period for taking legal action following the said decision.

2. In the first phase of the competition procedure, at the stage of the review of eligibility, it is sufficient for the selection board to consider whether candidates fulfil *prima facie* and as a whole the conditions laid down in the notice of competition. A selection board cannot be criticized for excluding the holder of a degree which very clearly relates on the face of it to a main field of study which has no particular relevance to the sphere of activity of the posts to be filled.

3. A selection board for a competition, whose previous decision to reject an application has been annulled by the Court, cannot be criticized for failing to take a new decision with a different membership, since that would amount to disregarding not only the nature of selection boards, which are collegial bodies operating in complete independence, but also to the system of legal redress instituted by the EEC Treaty, Article 176 of which provides that where the act of an institution has been declared void, the body concerned shall be required to take the necessary measures to comply with the Court's judgment.

In Case 34/80

XAVIER AUTHIÉ, a graduate in economics, resident in Paris, represented by Marcel Slusny of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 Rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Raymond Baeyens, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for annulment of the decision of the Selection Board for Competition COM/A/154 refusing to admit Mr. Authié to the tests and as far as may be necessary of the rejection by the Commission of the complaint made against that decision,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, A. Touffait and O. Due, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions and arguments of the parties may be summarized as follows:

I — Summary of the facts

Xavier Authié, who is a French national, a graduate in economics with a specialization in econometrics of the University of Orléans-Tours, a former student at the Institut d'Études Politiques in Paris and the holder of a certificate of Advanced European Studies of the College of Europe in Bruges, carried out a period of in-service training from 16 September 1977 to 15 February 1978 at the Commission of the European Communities, Directorate-General for Economic and Financial Affairs, Budgetary and Financial Matters Directorate, in the Division for Preparation of Medium-Term Economic Policy Programmes.

On 1 October 1977 Mr Authié applied to enter for Open Competition COM/A/154 on the basis of tests (Official Journal 1977, C 213, p. 9) held by the Commission to constitute a reserve of candidates for appointment as administrators in Career Bracket A 7/A 6, in various fields including that of external relations, chosen by Mr Authié.

The Selection Board refused to include Mr Authié's name on the list of candidates admitted to the tests and Mr Authié made a complaint against that decision and thereafter brought an action before the Court of Justice.

That action, joined with two others relating to the same subject-matter, gave rise to a judgment of the Court dated 30 November 1978 (Joined Cases 4, 19 and 28/78 *Salerno, Authié and Massangioli* v *Commission* [1978] ECR 2403). That judgment set aside the decisions refusing to admit the applicants to the competitive tests; the reasons on which the annulment was based were stated to be the excessive part played by the examiners who had assisted the Selection

Board in examining applications and the inadequacy of the reasons given for the disputed decisions.

Following that judgment the Selection Board for Competition COM/A/154 met again on 9 January 1979 and carried out a review of the material contained in Mr Authié's file having regard to the entry requirements set out in the notice of competition. The assessment of these requirements was made as at 10 October 1977, the closing date for all applications. The result of the meeting was set out in the Board's report dated 11 January 1979. The Board arrived at the following conclusions:

The material contained in the candidate's file shows that Mr Authié's university studies are not relevant to the field of external relations as regards Open Competition COM/A/154, since they demonstrate knowledge acquired essentially in economics with a specialization in econometrics.

The Selection Board therefore decided not to admit Mr Authié to the written tests for the competition.

That decision was communicated to Mr Authié by letter dated 15 January 1979 signed by an official of the Recruiting, Appointments and Promotion Division.

On 13 April 1979, by his counsel, Mr Authié sent a complaint to the Commission under Article 90 (2) of the Staff Regulations, requesting withdrawal of the decision which had been communicated to him on 15 January and a fresh examination by the Board.

By letter dated 23 October 1979 the responsible Member of the Commission informed Mr Authié that his complaint had been rejected.

II — Written procedure

Mr Authié lodged this appeal on 25 January 1980.

The written procedure followed the normal course.

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

III — Conclusions of the parties

The *applicant* claims that the Court should:

1. Principally:

   Declare null and void the decision taken by the Selection Board for Competition COM/A/154 on 9 January 1979 not to admit the applicant to the said competition;

   Declare and order that the competition should be recommenced as far as the applicant is concerned;

2. As far as may be necessary, declare null and void the express rejection of the applicant's complaint by the Commission in its letter dated 23 October 1979;

3. In the alternative give judgment as far as may be necessary on the new alternative submission made by the applicant in the reply and annul the acts challenged on this additional ground;

4. Order the opposite party to pay the costs.

The *Commission* contends that the Court should:

— Dismiss the application principally as inadmissible and in the alternative as unfounded;

— Order the applicant to pay his own costs.

