff Regulations that an act adversely affecting an official may consist either of a measure of a general nature or of an individual decision addressed to the applicant or to a third party. It is also settled in case-law that officials have the right to submit a complaint and then to bring proceedings against a general measure of the appointing authority which adversely affects them without having to be individually concerned by that measure for the purposes of Article 173 of the Treaty (Case 54/75 *de Dapper* v *Parliament* [1976] ECR 1381; Joined Cases 146/85 and 431/85 *Diezler and Others* v *ESC* [1987] ECR 4283). Thus, in Case 125/87 *Brown* v *Court of Justice* [1988] ECR 1619, the Court of Justice held that an action challenging the legality of the general decision of the President of the Court concerning the grading and remuneration of officials who change to a higher category following a competition was admissible.

62 It has also been held that, although mere internal measures of organisation of the service, which do not adversely affect the position under the Staff Regulations of the official concerned, do not, in principle, constitute acts having an adverse effect, certain measures may, however, be regarded as having an adverse effect even if they do not affect the material interests or rank of an official, if they affect his personal interests or future prospects (Case T-36/93 *Ojha* v *Commission* [1995] ECR-SC II-497, paragraphs 41 and 42).

63 There is scarcely any doubt that the Administrative Committee's decision of 14 June 1995 affects the applicant. Even if the contested decision is regarded as also concerning the six other drivers, in addition to the applicant, as the defendant maintains that it should be, it has, in any event, the effect of denying the applicant the benefit of the establishment procedure laid down in the 1976 Decision. Once the Administrative Committee had decided that the new arrangements of 11 July 1994 were to be applied without any exceptions to all the drivers who were members of the temporary staff on that date, the President of the Court, who constitutes the appointing authority, could no longer decide to commence the procedure for the establishment of the applicant. It is therefore clear that the Administrative Committee's decision of 14 June 1995 changed the applicant's legal situation since it had the effect of refusing, or denying, him the possibility of obtaining the benefit of the establishment procedure laid down in the 1976 Decision. In so far as the contested decision provides that the 1994 decision is to apply

without any exceptions to all the drivers who were members of the temporary staff at that date, even if the driver had not been informed when taking up his post that he could not rely on the 1976 Decision, it must be regarded as affecting the legal situation of the applicant in particular, since he was the only driver who was a member of the temporary staff not to have been so informed. It follows that the contested decision constitutes a decision which may be the subject of an action for annulment in so far as it produces binding legal consequences liable to affect the applicant's interests by significantly changing his legal situation (Case T-293/94 *Vela Palacios* v *ESC* [1996] ECR-SC II-893, paragraph 22).

64 Contrary to the defendant's assertion, that conclusion cannot be affected by the fact that the applicant himself never at any time submitted a request under Article 90(1) of the Staff Regulations. It is only in the absence of an act having an adverse effect that the person concerned must submit a prior request to the appointing authority. As stated above, the contested measure must be regarded as adversely affecting the applicant. Furthermore, the applicant cannot be criticised for not having submitted any request himself since, according to the 1976 Decision on the establishment of drivers, it is for the Member to whom the driver is assigned, and not for the driver himself, to request that the establishment procedure be commenced. Judge Murray submitted such a request.

65 It follows that the application in Case T-66/96 is admissible.

Admissibility of Case T-221/97

66 The defendant does not contest the admissibility of the action in so far as it is directed against the decision of the President of the Court of 4 December 1996 rejecting Mr Mellett's request for establishment.

67 On the other hand, it claims that the action is inadmissible in so far as it seeks the annulment of the decision allegedly contained in the memorandum of the President of the Court of 17 October 1996 to Judge Murray.

68 The defendant argues that the request which led to the President of the Court's reply of 17 October 1996 was not made by Mr Mellett, but by a third person, namely Judge Murray, and that the memorandum of 17 October 1996 was addressed to Judge Murray and not to Mr Mellett. It contends that that exchange of memoranda is not within the scheme of Article 90(1) of the Staff Regulations but is internal to the institution. Moreover, the memorandum of the President of the Court of 17 October 1996 constitutes at most an act preparatory to a final decision and does not adversely affect the applicant.

