2. Orders the defendant to bear the whole of the costs.

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 29 March 1984.

For the Registrar

D. Louterman

Administrator

Y. Galmot

President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 23 FEBRUARY 1984 [1]

Mr President
Members of the Court,

A — Adam Buick, the applicant in this staff case, seeks to obtain an improvement of his classification in the starting grade. He started work for the Commission in January 1974 as a probationary official in Grade A 7, step 3, and was promoted to Grade A 6 in January 1978.

In a memorandum dated 27 April 1981 the applicant asked to be reclassified in Grade A 6, step 1, with retroactive effect, relying on the Commission's "Decision on the Criteria applicable to Grade and Step Classification upon recruitment" (hereinafter referred to as "grading criteria") dated June 1973 and distributed in March 1981 by the Directorate General for Personnel and Administration. He argued that he satisfied the requirement of at least eight years' practical experience laid down for such an appointment in the upper grade. In June 1965, four years after the completion of his advanced secondary studies, he had obtained his university degree. He had been in relevant employment since September 1965. He claims that he therefore had eight years of practical experience behind him when he started work for the Commission.

The Commission's Grading Committee replied in a memorandum dated 11 May 1981 that in the case of a short course of university studies of three years such as the applicant had taken, the first year of employment following the award of the degree is regarded as a *fourth year of study.* Thus only the period from June 1966 to 1 January 1974, amounting to seven and a half years, could be taken into account as practical experience. There were therefore no grounds for recommending a reclassification.

1 — Translated from the German.

The applicant then lodged a complaint through official channels in due form and within the period prescribed. In it he explained that he had left school in December 1961 after the entrance examination to Oxford University and had begun his university studies in October 1962. Therefore his employment since December 1965 should be credited as practical experience.

The applicant's complaint was rejected in a decision of the appointing authority dated 23 November 1982, and on 16 February 1983 he brought an action for its annulment and for an order that the Commission should review the matter in accordance with the expected judgment of the Court. He claims in the alternative that the defendant should be ordered to pay the costs in their entirety.

B — On those claims, my opinion is as follows:

1. Admissibility

The admissibility of the action might be challenged by saying that what the applicant is really seeking is the annulment of the classification in the starting grade which he was given in 1974 and which thereby became definitive. However, as the Court has held in judgments of 1 December 1983 (Case 190/82 *Adam P. H. Blomefield* v *Commission of the European Communities* [1983] ECR 3981, and Case 343/82 *Christos Michael* v *Commission of the European Communities* [1983] ECR 4023, the publication of the grading criteria in March 1981 is to be regarded as a *new* fact which causes the period prescribed under Articles 90 and 91 of the Staff Regulations to start to run afresh. The appointing authority itself regarded the applicant's request for a reclassification under Article 90 (1) of the Staff Regulations as admissible. Since the applicant has complied with the time-limits laid down for complaints and appeals under Articles 90 and 91 of the Staff Regulations, the action must be considered admissible.

2. Substance

The decision now at issue, in which the applicant was refused reclassification with retroactive effect in Grade A 6, must be annulled on grounds of illegality if the appointing authority has departed, to the prejudice of the applicant, from the rules which it has laid down for itself for the assessment of training and practical experience, to the extent to which these are compatible with the Staff Regulations.

(a) According to those rules the appointing authority may appoint a successful candidate to Grade A 6, provided he cans prove *at least eight years'* relevant practical experience.

(b) As the second paragraph of Article 2 of the grading criteria provides: "Professional experience with regard to the post to be filled shall be assessed on the basis of all the activities in which the candidate has engaged before recruitment". The third paragraph provides: "Professional experience shall be calculated from the *time when the candidate was awarded the qualification* giving access pursuant to Article 5 of the Staff Regulations to the category in which the post falls". Accordingly, only an occupation which is specifically relevant to the post to be filled and which has actually been undertaken between the completion of university studies and the start of work with the Commission may be treated as practical experience.

According to those criteria, the applicant can undeniably show that he had more than eight years' practical experience within the meaning of the classification criteria.

(c) The applicant refers to the wording of the second subparagraph of paragraph 2 (a) of Annex II to the staff notice of March 1981, which provides that "Where university studies are *short*, practical experience is taken into account only *with effect from the fourth year* following the completion of advanced secondary studies", and takes the view that his practical experience should have been taken into account from December 1965. The period between the entrance examination to Oxford University which concluded his secondary education in December 1961 and the start of his university education in October 1962 is to be explained, according to him, by the fact that the Oxford scholarship examination for which he entered takes place only in December of each year.

