

OPINION OF ADVOCATE GENERAL  
POIARES MADURO  
delivered on 16 December 2004<sup>1</sup>

1. The present case is important in two respects. First, the action brought by the Kingdom of Spain against calls for applications for the recruitment of temporary staff to serve with Eurojust provides the Court once again with an opportunity to examine the meaning and scope of the language regime of the institutions and bodies of the European Union. The Court has already given a decision on the language regime applicable to the registration procedures in an agency of the European Community, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).<sup>2</sup> In this instance, it is called upon to give a decision concerning the language regime applicable to the recruitment procedures and internal proceedings of Eurojust, a European Union body. However, such an examination can be embarked upon only if the Court declares to be admissible an action for annulment brought by a Member State against a measure adopted by a body of the Union under the provisions of Title VI of the Treaty on European Union. In this case, therefore, the Court is invited to state its position concerning both the remedies available under the Treaty on European Union

and the requirements concerning the languages to be used in Union institutions and bodies.

## I — The case and its context

2. It is necessary to clarify a number of points concerning the authorship and content of the calls for applications contested in these proceedings (hereinafter ‘the contested measures’) before considering the subject-matter and the pleas in law.

### *A — The author of the contested measures*

3. Eurojust is an important element in the development of the Union as an area of

<sup>1</sup> — Original language: Portuguese.

<sup>2</sup> — Case C-361/01 P *Kik v OHIM* [2003] ECR I-8283.

freedom, security and justice.<sup>3</sup> Pursuant to Article 29 EU, the creation of Eurojust reflects the need to provided citizens of the Union with a high level of protection by improving judicial cooperation between the Member States.

4. Eurojust was set up as a body of the Union, endowed with legal personality, by Council Decision 2002/187/JHA of 28 February 2002<sup>4</sup> (hereinafter 'the Eurojust decision'). Its task, in relation to serious crime, is to promote and improve coordination of action for investigations and prosecutions in the Member States, to improve cooperation between the competent authorities of the Member States and to provide support for the latter.

5. For that purpose it has been provided with a structure that is original. First, under Article 2 of the decision` establishing it, Eurojust is composed of one national member seconded by each Member State. A meeting of all the national members makes up the College. The College is responsible for the organisation and operation of Eurojust. It appoints the Administrative Director, who is responsible for the day-to-day management

of the body.<sup>5</sup> Second, Eurojust has its own administrative structure. Under Article 25 of Eurojust's Rules of Procedure,<sup>6</sup> the staff of the body is recruited by the Administrative Director, after evaluation and approval by the College of the posts to be filled. It is specifically the conditions for the recruitment of Eurojust staff that are at issue in the present action.

#### B — *The content of the contested measures*

6. On 13 February 2003, eight calls for applications were published in the *Official Journal of the European Union*<sup>7</sup> with a view to establishing reserve lists for Eurojust temporary staff. The calls for applications related in particular to the following posts: a data-protection officer, an accounting officer, an IT-informatics expert (webmaster) of the European judicial network, a legal officer, a librarian/archivist, a press officer and a secretary to the general administration. Each of the calls for applications describes the nature of the proposed duties, indicates the qualifications required of potential candidates and specifies the conditions for the recruitment and selection of candidates.

3 — Under Article 2 EU, one of the objectives of the Union is (to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with the appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime).

4 — Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ 2002, L 63, p. 1).

5 — Article 28 of the Eurojust decision.

6 — OJ 2002, C 286, p.1.

7 — OJ 2003, C 34 A, pp. 1-19.

7. As regards the prescribed qualifications, certain linguistic knowledge in particular is required. The requirements vary according to the posts to be filled. For the posts of data-protection officer and legal officer, an excellent knowledge of French and English is required; also, the ability to work in other official languages of the Communities would be an asset. Candidates for the post of press officer must be able to communicate at least in English and French; in their case, knowledge of other official languages of the Communities would be an asset. For the post of secretary to the general administration, a thorough knowledge of English and French is required; in addition, a satisfactory knowledge of other Community languages would be an asset. For the post of IT-informatics expert, a good knowledge of English is essential, and the ability to communicate in at least two other official languages of the Communities, including French, is regarded as an asset. Candidates for the accounting officer post are required to have a thorough knowledge of one of the official languages of the Communities and a satisfactory knowledge of another Community language, including a satisfactory knowledge of English. Only the call for applications for the post of librarian/archivist lays down no particular linguistic requirements.

form must be completed not only in the language in which it was published and came to the notice of the applicant but also in English. Second, some of the documents to be forwarded, namely the letter of motivation and the curriculum vitae, must be drawn up in English.

*C — Subject-matter of the action and pleas in law*

9. The subject-matter of the action is two-fold. In its application, the Kingdom of Spain asks the Court to annul, first, the paragraph in each of the contested measures concerning the documents to be forward in English and, second, any paragraphs in the contested measures relating to linguistic qualifications. By focusing the subject-matter of the action on linguistic matters, the applicant seeks to attack both the selection procedure and the selection criteria.

10. In support of its action, it puts forward three pleas in law. First, it submits that the contested measures were adopted in breach of the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment').<sup>8</sup> In its view, the contested measures are contrary to

8. The conditions for submitting applications are set out in the same terms in all the contested measures. First, the application

<sup>8</sup> — Those conditions supplement the Staff Regulations of Officials of the European Communities and govern the conditions of recruitment and work of members of temporary staff, members of auxiliary staff and local employees, as well as special advisers employed by the Communities.

Article 12(2)(e) of the Conditions of Employment in that they require, as the case may be, more than a satisfactory knowledge of a language other than the candidate's mother tongue, a knowledge of the French language and, in all cases, as an essential precondition, knowledge of the English language. Second, it alleges a breach of the language rules of Eurojust,<sup>9</sup> in that those rules require Eurojust to comply with the Community language regime, under which all the official languages of the European Communities must be used and respected.<sup>10</sup> Finally, it alleges a breach of the principle of non-discrimination on grounds of nationality, as embodied in Article 12 EC, since the requirements and conditions laid down in the contested measures unjustifiably favour candidates whose mother tongue is English or French.