69 The defendant considers that the judgment in Case T-46/90 *Devillez and Others* v *Parliament* [1993] ECR II-699, which is relied on by the applicant, is not relevant because in the present case the appointing authority has taken and notified a decision in due form, namely the decision of the President of the Court of 4 December 1996, whereas in the *Devillez* case the appointing authority had not formally addressed a decision to the applicant.

70 Finally, the defendant considers that it would be entirely superfluous to give judgment on the alleged decision of the President of the Court of 17 October 1996 when precisely the same point of substance is to be found in the decision of 4 December 1996.

71 The applicant states that both in this action and in Case T-66/96 he was seeking to have a procedure commenced for his benefit on the basis of the 1976 Decision and that, under that decision, the procedure for establishment is commenced by a proposal from the Member of the Court to whom the driver is assigned.

72 Just as Case T-66/96 is the sequel to Judge Murray's request of 13 December 1994, Case T-221/97 is the sequel to the new request submitted by Judge Murray on 1 October 1996 and challenges the legality of the decision of the President of the Court of 17 October 1996.

73 The applicant accepts that Judge Murray's request of 1 October 1996 and the decision of the President of the Court of 17 October 1996 do not fall within the scheme of Article 90(1) of the Staff Regulations, but points out that the request made by him to the President of the Court under Article 90(1) was made expressly without prejudice to the requests for his establishment made in due form by Judge Murray. He submits that the present proceedings are not based exclusively on Article 90(1) of the Staff Regulations, but seek the annulment of two separate decisions taken by the appointing authority on 17 October and 4 December 1996 under two different procedures.

74 The applicant also recalls that it is not necessary for an act to be communicated directly to the persons affected thereby for it to be capable of directly affecting a specific legal situation (*Devillez and Others* v *Parliament*, cited at paragraph 69 above, paragraphs 12 to 15).

75 The applicant submits that the decision of 17 October 1996 manifestly constitutes an act adversely affecting him within the meaning of Article 90(2) of the Staff Regulations, since it excludes him from the benefit of the 1976 Decision.

76 In the applicant's view, the decision of 4 December 1996 has no bearing on the legality of the decision of 17 October 1996. Each of those procedures was taken under different provisions of the Staff Regulations and have a different purpose, since the first challenges a decision not to commence a procedure leading to the holding of a competition under the 1976 Decision, whilst the other is a request for establishment addressed directly to the President of the Court by the applicant and submitted *à titre conservatoire*.

77 The applicant considers that if it were to be superfluous to consider the question of the legality of the decision of 17 October 1996, the Court of First Instance should rule that there is no need to give a decision on that part of the application, but should not hold it inadmissible.

Findings of the Court

78 The admissibility of the application in Case T-221/97, in so far as it is directed against the decision of the President of the Court of 4 December 1996, is not disputed, in so far as that decision constitutes an individual decision in response to the request submitted by the applicant within the meaning of Article 90(1) of the Staff Regulations.

79 It follows that it is necessary only to consider the admissibility of the application in so far as it is directed against the decision of the President of the Court of 17 October 1996.

80 The defendant disputes the admissibility of the application against the decision of the President of the Court of 17 October 1996 essentially on two grounds: the decision of the President of the Court of 17 October 1996 was not addressed to the applicant and constituted a reply to a request submitted, not by the applicant, but by Judge Murray; and, secondly, it was only a preparatory act.

81 Those objections cannot be accepted, since the admissibility of this application is apparent *a fortiori* from the reasoning set out above in relation to the examination of the admissibility of the application in Case T-66/96.

82 As regards, first, the fact that the decision of the President of the Court of 17 October 1996 is the reply to the request submitted by Judge Murray and not to an individual request submitted by the applicant, the Court finds, as is apparent from Judge Murray's letter of 11 July 1996, that it was at the express request of the applicant that Judge Murray formally asked the President of the Court to commence the procedure for his establishment. That request was quite unambiguous in so far as it was clearly seeking to obtain the commencement of the establishment procedure. It follows that, notwithstanding the fact that it was formally submitted by the applicant's immediate superior and not by the applicant himself, it must be construed as a request within the meaning of Article 90(1) of the Staff Regulations (see, to that effect, the judgment in *Devillez and Others* v *Parliament*, cited at paragraph 69 above). Furthermore, in the present case, the request was submitted in accordance with the formal requirements and conditions laid down in the 1976 Decision, which expressly provides that the procedure for the establishment of drivers is commenced on a written proposal from the Member of the Court to whom the driver is assigned.

