lations, from the day on which the decision taken in reply to the complaint is notified to the person concerned.

2. A selection board for a competition enjoys a wide discretion and the Court has no jurisdiction to review its value judgments. However, the board must proceed on the basis of objective criteria which are known to each of the candidates and it must state adequately the grounds on which its decision is based. It is for that reason that indent (e) of the second subparagraph of Article 1 (1) of Annex III to the Staff Regulations provides that the notice of competition, drawn up by the appointing authority, must specify *inter alia*, where the competition is on the basis of tests, of what kind they will be and how they will be marked.

3. In view of the importance for the subsequent career of officials of recruitment by way of competition, it must be ensured that criteria for assessment which are objective and equal for all the candidates are strictly applied. It follows that the candidates in a competition are entitled to expect that tests which take place simultaneously in different places are entirely identical and, in addition, they should receive formal and accurate information as to the result of the tests which they have taken. Where irregularities or errors have occurred in the course of a competition and cannot be rectified by a repetition of the tests, with the result that the only alternative is the application of a corrective factor in the assessment of the tests, that factor must be applied unequivocally and the person concerned is entitled to be informed of the criteria adopted.

4. Where, in an open competition for the purpose of constituting a reserve for future recruitment, the Court annuls the decision of the selection board not to place a candidate on a reserve list, the rights of the person concerned are adequately protected if the board and the appointing authority reconsider their decisions and seek a just solution in his case. It is not necessary to call in question the entire result of the competition or to annual the appointments which have been made as a result thereof.

In Case 144/82

ARMELLE DETTI, of 2 Rue Louis-XIV, Luxembourg, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18 A Rue des Glacis,

applicant,

v

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, represented by François Xavier Zwickert, Director of Administration, acting as Agent, assisted by

Alex Bonn, of the Luxembourg Bar, with an address for service at the latter's Chambers, 22 Côte d'Eich,

defendant,

APPLICATION for the annulment of the decision of the selection board for Competition No CJ 49/79 not to enter the applicant's name on the reserve list for the recruitment of shorthand-typists in Grade C 3 - C 2 resulting from that competition and for a declaration that the applicant should be appointed to a post in that career bracket with effect from the date of her appointment as a secretary/typist,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and issues

The facts of the case and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

The applicant was employed by the Court of Justice as an auxiliary typist from 4 September 1979 until 31 October 1980, first in Category C, Group VII, Class 2, and subsequently in Group VI, Class 1, of the same category. She felt that her position as an auxiliary typist was unsatisfactory and left the Court's service on 31 October 1980. She subsequently applied to take part in Open Competition No CJ 49/79 to constitute a reserve list for the recruitment of French-language secretary/shorthand-typists and typists. The tests for the competition were held simultaneously in Brussels and in Luxembourg. It appears from the decision of the President of the

Court of 11 February 1982, which is not contested on that point, that there were certain differences in the procedures in the two centres, inasmuch as "only a part of the text set for the shorthand test was dictated to candidates participating in the test in Luxembourg, whereas the text was dictated in its entirety to the candidates summoned to Brussels". In other words the text (a total of 240 words in three minutes) was dictated in Brussels with the title (11 words), whilst in Luxembourg the title was omitted. As a result, the candidates in Luxembourg had more time to complete the test than those who took it in Brussels. In order to compensate for that advantage, the selection board decided to mark the tests taken in Luxembourg more severely by subtracting a number of marks from the results obtained.

The applicant, who took part in the competition in Luxembourg, obtained only 19.5 marks out of 40. She therefore lacked half a mark to be be admitted to the list of suitable candidates for the competition for shorthand-typists (Career Bracket C 3 - C 2). On 12 December 1980, the selection board submitted its final report, in which, according to the defendant, the applicant appeared on the list of suitable candidates for typists (Career Bracket C 5 - C 4).