IV — Submissions and arguments of the parties during the written procedure

A — Admissibility of the application

The *Commission* submits that the application is out of time and therefore inadmissible: it was made only on 25 January 1980 whereas the decision challenged was communicated to him on 15 January 1979.

The complaint made by the applicant on 13 April 1979 could not prevent the application from being time-barred: it had no legal effects. The case-law of the Court shows that the filing of a complaint through official channels with the appointing authority under Article 90 (2) against a decision of the Selection Board for a competition goes beyond the limits of the provisions of the Staff Regulations of Officials inasmuch as that authority does not have the power to set aside or to amend the decision of the Selection Board acting within the limits of its discretionary powers.

The applicant has committed an inexcusable error as to the applicability of Article 90 (2) of the regulations; he must have been aware that his step had no legal significance.

The *applicant* joins issue with the Commission's objection of inadmissibility.

The Court has held in a consistent series of decisions that an official is entitled to apply to it directly against the decision of the Selection Board for a competition without any prior administrative complaint through official channels; but it does not therefore follow that meticulous observance of the provisions of Article 90 of the Staff Regulations must cause the application to the Court to be time-barred.

Under the Court's case-law an applicant may rely upon Article 90 of the Staff Regulations to make a complaint even if it is superfluous; his mistake is excusable in view of the way in which the provisions are drafted and does not deprive him of his right to apply to the Court.

Moreover, the question arises whether the solutions arrived at by the Court must be applied to all decisions of selection boards or whether it is not appropriate to make a distinction between those decisions which have an administrative nature and those which concern the merits of candidates whether in the written or in the oral tests; only the latter lie within the sole discretion of the Board.

The application is wholly admissible under the system set out in Articles 90 and 91 of the Staff Regulations.

B — Substance

The *applicant* criticizes the decision challenged on the ground that it is inadequately reasoned, that it is based on reasons which are erroneous, that it is vitiated by misuse of powers, that it disregards the notice of competition, that it is in breach of the principle of equality and of non-discrimination and that it was taken by an irregularly constituted selection board.

The *Commission* considers that none of the submissions put forward by the applicant is well founded.

1. The submission of lack of adequate reasons

The *applicant* points out that the Selection Board confined itself to stating that "Mr Authié's university studies are not relevant to the field of external relations as regards Open Competition COM/A/154 since they demonstrate

knowledge acquired essentially in economics with a specialization in econometrics" and failed to explain why the option "external relations" and studies in economics should be incompatible.

Moreover, it is impossible to determine by reading the letter of 15 January 1979 whether the alleged specialization in econometrics was a decisive factor in the new decision of the Selection Board.

The language used by the Selection Board is ambiguous whereas the Court's case-law requires that adequate reasons should be given.

There is no item in the file which shows that the Selection Board has seriously reconsidered the applicant's position — rather the reverse. The Board merely endorsed the unjustified preconception of its chairman, to the effect that the study of economics was incompatible with the option "external relations".

The *Commission* stresses that the reason for the Selection Board's refusal to admit the applicant was the fact that a candidate who has a degree in economics with a specialization in econometrics and a certificate of Advanced European Studies with a specialization in economics is unable to show that he has completed a course of university studies relevant to the field of external relations and therefore does not comply with the conditions of admission set out in the notice of competition.

It appears from the minutes signed by the three members of the Selection Board on 11 January 1979 that the Board carried out a complete examination of the applicant's file in the light of the decisions of the Court. The Board reconsidered the decision which had been annulled and gave precise and unambiguous reasons for refusing to admit the applicant to the written tests.

The criticism of the attitude taken by one of the members of the Board is wholly unsupported by the evidence and can hardly be reconciled with the confidentiality of the proceedings of a collegial body of this kind.

2. The submission of erroneous reasons

The *applicant* submits that the statement of the reasons on which the decision is based is not only inadequate but also wholly erroneous.

The notice of competition does not exclude any particular subject of study in relation to any option at all. The Board has no doubt certain powers to determine, subject to review by the Court, whether the qualifications, degrees and experience of candidates are relevant to the various options; but when doing so, it must take into account the different educational systems existing in Member States and the purpose of the notice of competition.