83 In any event, even supposing that Judge Murray's memorandum cannot be construed as a request within the meaning of Article 90(1) of the Staff Regulations, it is sufficient to recall that it is only in the absence of an act having adverse effect within the meaning of Article 90(2) of the Staff Regulations that an official must submit a prior request to the appointing authority. In the present case, there is no doubt that the decision of 17 October 1996 constitutes an act adversely affecting the applicant by directly affecting his legal situation. It was issued by the competent authority and embodies the administration's definitive view concerning the individual situation of the applicant.

84 The fact that the decision of the President of the Court of 17 October 1996 was not addressed to the applicant cannot invalidate that conclusion. It has been held that the fact that an official was informed only orally of the refusal of a request, formally addressed to his immediate superior, cannot prevent such a refusal from constituting a decision adversely affecting that official (*Devillez and Others* v *Parliament*, cited at paragraph 69 above, paragraphs 13 and 14). Likewise, according to the case-law of the Court of Justice, oral decisions can constitute acts adversely affecting the persons concerned (Case 316/82 *Kohler* v *Court of Auditors* [1984] ECR 641, paragraphs 8 to 13).

85 Finally, the fact that the appointing authority subsequently adopted and informed the applicant of the decision of the President of the Court of 4 December 1996 cannot alter the fact that the decision of 17 October 1996 is an act having adverse effect. The communication of the decision of 4 December 1996 is an act subsequent to the decision of the President of the Court of 17 October 1996 already adopted and having prior existence (Case T-113/95 *Mancini* v *Commission* [1996] ECR-SC I-A-185 and II-543).

86 As regards, second, the claim that the decision of 17 October 1996 constituted only a preparatory act, it is sufficient to note that it states the clear, unconditional and definitive refusal by the competent authority to grant the request for commencement of the procedure for establishment of the applicant, which was submitted by Judge Murray in accordance with the procedure laid down in the 1976 Decision. It follows that the negative response of the President of the Court of 17 October 1996 to Judge Murray's request cannot in any case be regarded as a purely internal measure in an exchange of correspondence within the institution but is indeed in the nature of a decision.

87 It follows from the foregoing that the application in Case T-221/97 is admissible in so far as it concerns the application for annulment of both the decision of the President of the Court of 17 October 1996 and the decision of the President of the Court of 4 December 1996.

Substance

88 Since the two actions are admissible and, as the parties agree, concern decisions concerning the same substantive issue, the Court will first consider the legality of the very first decision, namely that of the Administrative Committee of 14 June 1995.

89 The applicant puts forward five pleas in support of his application against that decision. The first alleges breach of Article 25 of the Staff Regulations; the second alleges breach of the principle of equal treatment; the third alleges breach of the principle of the protection of legitimate expectations; the fourth alleges breach of the prohibition of retroactive withdrawal of a legal measure which has conferred individual rights; and the fifth alleges that the applicant's legitimate rights and interests were not taken into account.

90 The Court considers that, in the present case, it is appropriate to start by considering the plea of breach of the principle of the protection of legitimate expectations.

Breach of the principle of the protection of legitimate expectations

91 The applicant, referring to the settled case-law on the principle of the protection of legitimate expectations, submits that unequivocal representations were made to him by a Member of the Court and by members of staff acting in the course of their duties as to his prospects of becoming a permanent official and it was on the basis of those representations that he accepted the post and disrupted his personal life and changed his professional career.

92 Whilst taking note, in the reply, that the content of those representations is not disputed by the defendant, the applicant claims that both the source and the nature of those representations had led him to expect that the procedure leading to his establishment as a permanent official would be applied. Contrary to the situation in *Vlachou* v *Court of Auditors* (Case 162/84 [1986] ECR 481, paragraphs 5 and 6), where the Court held that the promises of establishment made to the applicant could not create any legitimate expectation since they did not take account of the competition procedure, which is the only means of acceding to an official's post in the institutions, the representations made in the present case were in conformity with Article 29(1) of the Staff Regulations, since according to them an internal competition procedure would be commenced which would lead to the applicant's establishment as a permanent official. Second, those representations were based

upon a correct interpretation of the practice applied by the Court in relation to the recruitment and establishment of drivers.