By letter of 27 January 1981, the Director of Administration of the Court of Justice notified the applicant that she had been placed on the reserve list resulting from the competition. He did not however state whether she appeared on the list as a shorthand-typist or as a typist. The applicant claims that she was never officially informed of the true result and therefore that she was entitled to believe, at least until July 1981, that she had also passed the shorthand tests and that, consequently, she was on the resrve list for shorthand-typists. On the other hand, the defendant contends that the applicant was well aware, at least in April 1981, that she had not passed the shorthand test and appeared only on the reserve list for typists. It states that the applicant was notified of that fact during a telephone conversation on 8 April 1981, confirmed by letter of the Director of Administration of 23 April 1981. That letter which did not refer expressly to the results of Competition No CJ 49/79, informed the applicant that the Court was able to offer her a post of French-language typist, as a temporary servant in Grade C 4, from 16 June 1981. The applicant accepted the offer on 29 April 1981 and occupied the post in Grade C 4, Step 3, from 1 July 1981.

Following a vacancy notice, No CJ 107/81, for a post of French-language typist (Career Bracket C 5 - C 4), published on 21 July 1981, Miss Detti applied for the post on 22 July 1981 and was appointed, on 11 August 1981, as a probationary official with effect from 1 August 1981 in Grade C 4.

In August 1981, the applicant sent to the Registrar of the Court a memorandum which, although dated 19 July 1981, was, according to the defendant, written after the applicant's appointment on 11 August 1981. Indeed, the applicant has conceded that it might have been dated 18 August 1981. In that letter, the

applicant contested the marks given to her by the Selection Board for Competition No CJ 49/79 and requested "a serious reassessment" of her test.

Her request was founded on the possibility that the Board might have made an error of assessment. Mr Zwickert, the Director of Administration, therefore asked the members of the Selection Board for Competition No CJ 49/79 for a supplementary report. On 25 September 1981, the board sent him a report concerning the competition procedure, which concluded that "the board is not in a position to alter the decision taken in relation to Miss Detti". It would be very difficult for it "to give a new decision in respect of one candidate in that competition more than nine months after the submission of its final report". Moreover, it had already taken into consideration in the correction of the tests the more favourable conditions of the shorthand test in Luxembourg. The applicant was informed of the board's reply by a memorandum from the Registrar, A. Van Houtte, dated 14 October 1981.

On the previous day, 13 October 1981, the applicant had submitted to the appointing authority a request pursuant to Article 90 (1) of the Staff Regulations, in which she demanded that the decision of 11 August 1981, appointing her secretary/typist in Grade C 4 be set aside, on the ground that she was entitled to obtain a new appointment, as a secretary shorthand-typist in Grade C 3, with retroactive effect to the date of the first appointment (11 August 1981). She based her request on the fact that the Selection Board for Competition No CJ 49/79 committed a material error in the marking of the shorthand test in Competition CJ No 49/79 inasmuch as it awarded her only 19.5 marks out of 40, which led to her appointment to a grade which was lower than that which she might have expected at the Court. She also stated that she intended to bring an action before the Court for the annulment of the decision whereby the Selection Board for Competition No CJ 49/79 did not enter her on the list of suitable candidates for shorthand-typists. By memorandum of 5 November 1981, addressed to the appointing authority, the applicant asked that her memorandum of 13 October 1981 be considered as a complaint within the meaning of Article 90 (2) of the Staff Regulations, the submissions and arguments remaining unchanged.

On 23 October 1981, the Staff Committee sent a memorandum to the Director of Administration informing him that, in the orinion of the Staff Committee, the applicant was entitled to be informed of the result of a "second correction" which was alleged to have been effected by the selection board. If the result of that correction was negative, she was entitled "to expect the members of the Board to provide a detailed and reasoned explanation in particular as regards the criteria of assessment applied in the first correction and the criteria applied in the second correction of the shorthand test". Following that intervention, the Director of Administration sent a memorandum dated 6 November 1981 to the Chairman of the Selection Board for Competition No CJ 49/79, informing him of the view of the Staff Committee. In its reply, dated 24 November 1981, addressed to the Director of Administration, the Board again explained, in greater detail,

the method of correction applied by it in Competition No CJ 49/79. According to the board, it corrected the tests of the Luxembourg candidates in their entirety more severely so as to maintain equality of treatment between the candidates irrespective of where the competition took place. In order to do that, the Board "attributed a certain weight to the various types of possible mistakes", without referring to the candidates' scripts.

