

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
28 March 1996 *

(Officials – Recruitment – Competition for category C – Refusal to admit to
the competition – Candidates holding a university degree)

In Case T-60/92,

Muireann Noonan, a member of the temporary staff at the Court of Justice of the European Communities, represented in the written procedure by James O'Reilly, Senior Counsel, of the Bar of Ireland, and at the hearing by Onno Brouwer, of the Amsterdam Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

Commission of the European Communities, represented by John Forman, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Selection Board in Competition COM/C/741 not to admit the applicant to the competition, communicated to her on 9 June 1992,

* Language of the case: English

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

composed of: A. Saggio, President, V. Tiili and R.M. Moura Ramos, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 7 February 1996,

gives the following

Judgment

Facts and procedure

1 The applicant, a member of the temporary staff of the Court of Justice of the European Communities, applied to take part in Open Competition COM/C/741, which was organized by the Commission of the European Communities in order to constitute a reserve of English-language typists (C5/C4) (OJ 1991 C 333A, p. 11).

2 By letter dated 9 June 1992 (Annex C to the application) she was informed of the Selection Board's decision to reject her application in accordance with point II (Eligibility for Admission to the Competition) B (Special Conditions) 2 (Certificates and Diplomas required) of the competition notice on the ground that she had completed a university course and obtained an honours degree in French and Italian literature at University College, Dublin.

3 The abovementioned provisions in the competition notice were worded as follows:

'The following are not eligible, under penalty of exclusion from the competition and/or subsequent disciplinary measures under the Staff Regulations:

- (i) candidates with a degree or diploma qualifying them to enter an A or LA competition (see table attached to the Guide);
- (ii) candidates who are in the final year of such a course.'

As regards degrees and diplomas awarded in Ireland, the abovementioned table attached to the Guide to Candidates Taking Part in Interinstitutional Competitions or in Open Competitions Organized by the Commission (hereinafter 'the Guide') which was also published in the *Official Journal of the European Communities* 1991 C 333A, just before the competition notice in question, required a university degree for admission to A and LA competitions.

4 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 21 August 1992, the applicant sought the annulment of the decision of the Selection Board not to admit her to the competition. She claimed that the abovementioned provisions in the notice of competition on which the decision not to admit her to the competition was based were unlawful.

5 On 23 December 1992 the Commission raised an objection on the admissibility of the action based on the argument that in an action challenging a decision of a Selection Board for a competition an official may not rely on irregularities in the competition notice if he has not challenged in good time the provisions of the notice which, in his view, adversely affect him.

- 6 By judgment of 16 September 1993 in Case T-60/92 *Noonan v Commission* ([1993] ECR II-911) the Court of First Instance (Fourth Chamber) dismissed the objection and declared the application admissible in its entirety.
- 7 The appeal against that judgment lodged by the Commission on 19 November 1993 was dismissed by judgment of the Court of Justice of 11 August 1995 in Case C-448/93 P *Commission v Noonan* ([1995] ECR I-2321).
- 8 During the appeal the written procedure before the Court of First Instance continued; it was closed on 30 September 1994. After hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) opened the oral procedure without any preparatory inquiry. The parties presented oral argument and their replies to the questions put by the Court of First Instance at the hearing on 7 February 1996. At the end of the hearing the President declared the oral procedure closed.

Forms of order sought

- 9 The applicant claims that the Court of First Instance should:
- annul the Commission's Decision of 9 June 1992 rejecting her application to take part in Open Competition COM/C/741;
 - order the defendant to pay the costs.

The defendant contends that the Court of First Instance should:

- reject the application;
- order the applicant to pay the costs.

Substance

- 10 In support of her action and in order to demonstrate the unlawfulness of the provisions in the competition notice on which the decision not to admit her to the competition was based the applicant relies on five pleas: breach of Articles 27(1) and 5(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), breach of Article 1(1) of Annex III to the Staff Regulations, and failure to have regard for the principle of equal treatment and the freedom to pursue trade or professional activities.
- 11 The Court considers that the arguments concerning the first four pleas should be examined together; those pleas are set out below in the order followed by the parties.