93 The applicant considers that, since he satisfied the conditions for recruitment and establishment as provided for by the Court's practice, he is not relying upon unlawful acts committed by the Court in favour of others and that the Administrative Committee's decision of 14 June 1995 should be annulled on the ground that it breaches the principle of the protection of legitimate expectations.

94 As far as the question of legality of the 1976 Decision is concerned and the bearing which that question has on the question whether the decision of 14 June 1995 was well founded, the applicant puts forward five arguments.

95 First, the applicant reminds the Court that it is established case-law that, in principle, acts of the institutions are presumed to be lawful and accordingly produce legal effects, even if they are tainted by irregularities, until such time as they are annulled or withdrawn (Joined Cases 7/56, 3/57 to 7/57 *Algera* v *Common Assembly* [1957-1958] ECR 39, more specifically, p. 61; Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 48). The defendant has not proved that the 1976 Decision amounted to a misuse of powers, that is to say that it was taken with the exclusive purpose, or at any rate main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (Case C-331/88 *The Queen* v *Ministry of Agriculture, ex parte Fedesa and Others* [1990] ECR I-4023, paragraph 24).

96 Second, even if the holding of internal competitions on the basis of the 1976 Decision was contrary to the Staff Regulations, there is nothing to prevent the defendant from organising any future competition under the 1976 Decision in compliance with the Staff Regulations.

97 Third, the applicant claims that, if the 1976 Decision was illegal, the defendant can revoke an illegal decision retroactively only where proper consideration is given to the principle of legal certainty (Case 111/63 *Lemmerz Werke* v *High Authority* [1965] ECR 677). The Administrative Committee did not take account of the applicant's circumstances when it adopted the contested decision of 14 June 1995.

98 Fourth, the defendant cannot invoke in these proceedings irregularities which are the consequence of its own conduct (Case 90/71 *Bernardi* v *Parliament* [1972] ECR 603, paragraph 10). Since the defendant never questioned the validity of the 1976 Decision prior to submission of its defence, the applicant is not seeking the benefit of an illegal act but merely the application to his particular circumstances of a decision upon which he was legally entitled to rely.

99 Fifth, if the invalidity of the 1976 Decision was, as the defendant asserts, so plain, that decision was void *ab initio,* or even non-existent, and all the appointments establishing drivers assigned to Chambers of Members of the Court made under the authority of that decision are null and void (*Commission* v *BASF and Others*, cited at paragraph 95 above, paragraph 49; Case T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-407, paragraph 84).

100 The defendant claims, first, that the letter from the Deputy Registrar, Mr Cranfield, dated 22 April 1992 cannot be regarded as comprising a 'precise assurance' within the meaning of the case-law (Case T-123/89 *Chomel* v *Commission* [1990] ECR II-131, paragraph 25) because, on the one hand, the letter was not addressed to the applicant but to a third party, the Secretary of the Department of Defense and, on the other, because it was hedged about with important restrictions.

101 Second, the defendant does not dispute that Judge Murray, Ms Mixture and the Deputy Registrar gave the applicant oral assurances such as to lead him to believe that the procedure for the establishment of drivers under the 1976 Decision would be applied to him, but contends that such oral assurances cannot give rise to legitimate expectations. It reminds the Court that promises which do not take

account of the provisions of the Staff Regulations cannot give rise to legitimate expectations on the part of the person concerned (*Chomel* v *Commission,* cited at paragraph 100 above; Case T-20/91 *Holtbecker* v *Commission* [1992] ECR II-2599; Case T-534/93 *Grynberg and Hall* v *Commission* [1994] ECR-SC I-A-183 and II-595).

102 Third, the defendant argues that the procedure for the establishment of drivers provided for by the 1976 Decision constituted a misuse of powers since the successful candidate in the internal competition was designated in advance. The defendant points out that, according to the case-law of the Court (Case 105/75 *Giuffrida* v *Council* [1976] ECR 1395; Case 142/85 *Schweiring* v *Court of Auditors* [1986] ECR 3177), a competition organised by the appointing authority for the sole purpose of remedying the anomalous administrative status of a specific official and of appointing that official to the post declared vacant is contrary to the aims of any recruitment procedure and thus constitutes a misuse of powers. The defendant points out that the applicant is demanding that it organise a competition in which he is guaranteed in advance of being the successful candidate. It is not bound by any rule of law to perform such an unlawful act.