By decision of 11 February 1982, the President of the Court, acting in his capacity as appointing authority, rejected the applicant's complaint and concluded that although there had been a purely factual error on the part of the selection board, the consequences of that error were not "so harmful as to vitiate the procedure". The selection board had been entitled to decide that, in order to compensate for the slight advantage given to candidates participating in the competition in Luxembourg, it would mark "slightly more severely" the texts which were dictated there, since those candidates had had a longer period available for completing the test than those who had taken the test in Brussels. That method of correcting the consequences of the board's error was reasonable and did not result in any unfairness "since several candidates who were called to Luxembourg were placed on the reserve list of shorthand-typists as they had passed the test which the applicant failed".

By decision of 8 March 1982, the applicant was appointed as an established official from 1 February 1982 as a French-language typist in Grade C 4.

By application lodged at the Court Registry on 10 May 1982, the applicant brought the present action, in the first place, against the decision of the Selection Board for Competition No CJ 49/79 not to place the applicant's name on the reserve list of shorthand-typists (C 3 - C 2) and, in the second place, for the appointment of the applicant to a post in that career bracket with retroactive effect, and in the alternative, for the annulment of the decision rejecting her complaint.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

"1. Annul the decision of the selection board not to enter the applicant's name on the reserve list for shorthand-typists in Grade C 3 - C 2 in Competition No CJ 49/79;

2. Declare that the applicant is to be appointed to a post in that career bracket with effect from the date of her appointment as a secretary/typist;

3. Annul the decision rejecting her complaint;

and in the alternative:

4. Before taking any other steps in the case order the production of the report of the selection board, at least as regards the shorthand test and the script submitted by the applicant for that test on the day of the competition;

5. Order that the test be reconsidered by an independent selection board to

be appointed by the Court, or alternatively by a technical expert;

6. Order the Court to pay the costs."

The *defendant* claims that the Court should:

"Dismiss the action as inadmissible;

Alternatively dismiss it as unfounded;

Award costs in conformity with the provisions applicable".

III — Submissions and arguments of the parties

A — Admissibility of the action

The *applicant* claims that her action is admissible inasmuch as all the conditions of Articles 90 and 91 of the Staff Regulations are satisfied. In particular, it was introduced within the prescribed period, which did not expire until 12 May 1982. She contends that she was not required to bring the action or initiate the preliminary procedure within the three months following the board's decision, on the ground that she was never officially informed of the result of the competition, which was brought to her notice solely by an unofficial oral communication. In any event, there was a new substantive element of fact, namely the board's recognition of its own error.

The defendant considers the action inadmissible. As regards her application for the annulment of the selection board's decision, the applicant, in accordance with Articles 90 (2) and 91 (2) ought to have submitted a complaint thorugh official channels, but did not do so in respect of the first head of claim. Although the requests of 13 October and 5 November 1981, satisfy all the procedural requirements for a complaint and may therefore be regarded as such, they were not directed against the selection board's decision, but against the appointing authority's decision of 11 August 1981, appointing the applicant as a secretary/typist in Grade C 4. The subject-matter of the complaint through official channels was therefore different from that of the action before the Court. The Board's decision constitutes one element of the complaint submitted, but it is the basis of the complaint, not the subject-matter thereof. Further, even if the complaint of 13 October 1981 is directed against the selection board's decision, it is out of time, inasmuch as the applicant knew of the decision in Competition No CJ 49/79 at the latest as from 23 April 1981, when she received from the Director of Administration at the Court the offer of employment as a typist in Grade C 4, Step 3. The period of three months within which the complaint must be made started to run from that date, in accordance with the second indent of the first subparagraph of Article 90 (2), and therefore expired on 23 July 1981.

