nature of the duties attaching to the posts and do not concern the conditions of recruitment. Those conditions are governed by the provisions of Article 29 and of Annex III to the Staff Regulations and there is nothing to prevent the conditions fixed by the notice of competition in relation to particular posts or particular categories of posts from being more rigorous than the minimum conditions arising out of the classification of posts, whether in order to fill a particular vacant post or to draw up a reserve in order to fill posts in a particular category.

3. A candidate for a competition cannot rely to any purpose, in support of his claim that the selection board's decision not to admit him should be annulled, upon conditions of admission to another competition organized by the same institution in order to fill posts in the same career bracket but according to different procedures and in pursuit of a different aim.
4. There is no breach of the principle of equality where a particular objective rule is applied in the same manner to all officials or candidates who are placed in the same position.

In Case 143/82

DAVID LIPMAN, an official of the Commission of the European Communities, residing at 152 Avenue Winston-Churchill, 1180 Brussels, assisted and represented by Edmond Lebrun of the Brussels Bar, 68 Rue Camille-Lemonnier, 1060 Brussels, with an address for service in Luxembourg at the Chambers of Tony Biever, Advocate, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Hendrik Van Lier, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, 93 Avenue Brillat-Savarin, 1050 Brussels, with an address for service in Luxembourg at the office of Mario Cervino, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for:

1. Primarily:

The annulment of the decision of the Selection Board for Open Competition No COM/A/325 not to accept the applicant's candidature for the competition;

An order that the Commission should re-open as regards him the procedure for the said Competition No COM/A/325;

An order that the Commission should pay the costs.

2. In the alternative, prior to the decision on the substance of the application:

An order that all necessary measures of inquiry be adopted in order to determine whether or not the selection board had regard to the relevance of practical experience in relation to the officials who were candidates for the said Competition No COM/A/325,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Summary of the facts

1. The Commission of the European Communities, the defendant, published in the Official Journal of the European Communities on 12 September 1981 (C 233, p. 21) Notice of Open Competition No COM/A/325 for "an open competition, based on qualifications and tests, to constitute a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A." According to the notice, the purpose of the competition was to draw up a reserve in order to fill vacant or newly-created posts in that career bracket within the Commission, with administrative,

advisory and supervisory duties relating to the Commission's political, administrative and financial activities. The following options were available: external relations; press and information; public finance, accounting and auditing; and general administration.

2. The provisions of Section III B 2 of the Notice of Open Competition state in particular that:

"On the closing date for applications, candidates must have completed:

(a) A full university course, with degree or diploma, in an appropriate field (see section I) . . .

(b) At least two years' experience since graduation of the following types:

— professional activity related to the option specified under I;

— post-graduate studies with a degree or diploma related to the option selected;

— further training related to the option selected."

3. The applicant, David Lipman, an employee of the Commission recruited as an official in Grade B 4 in 1973 and then promoted to Grade B 3 in 1978, was assigned on his recruitment to Directorate-General I, External Relations, where he is still employed. Since 1977 he has been entrusted with a number of duties attaching to career bracket A 7/6.

In addition, on 1 August 1981 Mr Lipman was awarded a Bachelor of Laws Degree by London University.

Thus after the publication of the notice of competition he submitted an application on 28 September 1981, choosing the external relations option.

By a letter dated 25 February 1982, the Head of the Recruitment Division informed Mr Lipman that it had not been possible to accept his candidature for the competition on the ground that he had not provided evidence of at least two years' practical experience since graduation.

II — Written procedure and conclusions of the parties

By application lodged on 10 May 1982, the applicant brought an action against the Commission of the European Communities.

In his application, the applicant claims that the Court should:

Annul the decision of the Selection Board for Open Competition No COM/A/325 not to accept his candidature for the competition;

Order the Commission to re-open as regards him the procedure for the said Competition No COM/A/325;

Order the Commission to pay the costs.

In his reply lodged on 30 July 1982, the applicant further claims in the alternative that the Court should:

Order, prior to the decision on the substance of the application, that all necessary measures of inquiry be adopted in order to determine whether or not the selection board had regard to the relevance of practical experience in relation to the officials who were candidates for said Competition No COM/A/325.

The Commission contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure.