103 Finally, the defendant contends that the case-law concerning the withdrawal of illegal administrative acts relied on by the applicant and, in particular, the judgment in Case C-90/95 P *De Compte* v *Parliament* [1997] ECR I-1999, paragraph 35) relates only to acts addressed to the person concerned, whilst the 1976 Decision is a general measure for the organisation of the Court's services and not an individual act conferring rights on the applicant and, moreover, was never addressed to the applicant.

Findings of the Court

104 The principle that legitimate expectations should be respected is one of the fundamental principles of the Community (Case 112/80 *Dürbeck* [1981] ECR 1095, paragraph 48). According to settled case-law, the right to rely on this principle extends to any individual who is in a situation in which it is clear that the

Community administration has, by giving him precise assurances, led him to entertain reasonable expectations (Case T-3/92 *Latham* v *Commission* [1994] ECR-SC II-83, paragraph 58; *Grynberg and Hall* v *Commission*, cited at paragraph 101 above, paragraph 51; Case T-235/94 *Galtieri* v *Parliament* [1996] ECR-SC I-A-43 and II-129, paragraph 63; Case T-207/95 *Maria de los Angeles Ibarra Gil* v *Commission* [1997] ECR-SC I-A-13 and II-31, paragraph 25; Case T-211/95 *Petit-Laurent* v *Commission* [1997] ECR-SC I-A-21 and II-57, paragraph 72; *Chomel* v *Commission*, cited at paragraph 100 above, paragraph 26; Case T-498/93 *Dornonville de la Cour* v *Commission* [1994] ECR-SC II-813, paragraph 46; Case T-35/96 *Lars Bo Rasmussen* v *Commission* [1997] ECR-SC I-A-61 and II-87, paragraph 63).

105 It is therefore necessary to consider whether the administration gave the applicant precise assurances and, if so, whether they led him to entertain reasonable expectations.

106 As to the question whether the applicant did receive precise assurances, it is sufficient to observe, without there being any need to consider whether the Registrar's letter of 22 April 1992 is capable of providing proof of such assurances, that the defendant expressly stated that it does not dispute the applicant's contentions concerning the information given to him, before his entry into service, with a view to his entry into service. In particular, Judge Murray informed him that he would become an established official after three years' service provided that he himself proposed it and Mr Cranfield, the Deputy Registrar, confirmed to him that any change in the practice laid down in the 1976 Decision would apply only to those drivers who entered into service after that time and that the procedure leading to his establishment would commence in the autumn of 1994. Similarly, the defendant has not disputed the applicant's assertion that Judge Murray told him in July 1994 that the Registrar had assured him that his establishment as a permanent official would proceed in due course.

107 Since that information was precise, unconditional and consistent and came from authorised and reliable sources, it follows that the administration gave the applicant precise assurances. The fact that the information was given orally, rather than in writing, cannot alter this finding.

108 Next, it is necessary to consider whether those assurances could have given rise to reasonable expectations within the meaning of the aforementioned case-law.

109 According to settled case-law, even if an official receives incorrect confirmation from the administration of the entitlement he is claiming, such an undertaking cannot create a legitimate expectation, since no official of a Community institution can give a valid undertaking not to apply Community law (*Chomel* v *Commission*, cited at paragraph 100 above, paragraph 28). It is also clear from that case-law that promises which do not take account of provisions of the Staff Regulations cannot give rise to a legitimate expectation on the part of the person concerned (*Vlachou* v *Court of Auditors*, cited at paragraph 92 above, *Chomel* v *Commission*, cited at paragraph 100 above, paragraph 30).

110 In the present case, the expectation which the applicant is asking to be respected is not based on an undertaking by the administration not to apply Community law but arises from the precise assurances which were given to him that the establishment procedure laid down in the 1976 Decision would be applied to him provided that the Member of the Court proposed that it be done.

111 The defendant submits, however, that those assurances could not give rise to reasonable expectations on the ground that the decision of 30 June 1976 is clearly unlawful in so far as it provides for the holding of an internal competition in which the successful candidate is designated in advance.

112 It maintains that choosing the successful candidate in a competition in advance constitutes a misuse of power. The holding of such a competition is contrary to the Staff Regulations and to the principle of equal treatment.