In so far as the applicant claims that the acknowledgment of the members of the board that they had committed an error constitutes a new material fact, the defendant contends that there is no such acknowledgment in the memorandum of 25 September 1981 and denies the existence of a new fact.

The applicant's memorandum of 19 July 1981 should not be regarded as a complaint within the meaning of Article 90 (2) of the Staff Regulations, inasmuch as it was not addressed to the appointing

authority and did not contain any formal conclusions. Even if it might be regarded as a complaint, it was rejected by the negative reply communicated in the Registrar's memorandum of 14 October 1981, and that was the date from which the prescribed period for bringing an action before the Court began to run. That period therefore expired long before the action as brought.

In addition, the subject-matter of the complaints of 13 October and 5 November 1981 was different from that of the action, inasmuch as it was not directed against the selection board's decision but sought to have the appointing authority's decision of 11 August 1981 set aside. Even the possibility that the complaint might be considered as being directed against the board's decision does not affect the above conlcusion, since it could not be regarded as a first complaint, as a complaint had already been submitted. Moreover, the applicant ought instead to have brought an action before the Court.

Finally, the defendant also claims that the action is inadmissible on the ground that, in the circumstances of the case, the applicant, by her letter of 23 April 1981, accepted unreservedly the post of typist rather than that of shorthand-typist. that acceptance must be regarded as a waiver of any possible right of action in respect of the selection board's decision and as an acquiescence therein. That also applies to the second acceptance. also made without any reservations, of the same post when she was appointed on 11 August 1981.

Furthermore, the applicant's claim to be appointed to a post in Career Bracket C 3 - C 2 with retroactive effect, is inadmissible, on the ground that the applicant did not request the annulment of the decision of 11 August 1981 appointing her and that she cannot therefore demand that it be set aside. Although the applicant requested, on 13 October 1981, that the decision be set aside, and that she be given an new post, the action merely seeks the annulment of the selection board's decision.

The *applicant* denies that the subject-matter of the preliminary complaint through official channels differs from that of the action before the Court. In so far as she requested that the decision relating to her appointment in Grade C 4 be set aside, she was also contesting, by implication, the decision of the Selection Board for Competition No CJ 49/79. The Court has repeatedly held that an efficient administration must not restrict itself to the actual wording of requests and complaints but must look behind it to the intent. In so far as the applicant based her claim to a higher post on the errors of the selection board, she was requesting, at the same time, the rectification of the board's report. Moreover, she asked the appointing authority "to consider all the legal consequences" arising from the selection board's mistake.

On the question whether her application is out of time. The applicant denies that the prescribed period began to run as from 23 April 1981, because the letter from the administration of the Court dated 23 April did not contain the slightest mention of the fact that she had not been accepted as a secretary/ shorthand-typist. In any event, there is a new element of fact, which was not known initially and of which she learnt

only through the board's memorandum of 25 Spetember 1981, communicated to her by the Registrar's memorandum of 14 October 1981. In their memorandum, the members of the board acknowledged that they had committed an error, if "in somewhat diplomatic terms", and that was confirmed by the statement of the facts contained in the decision of the President of the Court. At least, as is apparent from the action and the conclusions, the sense of the complaint was correctly interpreted in the text of that decision, as being directed against the decision of the Selection Board for Competition No CJ 49/79 not to enter the applicant's name on the reserve list of shorthand-typists in Career Bracket C 3 - C 2. According to the applicant, her memorandum of 19 July 1981 was not a complaint, and was not therefore the point from which the period prescribed in the Staff Regulations began to run. The applicant also contests the argument that she waived her rights and acquiesced in the situation because, she maintains, there were grounds for her belief until July 1981 that she was entered on the reserve list of shorthand-typists and was not aware of any error on the part of the board.

The applicant concedes that she did not expressly request the annulment of her first appointment, but considers that she was requesting what must necessarily be accepted as the equivalent, namely her appointment in Career Bracket C 3 - C 2, which implies the annulment of her first appointment. Moreover she emphasizes that the two decisions are materially connected. As the board's decision was taken as a result of a mistaske, there was an obligation to enter her name on the reserve list for Career Bracket C 3 - C 2, at least on the basis of the principle of the protection of her legitimate expectation as against the administration.