Summary of the parties' arguments

Breach of Article 27(1) of the Staff Regulations

- 12 The applicant argues that notwithstanding the wide discretion enjoyed by the appointing authority in deciding what qualifications are required for the posts to be filled, the rule excluding candidates with degrees qualifying them to enter A or LA competitions (or candidates in the final year of a degree course) is incompatible with Article 27 of the Staff Regulations. It has no bearing on the ability of such candidates to carry out the duties corresponding to the relevant category (see the judgment of the Court of First Instance in Case T-56/89 *Bataille and Others v Parliament* [1990] ECR II-597, paragraph 48), in this case category C, which is for staff engaged in clerical duties requiring secondary education or equivalent professional experience (Article 5(1), fourth paragraph, of the Staff Regulations). In particular, an individual's ability to carry out certain tasks cannot be impaired by reason of the fact that she has acquired qualifications or experience additional to and independent of those demanded for those tasks.

- 13 In this case, the applicant points out that in any event the fact that she has a university degree has no bearing on her ability to carry out her duties as a category C official because she has been working as a typist in the Court of Justice for a considerable time. Consequently, by taking that degree into account when considering her application the defendant was manifestly in breach of Article 27 of the Staff Regulations.
- 14 The Commission argues that admitting university-educated applicants to category C competitions would have a number of negative effects on the efficient management of the secretarial services (see paragraphs 16, 18 and 20 below). In view of those effects and the Commission's wide discretion in laying down the recruitment criteria it considers that it may exclude that category of candidates from such competitions without thereby breaching Article 27 of the Staff Regulations. However, it concedes that that may not necessarily be so in other institutions, where their structure and the number of category C employees may justify a policy different to that followed by the Commission.
- 15 The applicant makes the general point that the arguments pertaining to the efficient management of its services relied on by the Commission have no basis in actual experience. In any event, the European Parliament, the Court of Justice and the Court of Auditors do not share the Commission's policy as expressed in the contested provisions of the competition notice.
- 16 The first argument put forward by the Commission regarding the requirements of good administration is that admitting candidates with university qualifications, who can express themselves more fluently than other candidates, would reduce the prospects of the latter or would even have the effect of eliminating them all, despite the fact that they are able to meet all the Commission's requirements as regards the relevant duties. In any event, the fact that at a particular moment there may be a surplus of 'over-qualified' applicants cannot affect the validity of that argument.

- 17 Neither the entry requirements for the competition nor the nature of the tests to be passed supports the existence of the risk alleged by the Commission.
- 18 Secondly, the Commission considers that precisely because of their university education such officials, once recruited in category C, might sooner or later become frustrated with having to perform on a daily basis the duties attaching to that category and for which they were employed. That might have a negative effect on their own work, on that of their colleagues in category C who did not have a university qualification and, generally, on the working atmosphere in their unit. Thus, in a study made by the Commission in 1992 (doc. IX/621/92, entitled 'Secretarial Staff at the Commission' and annexed to the rejoinder) on the situation of secretaries in the Commission, which has not changed since then, it is pointed out that secretaries recruited under the Staff Regulations, who are highly qualified as a result of the very stringent nature of the competitions, feel a sense of frustration because due to their place in the work and structure of the Commission their duties (typing and relatively simple tasks) do not in themselves require such a high standard. That frustration may lead rapidly to demotivation, so that they seek to leave traditional secretarial work and take on duties where they will enjoy greater responsibility and freedom of action. In that context the Commission points out that only a very few officials are promoted each year to category B following an internal competition. All those difficulties regarding the 'frustration' and 'demotivation' of category C staff would be aggravated if university-educated applicants were admitted to competitions for that category. The applicant has not shown how, other than by the means she challenges in this case, it would be possible to exclude persons liable to become disenchanted subsequently with their work.
- 19 The applicant replies that it has not been shown that university-educated category C officials are more prone to frustration than their colleagues without degrees. Frustration being a personal sentiment, it is necessary to consider the personality, character and background of each candidate and, more generally, the importance they attach to their degrees as regards career prospects or their activities and concerns outside work. One must distinguish between degrees regarded as a means of broadening general education and those which lead to a professional qualification. Moreover, there may be a personal preference for work in an international or multilingual context rather than a post, even of a higher level, in the Member State

of origin, particularly in the case of a peripheral Member State. Allowance must also be made for the different conditions obtaining in the Member States as regards the availability of employment, the status attaching to different jobs and the cost of labour. All those factors may be examined in the context of the interview provided for in the relevant competition notice or by means of the additional tests which the institution is free to arrange.