113 It is therefore necessary to consider whether the 1976 Decision is clearly unlawful in so far as it constitutes a misuse of power.

114 Point 2 of the 1976 Decision provides: '(a) The establishment procedure may be commenced after three years' service on a proposal from the Member to whom the driver is assigned. (b) After an internal competition, drivers shall be appointed probationary officials in career bracket D 3 – D 2 ...'

115 Contrary to the defendant's assertion, the 1976 Decision does not therefore provide for the holding of a sham competition in which the successful candidate is designated in advance, but lays down a condition for participation in an internal competition for drivers, namely completion of three years' service to the satisfaction of the Member concerned and a proposal by the latter that the establishment procedure be commenced. The 1976 Decision does not provide that the driver, a member of the temporary staff, taking part in such an internal competition will necessarily be established. Likewise, the 1976 Decision does not provide that only one candidate may be permitted to participate in the internal competition in which there will automatically be a successful candidate. Furthermore, the decision does not prevent the Court from periodically holding an internal competition for drivers in which drivers having already completed three years' service to the satisfaction of the Member to whom they are assigned may participate and in which the number of successful candidates need not necessarily be the same as the number of candidates. The 1976 Decision merely lays down certain conditions for participation in an internal competition for drivers, but does not prevent the Court from organising that competition in accordance with the Staff Regulations and the general principles relating to the Community civil service.

116 It follows that the establishment procedure provided for in the 1976 Decision is not clearly contrary to the Staff Regulations. The precise assurances given to the applicant could therefore have led the applicant to entertain reasonable expectations as regards the possibility of participating in an internal competition.

117 In any event, even if the 1976 Decision were unlawful, the assurances given to the applicant were by nature such as to lead him to entertain reasonable expectations.

118 First, it is to be remembered in this regard that, according to settled case-law, acts of the Community institutions are, in principle, presumed to be lawful and accordingly produce legal effects, even if they are tainted by irregularities, until such time as they are annulled or withdrawn (*Commission* v *BASF and Others*, cited at paragraph 95 above, paragraph 48).

119 In the present case, it is not disputed that on the day when the contested decision was adopted the 1976 Decision had not been annulled nor been the subject of any proceedings for a declaration that it was unlawful. As the applicant points out, it was in fact only in its defence that the defendant submitted for the first time that the 1976 Decision was clearly unlawful. Moreover, it is apparent from the documents before the Court, in particular point 3 of Mr Pommiès' memorandum of 9 June 1994 to the Registrar of the Court and page 2 of the Registrar's memorandum to Judge Murray of 7 March 1995, that it was in order to preserve the freedom of Members to choose their close collaborators, and not in order to abolish rules purported to be clearly unlawful, that the defendant accepted the proposal to ask the budgetary authority to regroup, in the temporary posts, the drivers' posts in Category D.

120 Second, it follows from settled case-law that while it must be acknowledged that any Community institution which finds that a measure which it has just adopted is tainted by illegality has the right to withdraw it within a reasonable period, with retroactive effect, that right may be restricted by the need to fulfil the legitimate expectations of a beneficiary of the measure, who has been led to rely on the lawfulness thereof (*de Compte* v *Parliament*, cited at paragraph 103 above, paragraph 35; Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749, paragraphs 10 to 12; Case 15/85 *Consorzio Cooperative d'Abruzzo* v *Commission* [1987] ECR 1005, paragraphs 12 to 17).

121 Contrary to the defendant's assertion, it follows from the case-law that that principle may not only be relied upon by a person to whom an individual administrative measure is addressed, but may also apply in respect of a general measure (see, in particular, Case C-248/89 *Cargill* v *Commission* [1991] ECR I-2987, paragraph 20; Case C-365/89 *Cargill* [1991] ECR I-3045, paragraph 18; Case 120/86 *Mulder* v *Ministre de l'Agriculture et de la Pêche* [1988] ECR 2321; Case 84/78 *Tomadini* v *Administrazione delle finanze dello Stato* [1979] ECR 1801; Case 224/82 *Meiko-Konservenfabrik* v *Germany* [1983] ECR 2539).