Since the subject-matter of the proceedings is the same in her action as in her complaint, and since her action is not out of time, she claims that it must be admissible.

B — Substance

In a first submission, the *applicant* takes the view that there were irregularities in the procedure inasmuch as the Selection Board for Competition No CJ 49/79 committed an error of fact by omitting the title of the text dictated during the shorthand test in Luxembourg, as was acknowledged by the board and by the President of the Court in his decision of 11 February 1982. The submission is directed against that procedural irregularity; it therefore refers to a factual error and not to a value judgment on the part of the selection board. In spite of its error, the board counted as a mistake the fact that the applicant failed to reproduce the title of the test.

In a second submission, the applicant claims that the board was not entitled to abandon the criteria laid down in order to "compensate for the advantages" arising from the test in Luxembourg. In amending the criteria for the correction of the test so as to make up for the above-mentioned error, the board disregarded the criteria which had been laid down. That practice constitutes an infringement of indent (e) of the first subparagraph of Article 1 of Annex III to the Staff Regulations according to which the board must establish in advance how tests are to be marked and may not adopt new criteria during the course of

marking. Moreover, the idea of compensating for the advantage by correcting the texts dictated in Luxembourg more severely was wrong. Similarly, the success of several other candidates who took the test in Luxembourg does not amount to sufficient proof that offsetting the advantages was a logical and fair method, at least in respect of the applicant. Because the board failed to apply the criteria laid down for the test, the result of the competition, at least in respect of the applicant, is distroted. As a result, the decision not to enter her name on the reserve list as a shorthand-typist should be annulled and the Court should declare that the applicant is to be regarded as having been successful in the shorthand test. Alternatively, the applicant's script should be subjected to a fresh examination by an independent board.

In a third submission, the applicant claims that the first two submissions show that there has been a breach of the principle of the protection of legitimate expectation. Inasmuch as it failed to give the applicant precise information as to whether she was admitted to the reserve list for typists or to that for shorthand-typists, the defendant was giving assurances and engendering hopes with regard to her career which could not subsequently be destroyed. That amounts to a wrongful act on the part of the administration which exposes the appointing authority at least to an action for damages. Any candidate in a competition of that nature is entitled at least to be assured that the board will not commit an error of which the candidate will have to bear the brunt at a later stage.

Finally the applicant requests the Court, in accordance with Article 45 (3) of the Rules of Procedure, to order the defendant to produce for her the report of the Selection Board for Competition No CJ 49/79 and her script in the shorthand test in order to enable her to adduce the evidence to support her submissions.

The *defendant* contends that the first submission cannot be considered by the Court, on the ground that the board's decision, the annulment of which the applicant requests, is the result of the board's assessment and is therefore not available for scrutiny by the appointing authority. It cannot therefore be reviewed by the Court, whose jurisdiction extends only to determining the legality of the procedure adopted.

The defendant denies moreover that the members of the selection board acknowledged that a factual error was committed or that there was an error in marking. In their memoranda adressed to the Director of Administration, the members of the Board merely explained how the tests were conducted in Brussels and Luxembourg. Although there were differences in the texts dictated at the two centres, the board ensured that the candidates were treated equally inasmuch as it assessed the results of the test by "offsetting advantages". The fairness of the system of marking was confirmed by the fact that several candidates who took the test in Luxembourg were successful.

As regards the second submission, the alleged departure from the criteria laid down, the defendant considers that the applicant is incapable of establishing her complaint or of furnishing any proof. The board fixed criteria for marking the tests and applied them strictly to the

various tests. Moreover, the applicant's view, to the effect that a selection board cannot alter the criteria which have been laid down, is incorrect.

As regards the third submission, the breach of the principle of the protection of legitimate expectation, the defendant maintains that neither the conditions of the competition, nor the circumstances in which it was conducted, support that theory. In view of the fact that the first and second submissions are unfounded, there is no basis for the third submission.