III — Submissions and arguments of the parties

1. The interpretation to be given to the provision of the notice of competition concerning the requirement of experience

The *applicant* claims that this provision, which states that candidates must have "At least two years' experience since graduation . . .", must be given a wide interpretation. In support of that view:

He claims first that as regards the duties to be carried out subsequently, it makes no difference whether the practical experience was acquired wholly or in part before or after graduation. At the date of his candidature for the competition, he had at least six years' practical experience, especially related to the option chosen and acquired at a high level.

Secondly, he argues that a text must be interpreted so as to avoid "absurd results" which "the legislature" must be regarded as not having intended and that such an interpretation should be given even where the text concerned does not contain any defect of language or substantive error. The literal application of the text in this case leads to the rejection of a candidate who can provide evidence of practical experience of a duration three times that required but of which only one year was acquired after graduation. The contested provision of the notice of competition should therefore be regarded as referring only to young graduates and, since that is not the position of the applicant, the text must be interpreted widely, as the Court ruled in its judgment of 31 May 1979 in Case 156/78 *Newth* v *Commission* [1979] ECR 1941, and as proposed in legal writing (Henri de Page).

Thirdly, he relies upon the provisions of Article 1 (d) of Annex III to the Staff Regulations of Officials of the European Communities which provides that the notice of competition must specify "the diplomas and other evidence of formal qualifications or the degree of experience required for the posts to be filled". He infers from that that the degree of experience required depends only upon the establishment of practical experience related to the post to be filled, regardless of whether that minimum experience was acquired before or after the degree or diploma required in addition.

Fourthly, he alleges that a wide interpretation of the provision at issue is all the more necessary since it lays down only a secondary condition of admission. On the one hand, the experience is in fact described in the notice of competition as "complémentaire" [1] and, on the other hand, the words "in general . . . should" in the Annex to Section I of the notice of competition make it seem as if this is not an essential condition of admission to the competition. In addition, in relation to certain candidates for the competition, the selection board did not check whether their practical experience was in fact related to the option chosen. Thus

1 — Translator's note: There is no translation of this word in the English version of the notice of competition.

since the requirement of practical experience was regarded as of secondary importance, the same views must be taken *a fortiori* of the condition relating to the length of such experience. On the latter point, the applicant requests measures of inquiry in order to determine whether or not the selection board had regard to the relevance of practical experience in relation to the officials who were candidates for the competition.

The *Commission*, on the other hand, considers that the contested provision of the notice of competition cannot be given a wide interpretation or regarded as of secondary importance.

It contends that no interpretation, however wide, can have priority over a clear text. In this case, since the language in the text of the notice of competition is not ambiguous and the text contains no substantive error, that notice cannot be subject to interpretation, as the Court has ruled on several occasions. It observes that the applicant has wrongly relied upon the judgment in *Newth*.

It explains that the very intention of the appointing authority was that candidates admitted to the competition should have practical experience based upon theoretical knowledge acquired in a university course, and therefore the requirement laid down in the notice of competition corresponds to the aim pursued, is not "absurd" and is within the discretionary power of the institution.

Moreover, in its opinion that interpretation follows very clearly from the first paragraph of Section 5 of the "Guide to Candidates taking part in Open Competitions of the Commission".

As regards the reference to Article 1 (d) of Annex III to the Staff Regulations of Officials, the Commission considers that the applicant's argument is unfounded, since the only purpose of that provision is to specify the headings which every notice of competition must contain and it does not lay down rules relating to the precise content of such headings.

The Commission denies the allegation that the requirement in question is of secondary importance. It argues that the term "complémentaire" is in no way synonymous with "secondary" but means simply that the experience required must complement and therefore relate to the degree or diploma obtained. Again, it is clear from a reading of the entire sentence in the annex to Section I of the notice of competition that the words "In general, . . . should" concerns the type of practical experience acquired and not the requirement that the practical experience should have been acquired after graduation. Finally, the Commission affirms that the selection board did in fact check whether the practical experience of all candidates was related to the option chosen and states that the applicant provides no evidence in support of his allegations which are, moreover, unconnected with the dispute.

2. Failure to observe Article 5 (3) of the Staff Regulations of Officials

The *applicant* claims that there was an infringement of Article 5 (3) of the Staff Regulations of Officials of the European Communities, which provides that "Identical conditions of recruitment and service career shall apply to all officials belonging to the same category or the same service." In support of that submission, he puts forward two arguments:

First, he observes that the Notice of Internal Competition No COM/A/4/81, based on tests, which was published at the same time as the contested notice and was also organized for the recruitment of administrators in the career bracket covering Grades 7 and 6 of Category A, did not require candidates to have a university degree, which automatically excluded any requirement concerning practical experience acquired after graduation.