Against this, the defendant states that the Grading Committee has adopted the following *practice* in calculating practical experience in the case of short university studies: A candidate who completed a three-year university course which began immediately after be completed his secondary education was given credit for any practical experience from the fourth year following the completion of his secondary studies, in accordance with paragraph 2 (a) of Annex II. In other cases, where candidates did not begin their university studies immediately after the completion of their advanced secondary studies or interrupted their studies, the four years' "duration of university studies" required under paragraph 2 (a) of Annex II was extended by the relevant period.

In the case of the applicant, since his studies lasted from October 1962 to June 1965, the Grading Committee, as will be seen from the disputed decision, took the view that the year which immediately followed his university studies could not be taken into account as practical experience and accordingly concluded that only the period from June 1966 to January 1974, a period of seven and a half years, could be taken into account as practical experience.

(d) The issue which lies at the heart of this legal dispute is therefore whether the practice followed by the defendant is to be regarded as lawful.

In this connection it should be acknowledged in the applicant's favour that the decision which was taken in his case does not follow directly from the wording of the second subparagraph of paragraph 2 (a) of Annex II. It is also true that the administrative practice of the Grading Committee, as summarized in Annex II, gives rise in principle to a *restriction* of the authority's *discretion*.

On the other hand, such rules of conduct, as the Court has emphasized in its judgments in *Blomefield* [1983] ECR 3981 and *Michael* [1983] ECR 4023, cannot have the effect of overriding the mandatory provisions of the Staff Regulations. Consequently, they can only be interpreted consistently with those regulations.

However, the Staff Regulations are intended to guarantee equal treatment of all officials in identical circumstances. Accordingly, Article 5 (3) of the Staff Regulations, which, together with other provisions, is expressly referred to in the grading criteria, provides that: "Identical conditions of recruitment and service career shall apply to all officials belonging to the same category . . .".

The grading criteria, as will be seen from the preamble, are also intended "to ensure that identical conditions of recruitment and career prospects shall be enjoyed by all officials in the same category. . .". That objective is faithfully applied, not least in the Grading

Committee's policy, described in the first subparagraph of paragraph 2 (a) of Annex II of the staff notice, of reducing the disparities in relevant practical experience which have arisen from the varying duration of university studies in the Member States from five to two years.

Since the defendant has calculated the relevant experience in this case in accordance with that purpose, exception cannot be taken to its decision.

Conversely, the stated purpose of this measure would be defeated if, as the applicant claims it should be, the period between December 1961 and October 1962 were also credited as a period of study. The consequence of such a step, as the Commission rightly observes, would be that the practical experience which could be taken into account would be extended by periods which could not be reckoned as either university education or relevant practical experience and the length of which would depend entirely on individual circumstances. This, however, would work to the disadvantage of all other candidates who are given credit only for actual university studies and practical experience.

(e) Against this, the applicant argues that such a practice prejudices him, since the scholarship examination forced upon him the waiting period between December 1961 and October 1962. However, it follows from the above-mentioned considerations that only actual study or practical experience or both are to be taken into account for grading purposes. Therefore it is irrelevant whether or not the waiting period between December 1961, when the applicant left school, and October 1962 when he began his university studies, was unavoidable for him. In either event, the inclusion of that period would be inconsistent with the purpose underlying the Staff Regulations.

(f) According to the calculation applied by the Commission, to which exception cannot be taken, the applicant cannot show that he satisfies the condition laid down for a grading in A 6, namely that he had at least eight year's practical experience. On these grounds alone the application must therefore be dismissed as unfounded. Consequently, there is no need to consider the additional question raised by the Commission, namely whether, if he had had the necessary practical experience he would have had any right to be classified in the grade in question.

3. Costs

In view of this finding, both parties should in principle be ordered to bear their own costs under Articles 69 (2) and 70 of the Rules of Procedure. However, the applicant has made an alternative claim for a departure from that provision as to costs, relying on the judgment in *Michael* [1983] ECR 4023. I do not, however, see any occasion for this, since he must face the objection that his claim, which is based on a doubtful part of the text, is on the face of it incompatible with the wording of other sections of the grading criteria and the purpose of the Staff Regulations.

C — In conclusion, I therefore propose that the application be dismissed and that the parties be ordered to bear their own costs.