20 Thirdly, the Commission points out how damaging it would be to the career prospects of other officials in category C to recruit candidates with university qualifications. In the first place, as regards the (ever-decreasing) possibility of passing an internal competition for promotion to category B, the latter applicants would have better chances than, and even an 'unfair' advantage over, their colleagues, the qualification embodied in a degree being easier to judge, because of its objective nature, than experience gained in the service, the assessment of which necessarily involves subjective elements. The Commission recruits staff into category C so that they may carry out the duties attaching to that category throughout their career, not in order that they may take up such duties with a view to gaining access to posts better suited to their qualifications. A similar advantage might arise, for much the same reasons, in the case of promotions within category C. The Commission is concerned to ensure that staff in that category have fair prospects of promotion.

21 As regards the 'unfair' advantage which the Commission claims university-educated category C officials would enjoy in internal category B competitions, the applicant points out that such an 'unfair' advantage could only be present if in such competitions the Commission itself, wrongly, gave priority to qualifications over experience acquired in the service. At the hearing she added that it is for the Commission to determine fair criteria for promotion of category C officials. It is not obliged to give priority systematically to graduates.

Breach of Article 5(1) of the Staff Regulations

22 The applicant submits that the institution has a duty to ensure that the requirements which must be satisfied for admission to an open competition show a link with the

duties which the successful candidates may be asked to perform. The reasoning which led the Court of First Instance to hold that 'experience' for the purposes of Article 5(1) must be interpreted in the light of the aims of the competition (judgment of the Court of First Instance in Case T-50/89 *Sparr v Commission* [1990] ECR II-207, paragraph 18) applies *mutatis mutandis* to the qualifications candidates must have (judgment of the Court of Justice in Case 181/87 *Agazzi Léonard v Commission* [1988] ECR 3823, paragraph 27).

- 23 The Commission submits that Article 5 divides the staff into four distinct categories: category C follows categories A and B and each category has its own specific requirements as to qualifications. In the case of category C posts there is a close link between the qualifications demanded of candidates and their obligation, once recruited, to perform the tasks in question. Consequently, the Commission is entitled to, and indeed must, exclude from category C competitions applicants eligible to apply for L or LA posts. At the hearing, the Commission added that Article 5, which appears among the 'General Provisions' of the Staff Regulations, does not merely lay down minimum education requirements but excludes graduates from participating in competitions for that category. That reflects the Commission's need for a very clearly defined staff structure.

Breach of Article 1(1) of Annex III to the Staff Regulations

- 24 The applicant interprets Article 1(1) of Annex III to the Staff Regulations as meaning that the validity of the conditions for admission to a competition must be determined in the light of either that provision or the rules contained in the Staff Regulations (judgment in *Bataille and Others*, cited above, paragraphs 45 and 46). There is nothing in Article 1(1) justifying the exclusion from the competition of candidates with qualifications unconnected with the performance of the duties attached to the post to be filled. Article 1(1)(d), in particular, refers only to the diplomas required for the post to be filled. There is also nothing in the Staff Regulations to justify such an exclusion. Since the disputed condition is therefore not covered by the discretionary power conferred by Article 1 of Annex III, the only one enjoyed by the defendant, its objections regarding the suitability of candidates affected by that condition but who meet the requirements set out in paragraph (d)

of that provision cannot be upheld (judgment in *Bataille and Others*, cited above, paragraphs 59 and 60).

- 25 The Commission contends that Article 1(1)(d), interpreted in the light of Article 5 of the Staff Regulations and the requirement that each institution must be equipped with the staff best capable of performing the duties attaching to category C, makes a specific link between the diplomas and other evidence of formal qualifications or the degree of experience required, on the one hand, and the post to be filled, on the other. The ongoing nature of the job determines what qualifications or experience are required as well as the qualifications (or experience) which result in ineligibility.

Breach of the principle of equal treatment

- 26 The applicant submits that the principle of equal treatment, which is of fundamental importance in European Civil Service law, as confirmed by Article 5(3) of the Staff Regulations, requires that similar situations shall not be treated differently unless that difference in treatment is justified by the existence of substantial objective differences (judgments of the Court of Justice in Joined Cases 17/61 and 20/61 *Klöckner-Werke and Hoesch v High Authority* [1962] ECR 325, at page 345, and Case 215/85 *BALM v Raiffeisen Hauptgenossenschaft* [1987] ECR 1279, paragraph 23). In deciding whether such objective differences exist, regard must be had, according to the applicant, to the aims which the institution may lawfully pursue in the area at issue (judgment of the Court of Justice in Case 250/83 *Finsider v Commission* [1985] ECR 131, paragraph 8).