Secondly, the applicant repeats his complaint based on the fact that other candidates were admitted to the competition even though their practical experience was not related to the option chosen.

The *Commission* considers that those two arguments cannot be accepted:

In relation to the first point, it contends that the applicant may not compare his situation with that of candidates for another competition of a different type and organized in the framework of the discretionary power of the appointing authority.

On the second point, the Commission considers that the applicant's assertion is mistaken in fact and in law and that in any event there is no point in ascertaining whether the requirement that practical experience should be related to the option chosen was checked in relation to all the candidates, since Mr Lipman was not admitted to the competition on the ground that he had not had practical experience of a specified duration after graduation.

3. Breach of general principles of law

The *applicant* claims first that there was a failure to observe the principle of equal treatment and in support of that submission on the one hand advances the same arguments as those set out under 2 above and on the other hand claims that it is clear from a comparison of his situation with that of other candidates who were admitted to the competition even though their practical experience was less weighty and relevant than his own that the resulting situation is artificial, grossly unfair and contrary to the principle of equality. He adds that in addition he is still performing the duties in respect of which he was not admitted to the competition.

The *Commission* considers that according to the well-established case-law of the Court there is no discrimination where a particular rule, based on objective factors, applies in the same manner to all officials who are placed in the same situation. That is the case here where the requirement of practical experience after graduation was applied to all the candidates and is objective and compatible with the aim pursued by the appointing authority. Equally, it considers that the existence of another competition which does not contain the same requirement does not disclose a case of discrimination either, since that competition is of a different type and was organized for the purpose of enabling officials without a university degree to enter Category A. As for the nature of the duties performand by Mr Lipman, the Commission considers that that does not affect the legality of the decision taken.

Secondly, the *applicant* submits that there was a failure to observe the principle of proportionality and claims that the "nature" of the requirement in question, which is not sufficiently closely related to the aim pursued by the appointing authority, is clearly out of proportion to the very detrimental consequences which that requirement has on the normal development of his career, regard being had to his age (33 years) and the frequency with which such competitions are organized (every four to five years).

The *Commission* considers on the other hand that it is an exaggeration to state that the normal development of the applicant's career is jeopardized, in view of the fact that open competitions of the same type are organized approximately every three years and that there is no age-limit for officials who have been employed by an institution for at least one year. In any event it considers that there is in this case no breach of the principle of proportionality.

Finally, it takes the view that by claiming that the general principles of law have not been observed, the applicant is in reality seeking to call in question its discretionary power to determine, in the framework of the Staff Regulations, the conditions of admission to a competition.

IV — Oral procedure

At the sitting on 10 March 1983 oral argument was presented by E. Lebrun, of the Brussels Bar, for the applicant and by H. Van Lier, acting as Agent, and D. Jacob of the Brussels Bar, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 24 March 1983.

Decision

1 By application lodged at the Court Registry on 10 May 1982, Mr David Lipman brought an action against the Commission of the European Communities for, on the one hand, the annulment of the decision of the Selection Board for Open Competition COM/A/325 not to admit him to the tests in that competition and, on the other hand, an order that the Commission should re-open as regards him the procedure for that competition.

2 The competition in question was an open competition based on qualifications and tests, to constitute a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A. The notice of competition,

published in the Official Journal of the European Communities on 12 September 1981, required candidates first, to have completed a full university course, with degree or diploma, in an appropriate field, and secondly, to have at least two years' experience since graduation related to the option selected.

3 The applicant, an employee of the Commission recruited in 1973 as an official in Grade B 4 and then promoted to Grade B 3 in 1978, was assigned to the Directorate-General for External Relations in which he still works. Since 1977 he has been entrusted with a number of duties attaching to Grade A 7. On 1 August 1981, he was awarded a Bachelor of Laws degree by London University. On 28 September 1981, he applied for admission to Competition COM/A/325, selecting external relations as his option.

4 By letter dated 25 February 1982, the Head of the Recruitment Division informed Mr Lipman that it had not been possible to accept his candidature for the competition on the ground that he had not had at least two years' practical experience since graduation.

I — Claim for the annulment of the decision refusing to admit the applicant to the competition

1. Submission that the provision in the notice of competition relating to the requirement of experience should be given a wide interpretation.