12. Considerations of two kinds are invoked to support the allegation of inadmissibility. The first are of a general nature. They are based on the fact that the contested measures were adopted outside the scope of Community law and, moreover, by an autonomous body not forming part of the institutional framework of the Union as established in Article 7 EC and Article 5 EU. It follows that, on those two grounds, the legality of the contested measures cannot be examined by the Community judicature. The second set of considerations is based on the actual wording of Treaty provisions. Neither Article 230 EC nor Article 35 EU allows an action to be brought against measures of the kind at issue. There is only one possible remedy, and that is reserved to aggrieved candidates, who may bring proceedings under Article 91 of the Staff Regulations of Officials of the European Communities which apply by analogy to temporary staff pursuant to Article 73 of the Conditions of Employment.

## II — The admissibility of the application

11. Eurojust contends that the action is inadmissible. This question is delicate. It must, in my opinion, be examined closely.

13. The weight of those arguments should not be understated. They would enable the Court to adopt a simple solution. Thus, it could conclude that there is no legal basis for any consideration of the present application. However, such a course of action comes up against the considerable difficulty that it is not consonant with the principles which have always guided the case-law of the Court. It would result in depriving a Member State of an opportunity to contest a measure which might undermine a fundamental principle of Union law. It is essential, in my view, that the Court should give decisions on questions which affect the definition of the fundamental legal framework of the Union.

9 — Pursuant to Article 31(1) of the Eurojust decision, ([t]he official linguistic arrangements of the Union shall apply to Eurojust proceedings).

10 — Under Article 1 of Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ English Special Edition 1952-1958, p. 59), as in force when this action was brought, ([t]he official languages and the working languages of the institutions of the Community shall be Danish, Dutch, English, French, Finnish, German, Greek, Italian, Portuguese, Spanish and Swedish.)

The present action raises such questions. In that regard, although they deserve to be taken into account, none of the arguments put forward in favour of inadmissibility seems to me to be decisive. On the contrary, excellent arguments are available to support the idea of admissibility.

14. There is no doubt that admissibility cannot be based, despite the applicant's contention, on Article 230 EC. The contested measures are not Community measures. They are based on provisions of the Treaty on European Union which authorise the setting up, organisation and operation of Eurojust. It is thus in the context of those provisions that the admissibility of the action must be established. One of the provisions on judicial and police cooperation in criminal matters, Article 35 EU, provides that '[t]he Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers'.

15. That wording is clearly inspired by the EC Treaty provisions concerning actions for annulment.<sup>11</sup> It will be recalled that, in this context, the Court has held that the European Community 'is a Community based on

the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty'.<sup>12</sup> The Court went on to conclude that, although Article 230 EC mentions only a limited number of measures which can be challenged, 'the scheme of the Treaty is to make a direct action available against all measures adopted by the institutions ... which are intended to have legal effects'.<sup>13</sup> In such a Community, the principle of effective judicial supervision of authorities acting under Treaty provisions is the expression of a general principle safeguarding respect for the law.<sup>14</sup>

16. Such a principle therefore deserves wide recognition. First, it cannot be limited to the institutional framework referred to in Article 7 EC. The Court has consistently held that Community bodies, vested with legal personality by the EC Treaty, are also amenable to its jurisdiction.<sup>15</sup> Any other solution would be contrary to the principle that every Community decision having an adverse

11 — See, to that effect, M. Gautier, *L'influence du modèle Communautaire sur la coopération en matière de justice et d'affaires intérieures*, Bruylant, Brussels, 2003, p. 564.

12 — Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, p. 23.

13 — *Les Verts v Parliament*, paragraph 24.

14 — See, among others, Case T-111/96 *Promedia v Commission* [1998] ECR II-2937, paragraph 60, and Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18.

15 — See, in particular, Case C-15/00 *Commission v EIB* [2003] ECR I-7281, paragraph 75, and Case C-370/89 *SGEEM and Etroy v EIB* [1992] ECR I-6211, paragraphs 15 and 16. It is also interesting to note that the Commission considers, in a Communication concerning European regulatory agencies, that European agencies must respect the principles of the institutional system of which they form part, and in particular the principle of legality (COM 2002/718 final).

effect, wherever it emanates from, must be amenable to effective judicial review.<sup>16</sup>

18. That certainly applies to the contested measures.<sup>21</sup>

17. Second, it seems to me that at present there is no obstacle preventing the Community system of law and the guarantees deriving from it from being extended to the European Union. In the context of Article 220 EEC, the Court sees its mission as requiring it to ensure compliance with the law in accordance with the criteria of a Community governed by the rule of law.<sup>17</sup> Pursuant to Article 46 EU, the provisions of the EC Treaty concerning the powers of the Court of Justice and the exercise of those powers apply to the provisions of the Treaty on European Union concerning judicial and police cooperation in criminal matters.<sup>18</sup> It is therefore incumbent on the Court to ensure, in that context, the observance of legality in accordance with the same criteria. That is the logical implication of a Union based on the rule of law, as referred to in Article 6 EU.<sup>19</sup> In a *Union governed by the rule of law*, it is essential for measures of Union institutions and bodies to be amenable to review by a Union Court, so long as they are intended to produce legal effects vis-à-vis third parties.<sup>20</sup>

19. However, there can be no question of disregarding the conditions for bringing an action for annulment laid down by the Treaty on European Union. Although the principles of legality and effective judicial review, upheld in the Community context, also prevail in the context of a Union governed by the rule of law, it does not follow that the rules and arrangements for reviewing legality are identical. The Community and the Union pursue, in part, distinct objectives and are subject to different conditions. Where an action is based on Article 35 EU, two special conditions must be taken into account.

20. The first concerns the nature of the measures contested. Article 35 EU appears to limit actions to decisions and framework decisions adopted by the Council in accordance with Article 34 EU. It is common ground that, as far as Eurojust measures are concerned, no review of legality was expressly provided for in the applicable legal texts. The reason for this is, without doubt,

16 — See, in particular, the order of the Court of First Instance of 8 June 1998 in Case T-148/87 *Keeling v OHIM* [1998] ECR II-2217, paragraph 33).

17 — See, most recently, Case C-496/99 P *Commission v CAS Succhi di Frutta* [2004] ECR I-3801, paragraph 63.

18 — Case C-170/96 *Commission v Council* [1998] ECR I-2763, paragraph 15.

19 — See J. Rideau, *L'incertaine montée vers l'Union de droit*, *De la Communauté de droit à l'Union de droit. Continuité et avatars européens*, LGD, Paris 2000, p. 1.