- 27 In the light of those criteria, the applicant concludes that the contested requirement is incompatible with the principle of equal treatment. Apart from the fact that the candidates affected by that condition hold a university degree, they are in the same situation as all the other candidates who meet the requirements which may be imposed on them in accordance with Article 1(1) of Annex III to the Staff Regulations. However, the difference in the treatment accorded to them compared with that given to the other candidates, including those who have attended university without graduating, is not justified by the existence of objective differences.

Possession of a university qualification is irrelevant to their aptitude to perform the tasks they would be called upon to perform as category C officials.

- 28 She maintains that the requirement has other discriminatory effects. It leads to arbitrary distinction between those who have a university degree when their application is submitted and those who obtain one after having been included on the reserve list or appointed officials. It also places candidates living in the peripheral Member States of the Community at an unfair disadvantage compared with those who live in a more central country because for the former a university qualification may, in the applicant's view, be one of the rare useful means of acquiring the requisite linguistic knowledge.
- 29 The Commission maintains that the contested requirement does not breach the principle of equal treatment. As regards the comparison between the applicant's situation and that of candidates without university qualifications, it points out that such a qualification makes her application incompatible with the nature of the duties to be performed, so that recruiting candidates in that situation would have negative consequences on the operation of the Commission's services. Consequently, subject to special cases (such as where a degree has been obtained after the candidate has been placed on a reserve list), the principle must be upheld that candidates with a university education must not be recruited for permanent clerical tasks.
- 30 As regards the disadvantages which the applicant claims ensue for candidates from peripheral Member States of the Community, the Commission declares that it has no information capable of supporting the applicant's hypothesis for which, moreover, no evidence has been provided.

Findings of the Court

- 31 The Court finds that the arguments submitted by the applicant in support of the four pleas summarized above are based essentially on a single complaint: she considers

that the Commission ought to have treated candidates with a university degree or diploma on the same footing as candidates who, apart from the possession of such a qualification, are in the same situation as those in the first category. By its very nature that complaint casts doubt on the compatibility of the contested requirement in the competition notice with the principle of equal treatment, expressly relied on in the fourth plea. It is therefore appropriate to consider all the arguments regarding that complaint in the light of that principle, observance of which is fundamental to the legality of the various stages of a competition (judgment of the Court of First Instance in Case T-132/89 *Gallone v Council* [1990] ECR II-549, paragraph 35).

- 32 By virtue of that principle it is unlawful, in particular, to treat differently two categories of person whose situations in law and in fact are essentially the same (see the judgment of the Court of First Instance in Joined Cases T-18/89 and T-24/89 *Tagaras v Court of Justice* [1991] ECR II-53, paragraph 68). Since the Commission treated candidates with a university qualification differently to those who had none, it must be ascertained whether there were essential differences between the situations in law and in fact of the two categories.
- 33 For the purposes of that comparison, it is necessary to take into account the general principle laid down in the first paragraph of Article 27 of the Staff Regulations, on which the first plea relied on in support of the application is based, and which provides that recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity. That is the principle relied on by the Commission, *inter alia*, in order to justify distinguishing, for a number of reasons, between those two categories.
- 34 Before examining those reasons in detail the Court of First Instance finds, *in limine*, that there is no technical reason to conclude that possession of a university qualification would prevent the candidates concerned from performing the duties attached to the post to be filled or that it would have a negative effect on the quality of their work or their efficiency. Consequently, in that regard, the criteria set out in Article 27 do not justify excluding them from the competition.