Moreover, the defendant raises an objection to the applicant's claim that the report of the Selection Board for Competition No CJ 49/79 be produced, on the ground that the relevant facts have been made sufficiently clear by the board's memoranda addressed to the Director of Adminsitration. Furthermore, the minutes cannot be produced without revealing numerous facts concerning persons who are strangers to the proceedings.

Finally, the applicant's request to be appointed to a post as shorthand-typist in Career Bracket C 3 - C 2 with retroactive effect is clearly beyond the Court's jurisdiction to decide on legality.

The defendant concludes that all the submissions advanced in the action are unfounded.

C — Costs

The *applicant* requests that, in any event, costs be awarded against the defendant, whose "rather strange" attitude has given rise to the proceedings, whilst the applicant was not at fault. On the other hand, the *defendant* considers that there are no grounds for departing from Article 70 of the Rules of Procedure in the applicant's favour.

IV — Oral procedure

At the sitting on 24 March 1983, the applicant, represented by Victor Biel, and the Court of Justice of the European Communities, represented by Alex Bonn, presented oral argument.

On the question whether, by way of "offsetting advantages", 11 marks were subtracted from the results of the candidates in Luxembourg for the omission of the title of the shorthand test, the defendant's representative explained, at the Judge-Rapporteur's request, that it was difficult for him to realize how, in practice, the board had effected that compensation. However, according to the explanations given to the administration, in particular in the board's memorandum of 24 November 1981 to the Director of Administration, the board proceded as follows:

"The assessments set out in the report take into consideration the fact that the candidates who took the tests in Luxembourg did not have to take down the title of the shorthand test (11 words), although they were allowed the same time as those in Brussels. The board did not penalize them for that omission, but in order to ensure that the candidates were treated equally, irrespective of where they took the test, it corrected the test in its entirety more severely."

The Advocate General delivered his Opinion at the sitting on 30 June 1983.

Decision

1 By application lodged at the Court Registry on 10 May 1982, Armelle Detti, an established official in Grade C 4 at the Court of Justice of the European Communities, brought an action primarily for the annulment of the decision of the Selection Board for Open Competition No CJ 49/79 not to enter the applicant's name on the reserve list for the recruitment of French-language secretary/shorthand-typists in Career Bracket C 3 - C 2.

2 In 1980 the applicant took part, in Luxembourg, in the tests for that competition which were also conducted simultaneously in Brussels.

3 In Brussels the text set for the shorthand test was dictated together with the title (11 words) whilst in Luxembourg the title was not dictated.

4 The selection board took the view that the candidates in Luxembourg had thus been placed at an advantage as compared with those in Brussels. It therefore decided, by way of "offsetting advantages" to correct more severely the tests held in Luxembourg in their entirety.

5 The applicant obtained 19.5 marks out of 40 and therefore failed by half a mark to be entered on the list of suitable candidates for the competition for shorthand-typists (C 3 - C 2). Her name was therefore entered only on the reserve list of suitable candidates for appointment as typists (C 5 - C 4).

6 By letter of 27 January 1981, the administration of the Court notified the applicant that her name was entered on the reserve list resulting from the competition. It did not however specify whether she appeared on the list as a shorthand-typist or as a typist and, apparently, it did not give her any details concerning the result of her test.

7 Following an offer made by telephone and confirmed by letter from the administration of 23 April 1981, the applicant was employed, from 1 July 1981, as a member of the temporary staff in Grade C 4, and, on 11 August 1981, following a vacancy notice, was appointed with effect from 1 August 1981, as a probationary official in Grade C 4, as a French-language typist.

8 By memorandum dated 19 July 1981, the applicant informed the Registrar that she contested the mark which had been given to her by the selection board and requested a reassessment of the shorthand test.

9 On 14 October 1981, the administration sent to the applicant a supplementary report drawn up by the board, dated 25 September 1981, explaining that the board had taken into account in the correction of the tests the conditions in which the shorthand test was conducted in Luxembourg and concluding that it was not in a position to alter the decision taken in respect of the applicant.