20 — It will be noted in that connection that the text of the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004 by the representatives of the Member States, provides in Article III-365 that the Court of Justice is to 'review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties' (CIG 87/2/04).

21 — That is not contested in the cases in which the Community judicature has been called on to examine the legality of similar measures in the context of the EC Treaty: see, in particular, Case T-146/95 *Bernardi v Parliament* [1996] ECR II-769, order of the Court of First Instance of 30 March 2000 in Case T-33/99 *Méndez Pinedo v ECB* [2000] ECR-SC I-A-63 and II-273, and Case 225/87 *Belardinelli and Others v Court of Justice* [1989] ECR 2353, paragraphs 13 and 14.

that Eurojust, has no legislative role or decision-making power.<sup>22</sup> It is a body with an essentially operational function. The Eurojust decision thus contains only conditions governing liability<sup>23</sup> and a system of special appeals in connection with access to data of a personal nature.<sup>24</sup> However, the fact that such a lacuna cannot constitute an absolute impediment to the admission of an action is clear from the judgments in *Les Verts v Parliament*, cited above.<sup>25</sup> Just as the Court declared admissible, in that judgment, an action against an institution whose legislative function had gradually become an essential feature, it is appropriate to admit an action against a Union body to the extent to which it has a legislative function, even if it is used only on an exceptional basis. If Eurojust measures do not expressly appear in Article 35 EU, that too is because they emanate from a body which was not created until after the original version of that provision was drafted. It cannot therefore be inferred from that omission that its measures enjoy immunity.

21. The Court has already admitted, in the context of the scheme of the EC Treaty, that

an action for annulment may be brought against all measures which produce legal effects, whatever their nature, form, or authorship.<sup>26</sup> That case-law clearly applies in the context of the Union. Article 35 EU must be interpreted as enabling certain applicants to seek the annulment of any measures adopted in the context of Title VI which produce legal effects vis-à-vis third parties. In my opinion, 'the very idea of legality', as it must prevail in a Union governed by the rule of law, requires that to be the case.<sup>27</sup>

22. The second condition concerns the standing of the applicant. Under Article 35 EU, only the Member States and the Commission are entitled to bring an action. At first sight, that condition does not appear to raise any difficulty in this case. In principle, applicants endowed with that right by Article 35 EU are not required to demonstrate any interest in bringing proceedings. As the Court has held in the context of the EC Treaty, a Member State does not have to demonstrate that a measure contested by it has had an impact on it in order for its action to be admissible.<sup>28</sup> In view of the parallelism of the provisions concerning actions for annulment contained

22 — The rules on judicial remedies are common to other Union agencies: see, on this point, the study by J. Molinier, '*Le régime contentieux des Agences de l'Union européenne*', *Les Agences de l'Union européenne. Recherche sur les organismes Communautaires décentralisés*, Presses de l'Université des sciences sociales, Toulouse, 2002, page 113.

23 — Article 24 of the Eurojust decision.

24 — Article 19 of the Eurojust decision. In that connection, the preamble to the Eurojust decision makes it clear that the competences of the common supervisory body, responsible for overseeing the activities of Eurojust, are to be exercised 'without prejudice to the jurisdiction of national courts or to the arrangements for any appeals which may be brought before them.'

25 — In that judgment, cited in footnote 12 above, the Court made it clear that '[t]he European Parliament is not expressly mentioned among the institutions whose measures may be contested because, in its original version, the EEC Treaty merely granted it powers of consultation and political control rather than the power to adopt measures intended to have legal effects vis-à-vis third parties.'

26 — Case 22/70 *Commission v Council* [1971] ECR 263, Case 60/81 *IBAF v Commission* [1981] ECR 2639, paragraph 9, and *Les Verts v Parliament*, paragraph 24.

27 — See, by analogy, the Opinion of Advocate General Mancini in *Les Verts v Parliament*, point 7.

28 — See, to that effect, the order of 27 November 2001 in Case C-208/99 *Portugal v Commission* [2001] ECR I-9183, paragraph 23.

in the EC and EU treaties, that case-law falls to be applicable in the context of Article 35 EU.

23. Account must also be taken of an objection raised by Eurojust in the present case: in so far as an action could properly be brought on the basis of Articles 90 and 91 of the Staff Regulations of Officials, against the contested measures, any endeavour to secure the admissibility of the present application is pointless. However, that objection overlooks the interest attaching to actions of this kind for the Member States. It is common ground that actions based on provisions of the Staff Regulations are of a special nature, in so far as they are concerned only with the relationship between the applicant and an institution.<sup>29</sup> However, the defence of interests deriving from that special relationship cannot be regarded as the only basis for proceedings before the Court. A Member State, which does not have an interest in that relationship, must be entitled to invoke, in support of an action for annulment, an infringement of Union law.<sup>30</sup>

Union confers a very privileged status on the Member States.<sup>31</sup> It would therefore be rather inconsistent to allow actions by individuals without also granting the Member States a right of access to the Court. It should also be noted that the present action is concerned with an essential requirement of Union law which the Member States, primarily, are responsible for upholding. It is clear from Article 290 EC, by virtue of the reference to Article 41 EU, that the Union institutions are to exercise their competences in a way that upholds linguistic diversity. Respect for linguistic diversity is one of the essential aspects of the protection granted to the national identities of the Member States, as is apparent from Article 6(3) EU and Article 149 EC.<sup>32</sup> In those circumstances, the right available to candidates to defend their particular interests cannot be allowed to run counter to the fundamental interest in defending a rule such as that of linguistic diversity in the Union.<sup>33</sup> The Member States' interest is not subsumed under the interests of individuals; those interests in bringing proceedings coexist.

25. I therefore consider that the present action should be declared admissible.

24. Two arguments militate in favour of that solution in this case. It should be remembered, first, that the Treaty on European

29 — Regarding the special nature of this relationship and of the associated remedies, see, in particular, Case 9/75 *Meyer-Burckhardt v Commission* [1975] ECR 1171.

30 — See, by analogy, Case 41/83 *Italy v Commission* [1985] ECR 873, paragraph 30.

31 — That status is evidenced both by the exceptional role attributed to the Member States in initiating measures adopted under Title VI of the Treaty on European Union (Article 34(2) EU) and by their power to bring proceedings before the Court with a view to securing review of measures intended to produce legal effects vis-à-vis third parties (Article 35(6) EU).