- 35 As far as the details of the reasons relied on by the Commission are concerned, they relate, in the first place, to the career interests of the candidates who have no university qualification, that is to say their chances of passing the competition (see paragraph 16 above) and, once recruited, of being promoted or passing an internal competition enabling them to move from category C to category B (see paragraph 20, above). In the second place, the Commission claims that it wishes to avoid the negative consequences, should graduates become frustrated by the daily tasks they will have to perform after recruitment, on their own work and on working conditions around them (see paragraph 18, above). Those reasons will be examined in the order in which they have just been described.
- 36 The Commission maintains that if it did not exclude graduates other candidates' chances of passing the competition would be reduced or even eliminated. That argument cannot be upheld because in no way does it call in question the ability of candidates in the first of those categories to accomplish the tasks which successful candidates in the competition will be called upon to perform, in the same way as other candidates, and to satisfy the criterion laid down in the first paragraph of Article 27 of the Staff Regulations.
- 37 In order to show that graduates are at an advantage as regards promotion within category C and internal competitions for category B, the Commission explains that because a university degree or diploma is objective by nature it is easier to assess the qualifications it implies than it is to assess experience acquired in the service, the appreciation of which necessarily entails subjective elements. That argument must likewise be rejected. In the first place, in each promotion procedure or internal competition the appointing authority is bound to lay down the selection criteria in accordance with the interests of the service (see, for promotions, the judgment of the Court of Justice in Case 306/85 *Huybrechts v Commission* [1987] ECR 629, paragraph 10; and for internal competitions *Agazzi Léonard v Commission*, cited above, paragraphs 27, 32 and 33). Consequently, the Commission can no more exclude from the recruitment competition candidates affected by the contested requirement on the ground that they would have better career prospects within the Commission than other candidates than it can exclude them on the ground that they would have better chances of passing the competition

than other candidates (see the preceding paragraph). In the second place, the Commission has provided no evidence that the interests of the service require the choice of a criterion, as regards promotion and internal competitions, based on possession of university qualifications. In the case of promotions, the Court finds that, on the contrary, other criteria should be applied when comparing the merits of candidates eligible for promotion, in particular the general quality of the work which they have performed in carrying out their duties (judgment of the Court of Justice in Case 280/81 *Hoffmann v Commission* [1983] ECR 889, paragraphs 9 and 10).

38 The Commission also considers that because of the disparity between their level of education and the nature of their daily work as Commission officials in category C, graduates, once recruited, might sooner or later begin to feel frustrated, which would have negative consequences on their own work as well as on working conditions around them.

39 The Court finds that that argument seeks to cast doubt, as regards both the individual efficiency or quality of work and relationships with colleagues at work, on the capacity of the candidates affected by the contested requirement to do work equivalent to that of persons in the same category but without university qualifications. However, since the possession of such qualifications does not in principle prevent the holder from carrying out category C duties in the same fashion as any other official in that category (see paragraph 34, above), it is for the Commission to provide evidence in support of its argument. Such evidence must be based on verifiable factors, showing not only that the risk which the Commission claims it wishes to avoid is real and of undeniable importance as regards the interests of the service, but also that it is specifically linked to recruitment in category C of candidates with university qualifications. In that context it should be pointed out that in the recruitment procedure the competition stage, which is the first step, does not have the same function as the probationary period. Recruitment competitions are designed to permit the selection of candidates on the basis of general criteria directed to the candidate's future suitability, whereas the purpose of the probationary period is to enable the administration to make a more concrete assessment of the candidate's suitability for a particular post, the manner in which she performs these duties and the efficiency in the service (judgment of the Court of Justice in Case 290/82 *Tréfois v Court of Justice* [1983] ECR 3751,

paragraph 24; judgment of the Court of First Instance in Case T-26/91 *Kupka-Floridi v Economic and Social Committee* [1992] ECR II-1615, paragraph 43).

- 40 The Court of First Instance considers that the elements relied on by the Commission to justify the contested condition for admission do not satisfy those requirements.
- 41 In particular, the Commission has been unable to point to any specific experience in the matter. At the hearing its representative declared, on the contrary, that to his knowledge the Commission had never admitted graduates to category C competitions. Moreover, the study carried out by the Commission, a copy of which was produced annexed to the rejoinder (see paragraph 18 above) does not describe, among the problems found to exist in the area, any specific experience of recruitment in category C of persons having that level of education. Moreover, the Commission has not described relevant experience of such matters in other Community institutions and has not explained in concrete terms why some of those institutions have not found it necessary to follow its policy. The sole fact that their tasks and administrative structure may differ from its own or that they employ relatively few category C officials is not a sufficient explanation in that regard.
- 42 Similarly, there is nothing in the case-file to justify the Commission's attempt to forecast the effects of recruiting graduates in category C. Admittedly, the study referred to above described the problem of frustration resulting from the disparity between the high qualifications of secretaries recruited under the Staff Regulations, owing to the stringency of the competitions preceding their recruitment, and the nature of their duties, which reflects the tasks and administrative structure of the Commission. However, in the first place, the study contains no analysis of the actual effects of such a situation on the work, in the widest sense of the term, of the officials concerned. In the second place, it may be that in a particular case possession of a university qualification has a negative effect on the spirit in which the holder of such a qualification performs his work, on his efficiency in the service or on working conditions for his colleagues, for reasons similar to those indicated in the report; however, that possibility is contingent on numerous other factors,