In French universities the study of economics includes common basic courses of lectures covering external relations; this teaching, completed by that obtained at the Institut d'Études Politiques, includes numerous links with questions of external relations.

In any case there is no such thing in French universities as a final specialization in external relations.

It is also appropriate to take account of the fact that Directorate-General I of the Commission, External Relations, includes a number of branches dealing with economic, financial or commercial questions; moreover, Directorate-General II, Economic and Financial Affairs, includes branches dealing with external relations and Directorate-General VIII, Development, included by definition a series of branches dealing with international economic relations.

The *Commission* takes the view that the fact that the course of studies followed by the applicant included three series of lectures which were not totally unconnected with external relations does not change the fact that his university education, in so far as it is complete and evidenced by a degree, is clearly in the field of economics with moreover a specialization in econometrics, an area which can hardly be considered identical with that of external relations.

The argument based on the Commission's detailed list of posts is not relevant either. The competition was held in order to constitute a reserve of administrators and the vacant posts were not specified in accordance with the specific needs of particular directorates-general or other departments of the Commission. The fact that directorates-general which have external relations as their central field of activity also deal with certain economic or financial aspects of question of external relations does not appear to be a point constituting an error in the objective judgment made by the Selection Board for the competition, based on the documents contained in the file supplied by the candidate himself.

3. Submission of misuse of power

According to the *applicant*, the refusal to admit him to the competition is to be explained by the deliberate intention of the chairman of the Selection Board to exclude economists from the competition as far as possible. His objective was to establish a sort of general rule taking account of a series of successive competitions. This conduct is in contradiction with the notice of competition: it tends to favour candidates who have followed a particular type of course of study. There is therefore a genuine misuse of power in this case.

The *Commission* takes the view that this allegation is not concerned with the present dispute and that no evidence has been adduced in support of the allegation that the chairman of the Selection Board, by excluding candidates who had studied economics, intended to carry out a scheme which was all his own and which allegedly was to set up an imaginary general rule *praeter legem.*

4. The submission that the notice of competition was disregarded

The *applicant* submits that the notice of competition was disregarded from two points of view: on the one hand, the Selection Board considered the training as econometrist as a basic training, whereas it was only a final specialization and the basic training was far more general, and on the other hand the Selection Board took experience into

account although the applicant's candidature was rejected solely on the basis of the nature of his education.

Moreover, the applicant was not informed of this, which was equally a breach of the rights of the defence.

The *Commission* feels that this submission does not add anything to the first two submissions and is in any case not founded in fact.

The Selection Board did not consider the specialization in econometrics as a basic training nor did it take into account the applicant's experience in order to refuse his admission to the written tests.

5. The submission of breach of the principles of equality and non-discrimination

In refutation of the decision under appeal, the *applicant* relies upon the fact that certain candidates who had followed courses of studies related to economics (courses in business studies or in political economy) were admitted to the competition although these studies were less advanced than his own university studies in economics. The applicant was therefore penalized for having pursued his education further than other candidates.

The breach of the principle of equality between officials is accompanied in this case with a failure to respect the notice of competition inasmuch as the latter provided for the different educational systems existing in the Member States to be taken into consideration.

The Selection Board should have taken account of these circumstances and should also have undertaken comparisons setting out their reasons so as to avoid mistakes. The applicant's studies were more advanced than those of the German candidates admitted to the competition; his specialization in econometrics was additional to general studies whose level was already superior to that of other candidates.

The Commission's arguments to the effect that the discrimination on which the applicant relies cannot have prejudiced him since in any event the Selection Board simply made a mistake in the case of the candidates to whom he refers cannot be accepted; it is also incorrect to rely upon case-law according to which a selection board's decision need not be annulled when such annulment can be of no use to the applicant since the decision may in any event be upheld.

The real problem is to analyse the behaviour of the Board. In this respect it should be remarked that the decision by the chairman of the Board to exclude candidates who had studied economics for the option "external relations" was not the subject of a general instruction and was applied with total inconsistency, in particular in a much more rigorous way for French-speaking candidates than for German-speaking candidates. In this way the irregularities referred to by the applicant appear as cumulative: the absence of general instructions is the cause of the inconsistencies in the Selection Board's decisions; for this reason the decisions taken are arbitrary.

According to the *Commission* a mere comparison between the final university degrees without taking account of the

different methods of teaching in universities in the various Member States and of the other qualifications contained in the candidates' files cannot provide the least support for an allegation of discrimination.