32 — According to Article 6 EU, '[t]he Union shall respect the national identities of its Member States'. Article 149 EC, inserted by the Maastricht Treaty, for its part refers to the Community's duty to respect the cultural and linguistic diversity of the Member States.

33 — See, by analogy, Case C-70/88 *Parliament v Council* [1990] ECR I-2041, paragraph 26.



### III — Appraisal of the pleas in law

26. The applicant relies on rules of law whose relevance to the outcome of this case is contested by Eurojust. Before any discussion of the legality of the contested measures, it is appropriate to dispose of the preliminary issue of the applicability of the provisions referred to.

conditions of engagement laid down in Article 12 of the Conditions of Employment. According to that provision, '[t]he engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of the Member States of the Communities'. It also states that 'a member of the temporary staff may be engaged only on condition that ... he produces evidence of a thorough knowledge of one of the languages of the Communities and of a satisfactory knowledge of another language of the Communities to the extent necessary for the performance of his duties'.

#### A — *Determination of the applicable law*

27. Two provisions, concerning the Conditions of Employment and the language regime of the European Community, and a general principle of Community law, the principle of non-discrimination laid down in Article 12 EC, are invoked in this case by the applicant.

28. There is no doubt as to the applicability of the Conditions of Employment. Moreover, it is not disputed. Under Article 30(1) of the Eurojust decision, 'Eurojust staff shall be subject to the rules and regulations applicable to the officials and other servants of the European Communities, particularly as regards their recruitment and status'. It follows in particular that the recruitment of Eurojust temporary staff is subject to the

29. On the other hand, the application of the Community language regime is a matter of some controversy. Opposing its applicability, Eurojust puts forward two arguments, based on the same reasoning: an alleged divergence of wording as between the various language versions of Article 31 of the Eurojust decision. First, since all the language versions of the provision, with the exception of the Spanish version, refer to the 'official linguistic arrangements of the Union' and not to the 'linguistic arrangements of the Community institutions', it must be concluded that Regulation No 1 does not apply to that body. According to that argument, the language regime of the Union is different from that of the Communities and thus it is to be expected that the Union institutions are to adopt specific provisions on that point. Second, even if it is supposed that the Community language regime is held to be

applicable, Eurojust denies that it applies to part of its area of activity. The fact that Article 31 of the Eurojust decision makes it clear, in all the language versions other than Spanish, that that regime applies to the 'proceedings' or to the 'procedures' of Eurojust means, in its view, that internal communications fall outside the scope of that regime.

30. Neither of those arguments stands up to analysis. First, the applicability of Regulation No 1 is apparent from a well-established chain of textual references. The language regime of the Union, in the context of the third pillar thereof, is provided for in Article 41 EU. That article expressly states that Article 290 EC is to be applicable to the provisions of the Union relating to police and judicial cooperation in criminal matters. According to that article, the rules governing the languages of the institutions of the Community are to be determined by a Council regulation, which was adopted in the form of Regulation No 1.<sup>34</sup> It is also noteworthy that the latest amended version of that regulation refers expressly to the languages 'of the institutions of the European Union'. It is precisely that regime which Article 31 of the Eurojust decision extends to Eurojust as a body operating in the context of the Treaty on European Union.

31. Second, the exclusion of that regime in relation to a part of Eurojust's operations is likewise not justified. That exclusion is based

on a distinction between operational functions and purely administrative functions and has no foundation in law. There is nothing to indicate that administrative functions are excluded from the concept of 'working languages' as used in Regulation No 1. On the contrary, there is every reason to think that that term covers without distinction external communications and proceedings within institutions. Moreover, it is precisely in that sense that the Court has used that term.<sup>35</sup> The scope of the language regime embraces all the activities of the Union institutions and bodies, whether relating to external relations or to internal operations. That does not mean, however, that no distinction between external communications and internal communications can be accepted. But such a distinction can be seen as relevant only as regards the arrangements for applying the language regime.<sup>36</sup>

32. The issue of the applicability of the principle of non-discrimination on grounds of nationality remains to be dealt with. Eurojust denies such applicability, on the ground that since that principle derives from Article 12 EC it is not applicable outside the Community context. That objection does not seem to me to be well founded. It is undisputed that Article 12 EC embodies a general principle of Community law,<sup>37</sup> as a 'a

34 — It should be noted that the same applies in the case of Title V of the Treaty on European Union as regards the common provisions on the foreign and security policy, by virtue of Article 28 EU.

35 — See Case 280/80 *Bakke-d'Aloja v Council* [1981] ECR 2887, paragraph 13.

36 — See point 46 of this Opinion.

37 — Case C-411/98 *Fertini* [2000] ECR I-8081, paragraph 39.

specific expression of the general principle of equality'.<sup>38</sup> Such principles rank as 'fundamental principles' of the Community legal order.<sup>39</sup> Accordingly, they form part of the basic *acquis* of the Community.<sup>40</sup> Under Article 2 EU, the Union sets itself the objective of 'maintain[ing] in full the *acquis Communautaire* and build[ing] on it'. Moreover, the category to which those principles belong is not wholly unknown in the context of the Treaty on European Union because, under Article 6 thereof, 'the Union shall respect fundamental rights ... as general principles of Community law'.<sup>41</sup> It follows, in my opinion, that the fundamental principle of non-discrimination and its specific expression, the principle of non-discrimination on grounds of nationality, are perfectly well applicable within the sphere of the Treaty on European Union. Accordingly, they must be regarded as enforceable against the institutions and bodies operating in that context.<sup>42</sup>

33. That conclusion, based on protection of the *acquis Communautaire*, also reflects a concern for consistency.<sup>43</sup> The basis for the construction of an area of freedom, security and justice is to be found in the provisions both of the Treaty on European Union and of the EEC Treaty. It is essential that, whatever its basis, any action undertaken by the Union institutions in this context should be subject to the same standards. To that end, Article 3 EU provides expressly that 'the Union shall be served by a single institutional framework which shall ensure the consistency and continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis Communautaire*.'