122 In the present case, it is not disputed that precise assurances were given to the applicant by reliable sources within the institution, namely a Member of the Court and the Deputy Registrar, and that those assurances were not based on a clear misreading of the rules of law applicable but were, on the contrary, based on the rules in force, namely the 1976 Decision which, on the one hand, had been adopted and consistently applied for almost 20 years by the members of the highest Community court and, on the other, provided for the possibility of establishment after an internal competition, in accordance with Article 29(1) of the Staff Regulations. In those circumstances, it cannot be argued that the 1976 Decision was so tainted with illegality that the applicant, a member of the temporary staff in Category D, should have known that he could not rely upon it.

123 It follows from the foregoing that the precise assurances given to the applicant could have led him to entertain reasonable expectations as to the possibility of his participating in an internal competition in accordance with the establishment procedure provided for by the 1976 Decision. It must also be observed that the proposal for the repeal of the 1976 rules, dated February 1993, expressly provided that, as a transitional measure, the driver who was recruited on 16 May 1992 under the 1976 Decision, namely the applicant, could remain subject to the provisions of that decision and go through an establishment procedure after three years' service, on a proposal from the Member concerned.

124 It follows that the plea of failure to protect legitimate expectations is well founded and that the Administrative Committee's decision of 14 June 1995 must be annulled.

125 In the present case, however, the Court considers it appropriate to examine also the plea of breach of the principle of equal treatment.

The plea of breach of the principle of equal treatment

Arguments of the parties

126 The applicant submits that, since 16 May 1995, he has satisfied the conditions for recruitment and establishment as a Member's driver. He claims that the Administrative Committee's decision of 14 June 1995 therefore contravenes the principle of equal treatment since it amounts to a refusal to apply an established procedure for his benefit in circumstances where that procedure had been systematically applied to other persons in identical circumstances, without any justification being given for that difference in treatment.

127 The defendant maintains that the procedure for the establishment of drivers laid down by the 1976 Decision constituted a misuse of power, since the successful candidate in the internal competition was designated in advance. Referring to the case-law according to which no one may plead in his own cause an unlawful act committed in favour of another (Case 134/84 *Williams* v *Court of Auditors* [1985] ECR 2225; Case T-30/90 *Zoder* v *Parliament* [1991] ECR II-207), the defendant contends that the applicant may not, in the name of the principle of equality of treatment, rely on the fact that other drivers benefited from competitions vitiated by a misuse of power. In its view, the plea of breach of the principle of equal treatment is therefore unfounded.

128 The applicant submits that the defendant's argument that no one may plead in his own cause an unlawful act committed in favour of another is not relevant since the 1976 Decision is lawful.

Findings of the Court

129 According to settled case-law, the principle of equal treatment is breached where two categories of person whose legal and factual circumstances disclose no essential difference are treated differently (Case T-211/95 *Petit-Laurent* v *Commission* [1997] ECR-SC II-57, paragraph 56).

130 As was found in the examination of the previous plea, the defendant has not put forward any arguments or evidence enabling the Court to conclude that the 1976 Decision was unlawful. In relying on the fact that all the drivers who were members of the temporary staff have been established in accordance with the 1976 Decision, the applicant is not therefore basing his case on an unlawful act committed in favour of another.

131 In order to determine whether the refusal to commence the procedure for the establishment of the applicant constitutes a breach of the principle of non-discrimination, it is necessary to consider whether the factual and legal circumstances of the applicant were actually the same as those of the drivers who had been established previously.

132 It is apparent from the documents before the Court that all the drivers who were established before the applicant on the basis of the 1976 Decision were established before 11 July 1994. In so far as the defendant purportedly repealed the 1976 Decision on 11 July 1994 in order to replace it with new rules, it is necessary to determine whether the applicant's circumstances are comparable to those of the drivers who had the possibility of taking part in a competition under the 1976 Decision.

133 It is therefore necessary to consider whether the Court validly adopted on 11 July 1994 a decision repealing the 1976 Decision.