Moreover, the Court takes the view that the confidential nature of the activities of selection boards as laid down by Article 6 of Annex III to the Staff Regulations prevents disclosure of any information relating to judgments of a personal or comparative nature about the candidates.

Finally, even if it were to be supposed that there had been some error of judgment in the course of the Selection Board's activities relating to the admission of candidates, a rejected candidate could not show that he had *locus standi* when that error of judgment was restricted to a few cases and had no effect on the working of the competition and therefore gave him no ground for complaint.

With regard to the "behaviour of the Board" in its activities, it should be noted that at its meeting of 9 January 1979 it deliberated without examiners for whom criteria or instructions would have been necessary and that the Board carried out a complete review of the three candidates' files which had given rise to the judgment of annulment of 30 November 1978; this was done in the light of the notice of competition issued by the Commission.

6. The submission of irregular constitution of the Selection Board

The *applicant* in his reply submits that the disputed decision was also irregular because the same person sat again as chairman of the Board which is contrary to the principle *nemo judex in re sua.*

The *Commission* is convinced that the submission regarding the constitution of the Selection Board cannot be accepted.

It is inadmissible under Article 42 of the Rules of Procedure and at all events unfounded. The presence of the chairman of the Selection Board cannot constitute an irregularity.

V — Oral procedure

The applicant, represented by Mr Slusny, and the Commission, represented by Mr Baeyens, presented oral argument at the sitting on 11 December 1980.

As to the submission concerning the constitution of the Board, the *applicant* took the view that it was contrary to a general principle of law that the same Board with an identical membership should decide a second time on the same file in the absence of any new factor. The *Commission* for its part was of the opinion that consideration of Mr Authié's application could only return to the same Selection Board, better informed, and that a modification of the membership of the Board would have been liable to raise doubts as to the regularity of the proceedings.

The Advocate General delivered his opinion at the sitting held on 5 February 1981.

Decision

1 By application lodged at the Court Registry on 25 January 1980 Mr Authié brought an action for annulment of a decision of the Selection Board in Competition COM/A/154 (Official Journal, C 213, p. 9) refusing to admit him to the tests.

2 It should be recalled that the applicant took part in this competition held to constitute a reserve of administrators for Category A 7/A 6 in 1977. Since he was not at that time included on the list of candidates admitted to the written tests he brought an action as a result of which he obtained by judgment of the Second Chamber of 30 November 1980 *(Salerno, Authié and Massangioli v Commission,* Joined Cases 4, 19 and 28/78, [1978] ECR 2403) the annulment of the decision of the Selection Board on two grounds: the lack of sufficient supervision by the Selection Board over the activities of examiners who had assisted the Board because of the large number of candidates, and the excessive succinctness of the statement of the reasons on which the disputed decision was based.

3 As a result of the Court's judgment the Selection Board for the competition reviewed the applicant's file and at its meeting on 9 January 1979 confirmed its previous decision. That new decision was communicated in the following terms to the applicant by letter dated 15 January 1979:

"By judgment given in Joined Cases 4, 19 and 28/78 on 30 November 1978, the Court of Justice of the European Communities annulled the decision which was communicated to you by letter dated 5 December 1977 concerning the refusal to admit you to the written tests for Competition COM/A/154.

I am to inform you that the Selection Board met on 9 January 1979 and took the following decision in your regard:

Mr X. Authié chose the field 'external relations'. He declared that he:

(i) had obtained a degree in economics at the University of Orléans on 29 June 1973 and a Certificate of Advanced European Studies with specialization in economics, Class B, awarded by the College of Europe on 27 May 1977;

(ii) had followed the second year of studies of the Institut d'Études Politiques, Paris, (1974/75).

The applicant has moreover been admitted to carry out a period of training within the Commission as from 16 September 1977. The information contained in the candidate's file shows that Mr Authié's university studies are not relevant to the field of external relations in respect of Open Competition COM/A/154 inasmuch as they demonstrate knowledge acquired essentially in economics with a specialization in econometrics."

4 On 13 April 1979 the applicant made a complaint to the Commission signed by his counsel, under Article 90 of the Staff Regulations. By letter dated 23 October 1979 the responsible member of the Commission confirmed the reason for the refusal to the applicant and observed in conclusion that "the Commission has of course no power to set aside or to amend the decision of the Selection Board for a competition".

5 The application is made both against that letter from the Commission and the decision of the Selection Board.

Admissibility

6 The Commission has contended that the application is inadmissible because it was not made, within the prescribed period, against the decision of the Selection Board — which is the only act adversely affecting the applicant in this case — but only against a letter from the Commission explaining a decision which the Commission did not have the power to amend because of the independence of the Selection Board. The Commission's Agent has,

however, let it be known that the Commission does not wish to press this objection of inadmissibility.