34. Finally, I should like to add a last remark concerning the applicable law. In my view, the question of linguistic requirements does not fall solely within the scope of regulations or specific Treaty provisions. This question must be linked with rights, with a principle and with an objective which are fundamental to the European Union.<sup>44</sup> It is important to bear in mind in that connection that respect for and promotion of linguistic diversity are not in any way incompatible with the objective of the common market. On the contrary, against the background of a Community based on the free movement of persons, 'the protection of the linguistic

38 — Case C-224/00 *Commission v Italy* [2002] ECR I-2965, paragraph 14.

39 — With regard to the principle of non-discrimination on grounds of nationality as a 'fundamental rule' of the Community, see, most recently, Case C-465/01 *Commission v Austria* [2004] ECR I-8291, paragraph 25. As regards the principle of equal treatment as a 'fundamental principle' of Community law, see Case C-55/00 *Gottardo* [2002] ECR I-413, paragraph 34.

40 — They are 'fundamental provisions of the Community legal order' which it is incumbent on the Court to protect (see to that effect Opinion 1/91 [1991] ECR I-6079, paragraph 41). See also P. Pescatore, 'Aspects judiciaires de l'acquis Communautaire', *Revue trimestrielle de droit européen*, 1981, p. 617.

41 — It is noteworthy in that connection that the Charter of Fundamental Rights of the European Union upholds, in Article 21, the role of non-discrimination as a fundamental right enforceable against the institutions of the Union (OJ 2000, C 364, p. 1).

42 — See, by analogy, the decisions given on the right of access to documents held by Union institutions: Case T-194/94 *Carvel and Guardian Newspapers v Council* [1995] ECR II-2765 and Case C-353/99 P *Council v Hautala* [2001] ECR I-9565.

43 — See, to that effect, C. Timmermans, 'The Constitutionalisation of the European Union', *Yearbook of European Law*, 2002, vol. 21, p. 1.

44 — See, to that effect, N. Nic Shuibhine, 'Commentaire de l'arrêt *Kik v OHIM* (C-361/01 P)' *Common Market Law Review*, 2004, p. 1093.

rights and privileges of individuals is of particular importance'.<sup>45</sup> It is common ground that the right of a national of the Union to use his own language is conducive to his exercise of the right of free movement and his integration into the host state.<sup>46</sup> In those circumstances, the Court condemns all forms of indirect discrimination based on knowledge of languages.<sup>47</sup>

35. In a Union intended to be an area of freedom, security and justice, in which it is sought to establish a society characterised by pluralism,<sup>48</sup> respect for linguistic diversity is of fundamental importance. That is an aspect of the respect which the Union owes, in the terms of Article 6(3) EU, to the national identities of the Member States. The principle of respect for linguistic diversity has also been expressly upheld by the Charter of Fundamental Rights of the European Union<sup>49</sup> and by the Treaty establishing a Constitution for Europe.<sup>50</sup> That principle is a specific expression of the plurality inherent in the European Union.

36. 'My motherland is the Portuguese language'. That famous statement by Pessoa,<sup>51</sup> taken up by numerous men of letters, such as Camus,<sup>52</sup> clearly expresses the link which may exist between language and a sense of national identity. Language is not merely a functional means of social communication. It is an essential attribute of personal identity and, at the same time, a fundamental component of national identity.<sup>53</sup>

37. In my opinion, the language regime of the Union institutions must not be severed from that context or from that principle. That regime guarantees that the linguistic rights of those individuals who have *direct* access to the Union institutions will be recognised. It stems from the special nature of the relationship between the Union and its citizens. It must therefore be regarded as a direct expression of the linguistic diversity inherent in the European Union. It thus constitutes a fundamental institutional rule of the European Union.

38. Admittedly, it is not possible to infer from the foregoing the existence of an absolute principle of equality of languages

45 — Case 137/84 *Mutsch* [1985] ECR 2681, paragraph 11, and Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraph 13.

46 — *Mutsch*, paragraph 16, and *Bickel and Franz*, paragraph 16.

47 — Case C-379/87 *Groener* [1989] ECR 3967, paragraphs 19 and 23.

48 — That is one of the fundamental values of the Union according to Article 2 of the Treaty establishing a Constitution for Europe.

49 — Article 22 of the Charter states that '[t]he Union shall respect cultural, religious and linguistic diversity.'

50 — Article 1-3(3) provides that the Union must 'respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced'.

51 — 'A minha pátria é a língua portuguesa', B. Soares (a 'heteronym' of Fernando Pessoa), *Livro do Desassossego*, Lisbon, 1931-1932.

52 — Camus reportedly said 'Oui, j'ai une patrie, c'est la langue française'.

53 — That explains why the Community has provided itself with a single currency, whereas it is unthinkable that the Union could adopt a common language (to that effect, see B. Witte, 'Language Law of the European Union: Protecting or Eroding Linguistic Diversity?', *Culture and the European Union*, Oxford University Press, Oxford, 2004).

in the Union. As is clear from the judgment in *Kik v OHIM*, the references to the use of languages in the European Union contained in the Treaty 'cannot be regarded as evidencing a general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language *in all circumstances*'.<sup>54</sup> There are circumstances in which that right cannot be applied. But those circumstances can but be limited and they must be justified on every occasion. In any event, the Union institutions and bodies have a duty to respect the principle of linguistic diversity.

1. The language regime of the Union institutions and bodies

40. The foregoing considerations concerning the applicable law clearly show that the principle of respect for the linguistic diversity of the Union applies, as a fundamental requirement, to all the institutions and bodies of the Union. That said, it is a requirement that cannot be regarded as absolute. It is necessary to accept restrictions in practice, in order to reconcile observance of that principle with the imperatives of institutional and administrative life. But those restrictions must be limited and justified. In any event, they cannot undermine the substance of the principle whereby the institutions must respect and use all the official languages of the Union.

*B — Application of the foregoing considerations to the present case*

39. This case involves not only an appraisal of the conformity with Union law of the conditions for the recruitment and selection of temporary staff within a Union body. Linguistic requirements such as those challenged in this case may be imposed either because of the language regime chosen for the internal functioning of a body or as a reflection of the nature of the posts to be filled. It seems to me that, in any analysis, care should be taken to draw a distinction between those two alternative requirements. Accordingly, a prior examination of the legal rules on the use of languages in the Union institutions and bodies is called for.