10 On 13 October 1981, the applicant submitted a request within the meaning of Article 90 (1) of the Staff Regulations to the effect that the decision of 11 August 1981 appointing her as a secretary/typist in Grade C 4 should be set aside, and seeking her appointment as a secretary/shorthand-typist in Grade C 3. On 5 November she asked the administration to regard that request as a complaint within the meaning of Article 90 (2) of the Staff Regulations.

11 Following the intervention of the Staff Committee, the board sent the administration a second report, dated 24 November 1981.

12 By decision of 11 February 1982, the President of the Court, acting in his capacity as appointing authority, dismissed the complaint and confirmed that the board's action in correcting "slightly more severely" the scripts of the candidates who took the competition in Luxembourg did not compromise the legality of the procedure.

13 On 10 May 1982 the applicant brought this action against which the defendant has raised, in the first place, an objection of inadmissibility.

Admissibility

14 According to the defendant, the action is inadmissible on three grounds. First, the applicant did not submit a complaint through official channels in respect of the application for the annulment of the selection board's decision, since her complaint of 5 November 1981 was directed against the appointing authority's decision of 11 August 1981 appointing her as a secretary/typist. Secondly, that complaint was out of time inasmuch as the applicant knew of the board's decision on 23 April 1981 at the latest, so that the period prescribed for submission of the complaint expired on 23 July 1981. Thirdly, by accepting unreservedly a post of typist in Grade C 4, the applicant conceded that the administration's view was correct.

15 In reply to that objection, the applicant claims that by her complaint through official channels she also contested the selection board's decision, although only by implication, and that, in any event, there was a new element of fact which was brought to her notice only by the selection board's memorandum of 25 September 1981.

16 As regards the first ground put forward by the defendant, it should be observed, in the first place, as the Court stated in its judgment of 14 June 1972 *(Marcato* v *Commission* Case 44/71 [1972] ECR 427), that a complaint directed against a decision of a selection board appears to be pointless, as the institution concerned has no authority to annul or amend the decisions of a selection board, and that therefore the only legal remedy open to those concerned by such a decision lies in a direct application to the Court.

17 In the light of that situation, it should be stated that the applicant was not required to lodge a complaint against the selection board's decision as a preliminary to bringing an action before the Court. However, inasmuch as a complaint was nevertheless submitted, the prescribed period began to run, in accordance with Article 91 of the Staff Regulations, from the day on which the decision taken in reply to the complaint was notified to the applicant.

18 In the second place, it should be noted that it appears from the papers in the case than when, by her complaint of 5 November 1981, the applicant requested that the decision of 11 August 1981 appointing her as a typist in

Grade C 4 be set aside, she called in question at the same time the selection board's decision in Competition No CJ 49/79 relating to the failure to enter her name on the reserve list of secretary/shorthand-typists in Career Bracket C 3 - C 2. Consequently her complaint directed against the appointing authority's decision of 11 August 1981 was also intended to secure the annulment of the selection board's decision. It follows that the complaint also covered her request for appointment to Grade C 3.

19 As regards the allegation that the action is out of time, it should be noted that the applicant was never formally informed of the actual result of her test and above all that she was informed of the process of "offsetting advantages" only by the selection board's memorandum of 25 September 1981. The administration is therefore not entitled to raise an objection to a delay which is a result of its own conduct.

20 For the same reasons, the argument that the applicant acquiesced in the result of the tests must be rejected.

21 It follows that the objection of inadmissibility must be dismissed.

Substance

22 In her application, the applicant puts forward three principal claims, first, the annulment of the decision of the Selection Board for Competition No CJ 49/79, concerning the failure to enter her name on the reserve list for the recruitment of secretary/shorthand-typists in Career Bracket C 3 - C 2; secondly, her appointment to a post in that career bracket with effect from the date of her appointment as a secretary/typist in Grade C 4; thirdly the annulment of the decision rejecting her complaint.