7 The Commission's attitude is justified in principle in so far as the use of the complaints procedure under Article 90 of the Staff Regulations is nugatory where a decision is made by a body such as a Selection Board for a competition which adjudicates in complete independence and whose decisions cannot be amended by the appointing authority. Nevertheless in so far as the definitive nature of such decisions and the ineffectiveness of a complaint under Article 90 of the Staff Regulations with regard to them are not formally acknowledged either by a provision of a regulation or by an express warning in the decisions themselves, it seems inequitable to deprive a person of his right of redress where he has made his complaint before the expiry of the period for taking legal action following the actual decision.

8 It is therefore appropriate to ignore the doubts expressed by the Commission.

Substance

9 As regards the substance, the applicant puts forward seven submissions based mainly on the fact that he was excluded during the selection process of a competition covering *inter alia* the field of "external relations" since he held a university degree in economics (second, third, fourth and sixth submissions). In addition he puts forward submissions relating to lack of a sufficient statement of the reasons on which the decision was based (first submission), infringement of the principle of equality in the treatment of candidates (fifth submission), and finally irregular constitution of the Selection Board (new issue raised in the reply).

The assessment of the applicant's degree

10 In the terms of the notice of competition, Section III, B 2, first paragraph, candidates should show "university education, with degree or diploma in a field appropriate to the option chosen (see Section I). The Selection Board

will allow for differences in national education systems". The applicant chose the option "external relations", so that the degree should be assessed in relation to that field.

11 It is common ground that among the various qualifications which the applicant relied upon in his application, only the degree granted on 12 May 1976 by the Faculty of Law and Economics of Orléans is relevant to the requirement of the notice of competition quoted above. The degree certifies that Mr Authié "passed the fourth year examination of the degree in economics 'specialization in econometrics' of the said Faculty on 29 June 1973 with the mark 'passable', entitling him to the degree of Graduate in Economics"; it should be further understood that the Certificate of the College of Europe was considered as equivalent to "practical experience obtained after graduation" according to the notice of competition, and the year of study at the Institut d'Études Politiques in Paris was ignored since it was not evidenced by any degree or certificate.

12 The applicant submits in essence that the Selection Board exceeded its authority, as set out in the particulars of the notice of competition, by excluding in advance graduates in economics and moreover that the Selection Board failed to appreciate the true significance of his degree, ignoring the structure of the French educational system. The applicant further alleges that the Selection Board for the competition acted in pursuance of a prejudice against economists; in this respect he refers to certain statements of the chairman of the Selection Board when giving evidence in the first case before the Court, from which it appears that the Board considered that candidates who had a training in economics could appropriately take part in competitions held periodically by the Commission to recruit economists but that that training did not correspond to the needs of external relations.

13 Contrary to those allegations, it does not appear that by excluding the applicant the Selection Board for the competition exceeded the limits of its authority or that it made a mistake in its assessment of the individual qualifications of the candidate.

14 It should in fact be recognized that within the framework of the notice of competition it was for the Selection Board to set up criteria, in the form of general categories, for the admissibility of candidates by determining the various types of degree which might be taken into consideration for the various specializations covered by the competition. In determining such criteria it was both necessary and permissible for the Board to take account of the Commission's recruitment policy as it appears from the specializations covered by the various successive competitions. The fact that the Commission periodically holds competitions reserved for candidates trained as economists was therefore a legitimate reason to concentrate the selection criteria on other types of training and degrees. The Board cannot therefore be criticized for exceeding the limits of its discretion by excluding in a competition held in the field of external relations a candidate who held a degree certifying a specialization in economics.

15 As to the assessment of the candidate's individual merits, he argues on the one hand that the Selection Board allowed itself to be led into error by the specialization in econometrics mentioned in his degree when this was merely a specialization over and above a first degree in economics; and on the other hand that the Selection Board did not take account of the fact that his curriculum in economics included a number of subjects relevant to external relations.

16 The criticisms of the applicant set requirements for the Selection Board which go beyond the scope of the review of eligibility which forms the first phase of the competition procedure. At that stage it was sufficient for the Selection Board to consider whether the candidates fulfilled *prima facie* and as a whole the conditions laid down in the notice of competition. A Selection Board cannot therefore be criticized for excluding the holder of a degree which very clearly relates on the face of it to a main field of study which has no particular relevance to external relations.