41. In assessing whether restrictions likely to be imposed on that principle are justified, it is necessary to take account of the context in which they are to apply. The exact determination of the scope of such a principle depends on the institution or body concerned, the surrounding circumstances and the conflicting interests to be taken into consideration in any such situation.

42. In that regard, I think that three different situations can be identified.

<sup>54</sup> — *Kik v OHIM*, paragraph 82 (emphasis added).

43. It is clear that it is in the context of communications between the institutions and the citizens of the Union that the principle of respect for linguistic diversity deserves the highest level of protection. In such cases, that principle is linked with a fundamental democratic principle of which the Court takes the greatest care to ensure observance.<sup>55</sup> That principle requires in particular that subjects of the law of the Union, be they Member States or European citizens, should have easy access to the legal texts of the Union and to the institutions which produce them. Only such access can offer Union citizens the opportunity to participate effectively and equally in the democratic life of the Union.<sup>56</sup> It follows that, for the purpose of exercising rights of participation attaching to European citizenship, respect for linguistic diversity must not be exposed to technical difficulties which an efficient institution can and must surmount.

44. Those rights also extend to relations between citizens and the administration. In the context of administrative procedures, it is essential that interested parties, whether Member States or citizens, should be able to understand the institution or body which they are communicating. Consequently, pursuant to Article 3 of Regulation No 1, the principle remains that the language of communications must be that of the individual concerned.<sup>57</sup> However, it is common

ground that, in this context, the linguistic rights of such persons are subject to certain restrictions based on administrative requirements. Thus, the use of a language other than that of the persons concerned may be allowed in certain cases if it is clear that they have been put in a position where they can properly take note of the position of the institution concerned.<sup>58</sup> In that connection, account must be taken of the fact that the parties to the proceedings are to be regarded not simply as persons subject to the jurisdiction of a Member State, within the meaning of Article 2 of Regulation No 1, but rather as qualified interested parties benefiting from the availability of cognitive and material resources enabling them to be adequately informed.<sup>59</sup>

45. In those circumstances, it may be open to the Council, pursuant to Article 290 EC, to take a differential approach to the use of official languages. But, first, the choice made by the Council must be appropriate and proportionate, having regard to the principle of linguistic diversity.<sup>60</sup> Second, that choice may not give rise to unjustified discrimination between European citizens.

46. A distinction must be drawn between the rules on the internal functioning of

55 — Case 138/79 *Roquette Frères v Council* [1980] ECR 3333, paragraph 33.

56 — To that effect, the third paragraph of Article 21 EC provides: 'Every citizen of the Union may write to any of the institutions or bodies referred to in this article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.'

57 — Joined Cases T-79/89, T-84/89 to T-86/89, T-89/89, 91/89, 92/89, T-94/89, T-96/89, T-98/89, T-102/89 and T-104/89 *BASF and Others v Commission* [1992] ECR II-315, paragraphs 54 and 55, and Case C-263/95 *Germany v Commission* [1998] ECR I-441, paragraph 27.

58 — See in particular Case T-77/92 *Parker Pen v Commission* [1994] ECR II-549, paragraphs 73 to 75, and Case T-118/99 *Bonaiti Brighina v Commission* [2001] ECR-SC I-A-25 and II-97, paragraphs 16 to 19, and *Kik v OHIM*, paragraphs 92 to 94.

59 — *Kik v OHIM*, paragraphs 88 and 89.

60 — *Ibid*, paragraph 94.

Union institutions and bodies and those two cases. Whilst linguistic diversity is the fundamental rule in the context of outside contacts, that is because it is necessary to respect the linguistic rights of persons having access to Union institutions and bodies. The Treaty and the case-law are based on the understanding that the choice of the language of communication is a matter for the Member State or the person who has a relationship with the institutions. On the other hand, in the context of the internal functioning of Union institutions, the choice of the language to be used for internal communications is the responsibility of those institutions, which are entitled to impose that choice on their employees. It thus follows from Article 6 of Regulation No 1 that '[t]he institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.'

the composition of Union institutions and bodies must always reflect a concern to safeguard the geographical and linguistic balance of the Union and respect the principle of non-discrimination.<sup>62</sup> That is also the underlying reason for the institutions' obligation to recruit on as wide as possible a basis among the nationals of the Member States.

47. Against that background, two conflicting requirements apply. On the one hand, basic reasons of administrative efficiency are conducive to choosing a limited number of working languages.<sup>61</sup> It is clear that a system of all-embracing linguistic pluralism is in practice unworkable and economically intolerable for an institution or body vested with technical and specialised competences. But, on the other hand, the internal language regime cannot be entirely dissociated from the rules governing external communications of the institutions. The functioning and

48. As far as determining the internal language regime is concerned, it is therefore necessary to grant a degree of operational autonomy to Union institutions and bodies. Such autonomy is necessary in order to ensure their proper functioning.<sup>63</sup> According to the Court, it is the expression of 'a principle inherent in all institutional systems'.<sup>64</sup> However, that autonomy must be strictly circumscribed. It can be exercised only within the limits allowed by the Treaty.<sup>65</sup> It must be borne in mind, in that connection, that the Treaty entrusts principally to the Council the responsibility of

61 — See, to that effect, the Opinion of Advocate General Jacobs in *Kik v OHIM*, paragraph 63, and the Opinion of Advocate General Van Gerven in Case C-137/92 P *Commission v BASF* [1994] ECR I-2555, point 43.

62 — See, by analogy, Case 15/63 *Lassale v Parliament* [1964] ECR 57, in which the Court speaks in particular of 'the desire to safeguard the geographical balance required by the Community spirit' (at p. 73).

63 — See, among others, Case 208/80 *Lord Bruce of Donington* [1981] ECR 2205, paragraph 17.

64 — Case 5/85 *AKZO v Commission* [1986] ECR 2585, paragraph 37.

65 — See, by analogy, Case C-213/88 *Luxembourg v Parliament* [1991] ECR I-5643, paragraph 34.