both objective (such as the nature of the qualification) and subjective (in particular the importance for career purposes attached to the qualification by the holder). In those circumstances, it was not possible for the Commission to make a forecast which was sufficiently reliable and precise, capable of supporting its argument and thereby of justifying the application of a general criterion based on the candidate's prospects, as described in the case-law set out above.

43 Finally, the incompatibility of the contested condition with the criterion laid down in the first paragraph of Article 27 of the Staff Regulations is not altered by the fact, stressed by the Commission, that the appointing authority enjoys a wide discretion in choosing the competition requirements. The choice to be made in the exercise of that power must always be governed by the requirements of the post to be filled and, more generally, the interests of the service (see *Gallone v Council*, cited above, paragraph 27). In this case, however, the Commission has failed to establish any link whatsoever between the contested condition and those requirements and interests.

44 Consequently, the contested condition in the competition notice, and therefore the contested decision itself, are unlawful because they are incompatible with the principle of equal treatment in conjunction with Article 27 of the Staff Regulations.

45 Neither Article 5(1) of the Staff Regulations nor Article 1(1) of Annex III to the Staff Regulations alters that finding.

46 As regards Article 5(1) of the Staff Regulations, the Court finds that the requirements as to education and experience envisaged therein for each category indicate the minimum level required of an official in the grade in question, depending on the nature of the tasks to which the posts correspond; subject to that, however, they do not concern recruitment conditions, which are governed by Articles 27 to 34 of the Staff Regulations (see the judgments of the Court of Justice in Case 117/78 *Orlandi v Commission* [1979] ECR 1613, paragraphs 15 and 16, and Case 143/82 *Lipman v Commission* [1983] ECR 1301, paragraph 7; and the

judgments of the Court of First Instance in Case T-2/90 *Ferreira de Freitas v Commission* [1991] ECR II-103, paragraph 54, and Case T-82/92 *Cortes Jimenez and Others v Commission* [1994] ECR SC II-237, paragraph 20). It follows that, contrary to what the Commission maintains, Article 5(1) of the Staff Regulations neither prescribes nor authorizes the application of a criterion which excludes certain candidates from admission to a competition solely on the ground that they have a higher level of education than a particular maximum determined, for example, by the minimum for a category higher than that to which the competition relates.

47 The same considerations apply as regards Article 1(1) of Annex III to the Staff Regulations, including paragraph (d) of that provision, from which the Commission endeavours to draw conclusions similar to those which it draws in relation to Article 5(1) of the Staff Regulations. It is evident that, on the one hand, the contested condition does not relate, as stated by that provision, to the diplomas and other evidence of formal qualifications 'required for the post to be filled', but to the qualifications possession of which will entail the exclusion of the holder from the competition. In the second place, it must be pointed out that whilst that provision defines one of the headings which must be included in every competition notice, it says nothing of the choice to be made by the appointing authority as regards its precise content in a given competition (see *Lipman*, cited above, paragraph 7). Consequently, that argument of the Commission must be rejected.

48 In the light of all those considerations the contested decision must be annulled for breach of the principle of equal treatment considered in conjunction with Article 27 of the Staff Regulations, without its being necessary to consider the applicant's pleas regarding breach of other provisions or principles, in particular the principle of the freedom to pursue a profession or trade.

Costs

49 Under Article 87(2) of the Rules of Procedure an unsuccessful party is to be ordered to pay the costs if they are asked for in the other party's pleadings. Since the Commission has failed in its submissions, it must be ordered to pay the costs, as applied for by the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

- 1. Annuls the decision of the Selection Board in Open Competition COM/C/741 refusing to admit the applicant to the tests in the competition;**
- 2. Orders the Commission to pay the costs.**

Saggio

Tiili

Moura Ramos

Delivered in open court in Luxembourg on 28 March 1996.

H. Jung
Registrar

A. Saggio
President