17 It follows from the foregoing that the Selection Board cannot be held to have exceeded its discretion or have made any mistake in the assessment of the degree submitted by the applicant.

The submission of lack of an adequate statement of reasons

18 Having referred to the fact that the first decision of the Selection Board was set aside for lack of an adequate statement of the reasons on which it was based, the applicant raises the same submission in respect of the second decision communicated by letter of 15 January 1979.

19 It may be seen from the foregoing that the Selection Board's decision cannot in itself be criticized for excluding the candidate because of the nature of his university degree. In the letter of 15 January 1979 the Board explained the essential reason for its decision namely the fact that the candidate's course of studies at university inasmuch as it demonstrated knowledge acquired essentially in economics with a specialization in econometrics, was not sufficiently relevant to the field of external relations. Since this was the decisive reason in view of the criteria which the Selection Board for the competition had legitimately set up, the decision cannot be criticized for want of a sufficient statement of reasons.

20 This submission must therefore be rejected.

The submission of infringement of the principle of equality of candidates

21 In this respect, the applicant alleges that at the same time as his own candidature was excluded, the Selection Board admitted several candidates who had followed courses of studies related to economics. He submitted in particular a photocopy of the degree of a German candidate who held the degree of "Diplom-Volkswirt" [graduate in political economy], who had been admitted to the same competition.

22 The Commission admits in this respect that there may have been certain inconsistencies in the application of the selection criteria. As to the candidates who were mentioned by name by the applicant, in so far as they were admitted to the competition, they were all subsequently eliminated without exception at the time of the written tests. None of them passed the final stage of the competition so that the applicant could not rely on their cases to show that there had been an infringement of equality of treatment of candidates.

23 The Court considers that the facts alleged by the applicant, which might in one or two cases be considered to have a certain plausibility, against a total of more than 4 000 candidates are not sufficiently cogent to support the allegation of discrimination. Even if the facts mentioned above were proved, they would be individual errors of judgment with regard to the selection criteria set by the Selection Board; the applicant cannot require that such errors of judgment should be extended for his benefit.

24 This submission must therefore be rejected.

The submission of irregular constitution of the Selection Board

25 Finally the applicant submits that following the annulment by the Court of the first decision not to admit him, the new decision should have been taken by a differently constituted board since the Board which had taken the first decision was biased against him. Relying on the maxim *nemo judex in re sua* he challenges in particular the right of the chairman of the Selection Board to take part in the new decision. Whilst stating that he does not wish to cast doubt on the "intellectual probity" of the chairman of the Board, the applicant complains that he wished to follow his "idée fixe" of excluding economists from this competition.

26 The applicant's criticisms fail to appreciate on this point not only the nature of selection boards, which are collegial bodies operating in complete independence, but also the system of legal redress instituted by the Treaty. Article 176 of the EEC Treaty in fact provides that where the act of an institution has been declared void, the body concerned shall be required to take the necessary measures to comply with the Court's judgment. In this case, following the judgment of 30 November 1978, the case could only be remitted to the Selection Board whose decision had been annulled.

27 It should moreover be emphasized that the first decision of the Selection Board was annulled only for a procedural flaw and for lack of adequate statement of reasons. The Selection Board therefore remained entirely free in its assessment on the actual question of the eligibility of the applicant to take the written tests. It follows from the above that the Selection Board cannot be criticized in any way as concerns the substance of its decision or of the statement of the reasons on which it was based. It is therefore clear that the objectivity of the decision taken cannot be called in question.

28 This submission must therefore be rejected.

29 As a result of all the reasons set out above, the application must be dismissed.

Costs

30 Pursuant to Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs.

31 Nevertheless pursuant to Article 70 of the Rules of Procedure the costs incurred by the institutions in cases brought by officials of the Communities are borne by the former.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Pescatore Touffait Due

Delivered in open court in Luxembourg on 26 February 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 5 FEBRUARY 1981

My Lords,

Introductory

This case is a sequel to Case 19/78 *Authié* v *Commission,* which was joined by the Court with Cases 4/78 *Salerno* v *Commission* and 28/78 *Massangioli* v *Commission* [1978] ECR 2403.

The facts are these.

Mr Xavier Authié, the applicant in Case 19/78 and in this Case, was born on 27 October 1952 and is of French nationality. On 1 October 1977 he applied to take part in an open competition held by the Commission to constitute a reserve of candidates for appointment as administrators in Grades 7 and 6 of Category A. He was then,