23 In support of that claim, the applicant submits that the selection board's action in erroneously regarding as a mistake the omission of the title of the text dictated in the shorthand test in Luxembourg constituted a procedural irregularity; that decision represented a factual error rather than a value judgment. Thus the board infringed indent (e) of the second subparagraph of Article 1 (1) of Annex III to the Staff Regulations by marking that test more severely by way of 'offsetting advantages'.

24 She claims moreover that inasmuch as the defendant institution failed to inform her unequivocally that she had not been admitted to the reserve list for shorthand-typists, it was giving assurances and engendering hopes with regard to her career which must be taken into consideration in accordance with the principle of the protection of legitimate expectation.

25 The defendant objects that the selection board's assessment of the tests represents a value judgment which cannot be reviewed by the Court since its jurisdiction extends only to checking the legality of the procedure adopted. In any event, it denies that the selection board committed a factural error. Moreover, it observes that the board applied purely objective criteria.

26 As regards the principle of the protection of legitimate expectation, on which the applicant relies, the defendant contends that neither the conditions of the competition, nor the circumstances in which it was held, nor the subsequent conduct of the applicant justify the application of that principle since the result of her test was brought to her notice at the latest in the course of her telephone conversation of 8 April 1981 with the administration.

27 It is clear from the established case-law of the Court that a selection board for a competition enjoys a wide discretion and that the Court has no jurisdiction to review its value judgments. However, the board must proceed on the basis of objective criteria which are known to each of the candidates and it must state adequately the grounds on which its decision is based. It is for that reason that indent (e) of the second subparagraph of Article 1 (1) of Annex III to the Staff Regulations provides that the notice of competition, drawn up by the appointing authority, must specify, *inter alia*, where the competition is on the basis of tests, of what kind they will be and how they will be marked.

28 In view of the importance for the subsequent career of officials of recruitment by way of competition it must be ensured that criteria for assessment which are objective and equal for all the candidates are strictly applied. It follows that the candidates in a competition are entitled to expect that tests which take place simultaneously in different places are entirely identical and, in addition, they should receive formal and accurate information as to the result of the tests which they have taken.

29 Where irregularities or errors have occurred in the course of a competition and cannot be rectified by a repetition of the tests, with the result that the only alternative is the application of a corrective factor in the assessment of the tests, that factor must be applied unequivocally and the person concerned is entitled to be informed of the criteria adopted.

30 In this instance, it is established that the tests organized in Brussels and Luxembourg were not entirely identical and that, in consequence, the board made compensatory adjustments in marking the scripts. The administration merely declared that the scripts of the candidates who took the test in Luxembourg were marked "more severely" than those in Brussels. It did not however explain what specific criteria were applied in the marking. In those circumstances, the Court cannot check whether objective criteria were applied or, in particular, whether the candidates were treated equally.

31 Moreover, the applicant was never formally notified of the actual result of her test, so that she was entitled to believe, especially in the light of the letter of the Director of Administration of the Court of 27 January 1981, that she had been successful also in the shorthand test.

32 Consequently the decision of the Selection Board for Competition No CJ 49/79, placing the applicant's name on the list of suitable candidates for the post of typist in Career Bracket C 5-C 4 infringes the above-mentioned principles and rules governing competitions and must therefore be annulled.

33 Since the competition in question was an open competition for the purpose of constituting a reserve for future recruitment, the applicant's rights will be adequately protected if the board and the appointing authority reconsider their decisions and seek a just solution in her case, in the light of the considerations set out above. It will not be necessary to call in question the

entire results of the competition or to annul the appointments which have been made as a result thereof. In those circumstances, the applicant's other claims have become devoid of purpose.

Costs

34 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to bear the costs. Since the defendant has substantially failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Annuls the decision of the Selection Board for Competition No CJ 49/79 not to enter the applicants's name on the reserve list for future recruitment of secretary/shorthand-typists in Grade C 3 - C 2;**

2. **Orders the Court of Justice to pay the costs.**

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 14 July 1983.

J. A. Pompe
Deputy Registrar

P. Pescatore
President of the Second Chamber