*defining* the language regime of the Union institutions.<sup>66</sup> That responsibility implies a considerable degree of latitude, provided that it does not in any way undermine the essence of the principle of linguistic diversity. In contrast, the Union institutions and bodies enjoy only a limited discretion for *implementation* of that regime. They must not be allowed to use it otherwise than for the purposes of their internal operational needs.

perform the duties associated with the posts to be filled must be able to secure access to and participate, on equal terms, in the recruitment procedures.<sup>67</sup>

49. In those circumstances, the choice of one or more Union languages for internal purposes can be allowed only if it is based on objective considerations relating to the functional needs of the body concerned and if it does not give rise to unjustified differences of treatment as between Union citizens. It is important to make certain, first, that the regime chosen reflects the specific needs of the body concerned, having regard, for example, to the history of its coming into being, the location of its seat, its internal communication needs and the nature of the functions which it must discharge. It is necessary to verify, secondly, that the choice made does not compromise equal access for Union citizens to the jobs offered by Union institutions and bodies. In that connection, all those who possess the necessary skills to

50. In any event, it is not sufficient to seek to justify an internal language regime by reference to ‘the nature of things’, (*‘la naturaleza de los hechos’*) as Eurojust saw fit to do before the Court.

## 2. The legality of the conditions of engagement

51. In the contested measures, Eurojust lays down language requirements not corresponding to those deriving from Article 12 (2) of the Conditions of Employment. Their scope is different, as is the level of knowledge required. The Kingdom of Spain claims that that difference constitutes, in itself, an infringement of the Conditions of Employment.

<sup>66</sup> — It will be noted, in that connection, that the Treaty of Nice, amending the Protocol on the Statute of the Court of Justice, calls on the Council to adopt rules relating to the language regime applicable to the Court of Justice and the Court of First Instance in the context of the Statute of the Court of Justice and no longer through the Rules of Procedure (Article 64 of the Protocol on the Statute of the Court of Justice). It follows that the latter would have to acquire the status of primary law and that every amendment would have to be approved by the Council unanimously, in accordance with the procedure under Article 245 EC. That amendment confirms the importance accorded by the Treaty to the provisions on the language regime and the particular responsibility borne by the Council in that connection.

<sup>67</sup> — That is also apparent from a combined reading of Articles 15 and 21 of the Charter of Fundamental Rights of the European Union, which protect, first, the right of every Union citizen to have access to employment and to the recruitment procedures organised in the Union and, second, the right not to suffer discrimination, in particular on grounds of language.



52. Expressed in those terms, that claim does not seem to me to be well founded. The Community case-law does not preclude any Union institution or body from laying down professional requirements, linked in particular with knowledge of languages, that are more stringent than those reflected in the minimum conditions prescribed by the Conditions of Employment.<sup>68</sup> However, those additional requirements must be justified.<sup>69</sup> In other words, they must pursue a legitimate objective and be proportionate to that objective.

53. Before the Court, Eurojust has put forward explanations falling into two categories.

(a) Justification by reference to the working language

54. According to Eurojust, the skills required are necessary to enable the candidates recruited to communicate with each other within the organisation. They are justified by the need to have a good command of Eurojust's working languages.

55. It is beyond doubt, in my opinion, that it may be necessary to choose an internal

working language in order to ensure the proper functioning of Union institutions and bodies.<sup>70</sup> Such a choice is particularly legitimate where the body in question is a specialised organisation with limited resources. However, for the purpose of attaining that legitimate objective, the requirement of knowledge of *both* of two specified Union languages for all the posts in question, with the exception of those of accounting officer and librarian/archivist, does not seem to be appropriate. To ensure good communication within the organisation, command of a single common language would appear sufficient. As long as all Eurojust's employees are fluent in that language, it is clear that the requirement of a second working language cannot be justified for reasons of internal communications.

56. I should make it clear that that does not, however, mean that a body may not choose to have more than one working language. But that choice must be clearly established and justified by the specific operational needs of the organisation, having regard in particular to the diversity of the staff recruited. The use of several languages within the departments of an institution may justify the requirement of knowledge of one of those working languages. In such a case, however, to require knowledge of *any* one of those languages would appear sufficient. In any event, the cumulative requirement of knowledge of *several* languages cannot be justified by internal communication needs and can only be indicative of a wish to afford a privileged status to certain

68 — See Case 108/88 *Cendoya v Commission* [1989] ECR 2711, paragraph 24, and Case T-73/01 *Pappas v Committee of the Regions* [2003] ECR II-1011, paragraph 85.

69 — See, to that effect, *Lassalle v Parliament*, at p. 74.

70 — See point 47 of this Opinion.

Union languages. However, it must be borne in mind that, under Article 290 EC, the power to apply differential rules regarding official languages of the Union is vested solely in the Council, which must exercise that power with due respect for the principle of linguistic diversity.

Eurojust's Rules of Procedure moreover do not throw any further light on the matter. Since Eurojust has not clearly established or justified the choice of one or several working languages, the explanation put forward must also be rejected in this case.

57. In this case, the requirement of knowledge of both of two specified Union languages in the calls for applications for the posts of data protection officer, legal officer, secretary to the general administration, IT-informatics expert and press officer appears to be clearly disproportionate. It cannot be justified by the sole objective of ensuring internal communication within the organisation.

59. The other justification put forward by Eurojust to defend the legality of the contested measures must now be examined.

(b) Justification by reference to the nature of the duties

58. As to the requirement of a satisfactory knowledge of English for the post of accounting officer, it could be permissible if the choice of English as the working language had been clearly established and duly justified. However, the observations submitted to the Court by Eurojust lack clarity. In some places it appears that a single language was chosen for internal communications, although that language is not clearly identified,<sup>71</sup> and elsewhere it appears that the two languages required in the calls for applications are those used for internal communications within the organisation.<sup>72</sup>

60. Eurojust also contends that those language requirements are linked to the duties associated with the various posts involved.

61. It must be conceded that the nature of the proposed duties may justify requiring the command of a language other than the one used for internal communications within the organisation. However, a measure laying down wider-ranging linguistic requirements than those appearing in the Conditions of Employment must not run counter to a fundamental principle such as the principle of non-discrimination. Accordingly, linguis-

71 — Paragraphs 49 and 65 of the defence.

72 — Paragraphs 13 and 28 of the rejoinder. That was also implied in the arguments put forward by Eurojust at the hearing.

tic requirements imposed by reason of the nature of the work to be undertaken must be strictly linked with the posts to be filled and they must not result in any dilution of the requirement of geographical diversity of Union staff.

post being reserved for one or more specified nationalities.<sup>73</sup>

62. As regards the first of those conditions, it is necessary to verify that the prescribed linguistic requirements display a necessary and direct connection with the proposed duties. Should that link not be established, such requirements must be regarded as involving discrimination detrimental to Union nationals who have the necessary skills, within the meaning of Article 12 of the Conditions of Employment, to be appointed to the posts to be filled. Even if the criterion of nationality is disregarded, such discrimination based on language is liable to constitute an unjustified barrier to access to employment.