134 The decision of 11 July 1994, which appears at point 8 of the minutes of the Court's administrative meeting of 11 July 1994, states, under the heading '8. Budget – lettre rectificative "l'élargissement" à l'état prévisionnel 1995' [Budget – amendment to the estimate for 1995 (enlargement)] : 'La Cour adopte l'état prévisionnel 1995 amendé incorporant les demandes budgétaires liées à l'élargissement ...' [The Court adopts the amended estimate for 1995 incorporating the budgetary requests relating to enlargement ...] 'La Cour approuve également la proposition de demander à l'autorité budgétaire une modification du tableau des effectifs consistant à regrouper dans les emplois temporaires, avec les emplois de référendaires, l'ensemble des emplois affectés aux cabinets des membres, c'est-à-dire les emplois B et C du personnel de secrétariat et les emplois D des chauffeurs ...' [The Court also approves the proposal to ask the budgetary authority for a modification of the Court's list of posts consisting of regrouping in the temporary posts, along with the legal secretaries' posts all of the posts assigned to the Chambers of the Members of the Court, that is to say the secretarial posts in Categories B and C and the drivers' posts in Category D ...].

135 Without it being necessary to consider whether, as the defendant submits, the repeal of the establishment procedure laid down in the 1976 Decision is merely a general measure of the services of the Court which does not require approval by the budgetary authority, it is sufficient to point out that, in the present case, the Court has not adopted any such decision. As is apparent from the very wording of the decision of 11 July 1994, the defendant did not decide to repeal the 1976 Decision and thenceforth modify the system of recruitment and establishment of drivers, but merely asked the budgetary authority for a modification of its list of posts. Furthermore, as the defendant has pointed out, that request had still not been approved by the budgetary authority when the contested decision was adopted but was only approved when the 1998 budget was adopted. The Court observes that the documents annexed by the defendant to its defence also corroborate that view. Mr Pommiès states expressly in his memorandum of 6 June 1995 that the matter of the proposal for repealing the 1976 Decision, which was put to the meeting of the Administrative Committee on 15 February 1993, had been deferred to a subsequent meeting but that it had not been re-entered on the agenda and that 'les modalités de recrutement et de nomination des chauffeurs de membres sont actuellement régies par une décision prise par la Cour lors de sa réunion administrative du 30 juin 1976' [The detailed rules for the recruitment and appointment of drivers of Members of the Court are currently governed by a decision adopted by the Court at its administrative meeting of 30 June 1976]. In view of all the foregoing, it follows that, on the day on which the contested decision was adopted, the 1976 decision had not been validly repealed.

136 Furthermore, in order validly to repeal the 1976 Decision, the Court should have observed the administrative law principle of following the same procedures. The 1976 Decision had been adopted after consultation of the Staff Committee, in accordance with Article 2 of the decision of 31 October 1974 on the establishment of a Staff Committee, but the latter was not consulted before the adoption of the decision of 11 July 1994.

137 It follows from the foregoing that, at least on the day on which the contested decision was adopted, the decision of 11 July 1994 had not had the effect, or even the implicit effect, of validly repealing the 1976 Decision.

138 It follows that, at the time when the contested decision was adopted, the applicant was in a situation comparable to the situation of drivers previously admitted to a competition held under the 1976 Decision. Accordingly, it must be held that Mr Mellett suffered discrimination.

139 The plea of breach of the principle of equal treatment is therefore well founded, too.

140 It follows from all the foregoing that the decision of the Administrative Committee of the Court of 14 June 1995 must be annulled. It is therefore not necessary to consider the other pleas raised by the applicant.

141 Finally, the Court notes that in Case T-221/97 the applicant has raised the same pleas in relation to the two decisions of the President of the Court of 17 October 1996 and 4 December 1996 and that those decisions are affected by the same flaws as the decision of 14 June 1995. It follows that, on the same grounds, the two decisions of the President of the Court of 17 October 1996 and 4 December 1996 must also be annulled in so far as they refuse to allow the establishment procedure provided for in the 1976 Decision to be commenced for the applicant.

Costs

142 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the Court of Justice has been unsuccessful and since the applicant has asked for costs to be awarded against it, the Court of Justice must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Joins Cases T-66/96 and T-221/97 for the purposes of the judgment;**

2. **Annuls the decision of 14 June 1995 of the Administrative Committee of the Court of Justice, as it is apparent from point 4 of the minutes, and the decisions of the President of the Court of Justice of 17 October 1996 and 4 December 1996 not to commence the procedure which could have led to the establishment of the applicant as a permanent official;**

3. **Orders the Court of Justice to pay the costs in Case T-66/96 and in Case T-221/97.**

Azizi García-Valdecasas Jaeger

Delivered in open court in Luxembourg on 21 July 1998.

H. Jung
Registrar

J. Azizi
President