64. In this case, it has not been established that the requirements laid down for the vacant posts involve discrimination based either on language or on nationality.

65. First, it does not seem that the contested measures have had a dissuasive effect on European citizens whose mother tongue is not one of those required in the contested measures. On the contrary, the information provided appears to be indicative of a balanced representation of the various nationalities both in the recruitment procedures and within Eurojust.

63. As regards the second condition, it is necessary to verify that the requirements decided upon do not excessively undermine the objective of ensuring a geographical balance within the Union institutions and the bodies. It is clear that preference for certain languages by way of professional requirements gives an advantage to those European citizens who have those languages as their mother tongues. However, such an advantage is liable to give rise to indirect discrimination adversely affecting other Union citizens. By virtue of the principle of non-discrimination on grounds of nationality, therefore, a linguistic requirement imposed in connection with the needs of the service must not result in a vacant

66. Second, it is true that Eurojust has not given very detailed explanations concerning such link as may exist between each of the duties considered and the corresponding linguistic requirements. In that connection, it confined itself to giving 'implicit' reasons deriving from the description of the duties involved. They reside, in particular, in the fact that constant contacts must be maintained with other people and organisations, at both national and international level, and in the need to secure rapid access to suitable

<sup>73</sup> — See *Lassalle v Parliament*.

working tools. In those circumstances, it must be borne in mind that Union bodies must be granted a degree of autonomy to determine the nature of their functional needs. It follows that the legality of the contested measures will only be affected if the prescribed requirements are manifestly inappropriate. In this case, it must be concluded that the Kingdom of Spain has not produced any specific evidence such as to raise doubts as to whether the prescribed linguistic knowledge is relevant to performance of the duties involved.

67. Even if, in this case, the explanation based on the language used for internal communications is not sufficient to justify the prescribed requirements, an explanation based on the nature of the functions cannot be rejected. In so far as the illegality of the linguistic requirements laid down in Eurojust's calls for applications has not been demonstrated, I consider that the pleas directed against that part of the contested measures must be rejected.

### 3. The legality of the selection conditions

68. The requirement that some of the documents forming part of the applications be submitted in English breaches the rule that private individuals are entitled to address the Union institutions and bodies in an official language of their choice. That rule applies to Eurojust pursuant to Article 2 of Regulation No 1, which was made

applicable to Eurojust by Article 31 of the Eurojust decision.<sup>74</sup>

69. The question must therefore be asked whether that breach may be justified. The situation of candidates responding to a call for applications issued by a Union body is not comparable to that of citizens addressing institutions in the context of their democratic participation in the life of the Union. The applications they submit form part of an organised selection procedure and are directly connected with the exercise of specific duties. In those circumstances, the requirement at issue may be justified if, first, it is directly linked with the skills necessary for performance of the duties involved in the posts in question and, second, it does not have an excessive adverse impact on the legal interests of potential candidates.

70. That means that it cannot be justified, in any event, by reasons relating to the way in which the selection process is organised and run. A person cannot be excluded from a recruitment procedure simply for reasons of practicality. Such an exclusion would constitute a breach of the fundamental right of access to employment for the persons concerned. On the other hand, it is entirely possible to require candidates for posts within a Union body to demonstrate, in their

74 — See point 30 of this Opinion.

applications, that they possess certain skills that are necessary for the post in question.

required, that knowledge of English is necessary. But there is nothing to indicate that it is necessary to communicate and write in English in order to carry out the duties of the post in question.

71. That is certainly so in the case of calls for applications in which an excellent, thorough or satisfactory knowledge of English language is one of the qualifications required for appointment to the posts on offer. In this case, a link can be established between the obligation to complete the application form in English and the prescribed professional qualifications. Moreover, all interested parties are able to ascertain what those requirements are by virtue of the publication of the calls for applications in all the official languages of the Union. Finally, candidates retain the right to submit their applications also in any language in which the calls for applications were published. It follows that the linguistic rights of the persons concerned were impaired to only a limited extent and, in any event, that was justified by the duties associated with the posts concerned.

73. In the absence of precise information concerning the linguistic knowledge required for the post in question, it is impossible to ascertain whether the requirement at issue is justified. Accordingly, I consider that the requirement in the call for applications for the post of librarian/archivist that the application documents must be in English is illegal.

#### IV — Consequences of the proposed solution

72. However, in one case those conditions do not appear to have been complied with. The call for applications for the post of librarian/archivist states that the application documents must be submitted in English. However, no specific details are given in it regarding linguistic qualifications. The link between the duties involved and the requirement of submitting the application in English has not therefore been established. Without doubt, it might be inferred from another selection criterion laid down in the call for applications, namely that 'a sound knowledge of the sources of the main legal documentation for ... [the] Common Law system' is

74. The Kingdom of Spain has asked the Court to annul the contested measures in part. In view of the foregoing considerations, that request should be acceded to in part.

75. However, in its case-law relating to competitions for officials and temporary staff,<sup>75</sup> the Court has always demonstrated a concern to take account not only of the

<sup>75</sup> — See, in particular, Case 144/82 *Dettré v Court of Justice* [1983] ECR 2421, paragraph 33, and Case C-242/90 *P Commission v Albani and Others* [1993] ECR I-3839, paragraphs 13 and 14.

need to uphold legality and safeguard the interests of candidates unjustly excluded but also to protect the interests of candidates already selected, against whom no criticism can be levelled. Thus, it has recognised that irregularities in a recruitment procedure do not automatically entail annulment of all the results of the competition in question.

76. It seems to me that such a solution is required in this case. If the Court should choose to follow this Opinion, it should make it clear that the partial annulment of the call for applications for the post of librarian/archivist cannot imply any adverse impact on the appointment already made on the basis of the call published.

## V — Conclusion

77. In the light of the foregoing considerations, I propose that the Court should:

(1) annul the call for applications issued by Eurojust for the post of librarian/archivist to the extent to which it requires that the applicants' documents must be drawn up and submitted in English;

(2) for the rest, dismiss the action.