5 The applicant claims that the provision in the notice of competition which requires that "candidates must have completed . . . At least two years' experience since graduation . . ." must be interpreted broadly and that consequently, in view of the length and quality of his practical experience

before graduation and even though he did not have at least two years' experience after graduation, he should have been admitted to the tests.

6 First, the Court finds that the text whose application is at issue clearly states that only experience since graduation may be taken into account. Consequently, no interpretation can override such a clear text, especially where the purpose of the text closely corresponds to the intention of the appointing authority which has a wide discretion in this area. Nor, therefore can that requirement laid down in the notice of competition be regarded as being of secondary importance.

7 Secondly, Mr Lipman relies in support of this submission upon the provisions of Article 1 (d) of Annex III to the Staff Regulations of Officials, which provides that the notice of competition must specify "the diplomas and other evidence of formal qualifications or the degree of experience required for the posts to be filled", and infers from it that the condition relating to practical experience should be formulated in relation to the post to be filled and not in terms of when the experience was acquired in relation to the degree or diploma. That argument cannot be accepted. In fact, the only purpose of the above-cited provision of the Staff Regulations is to specify the headings, which every notice of competition must contain, and cannot be regarded as laying down the precise content of each of those headings. Moreover, as the Court has already ruled in its judgment of 5 April 1979 in Case 117/78 *Orlandi* v *Commission* [1979] ECR 1613, the provisions of Article 5 of the Staff Regulations seek to provide a general definition of the minimum level required for an official of the grade in question according to the nature of the duties attaching to the posts and do not concern the conditions of recruitment. Those conditions are governed by the provisions of Article 29 of and Annex III to the Staff Regulations and there is nothing to prevent the conditions fixed by the notice of competition in relation to particular posts or particular categories of posts from being more rigorous than the minimum conditions arising out of the classification of posts, whether in order to fill a particular vacant post or to draw up a reserve in order to fill posts in a particular category.

8 It follows from the foregoing considerations that the first submission must be rejected.

2. Submission based on the failure to observe Article 5 (3) of the Staff Regulations of Officials

9 Article 5 (3) of the Staff Regulations of Officials provides that "Identical conditions of recruitment and service career shall apply to all officials belonging to the same category or the same service." In support of the submission based on the failure to observe that provision, Mr Lipman on the one hand claims that the Notice of Internal Competition No COM/A/4/81 published at the same time as the contested notice did not require the candidates to be university graduates, so ruling out any condition concerning the time when their practical experience was aquired and, on the other hand, contends that other canditates were admitted to the tests in Competition No COM/A/325, even though their practical experience was not related to the option selected.

10 Those two arguments cannot be accepted. First, Mr Lipman cannot rely to any purpose upon conditions of admission to another Commission competition, which was organized according to different procedures and which pursued a different aim, in support of the claim, formulated in his conclusions, that the decision of the Selection Board in Competition No COM/A/325 should be annulled; moreover, the second argument put forward in support of the submission is in any event invalid since it concerns the nature of the pratical experience and not whether or not that experience was obtained after graduation.

11 Consequently, and without its being necessary to order the measure of inquiry requested by the applicant in relation to the second part of the submission, there is no alternative but to reject that submission.

3. Submission relating to the breach of the principle of equality

12 In support of this submission, the applicant relies upon the fact that the comparison of his situation with that of other candidates admitted to the

competition, even though their practical experience was less weighty and relevant than his own, reveals a situation which is "artificial", "unfair" and contrary to the principle of equality.

13 As the Court has repeatedly ruled, there is no breach of the principle of equality where a particular objective rule is applied in the same manner to all officials or candidates who are placed in the same position. In this case, since it does not appear from the file and it is not even alleged that candidates with less than two years' practical experience after graduation were admitted to the competition, the submission can only be rejected.

4. Submission on the disregard of the principle of proportionality

14 The applicant claims that the nature of the condition laid down in the notice of competition is clearly out of proportion to the very detrimental consequences which it has on the development of his career.

15 The Court can only find that, whatever the applicant's merits, the condition laid down in the notice of competition was not vitiated by any illegality and was properly applied by the Commission to Mr Lipman's case. Therefore the consequences of the contested decision cannot affect its legality, and the principle of proportionality cannot be successfully relied upon in this case.

II — Claim that the Commission should be ordered to re-open, as regards Mr Lipman, the procedure for Competition No COM/A/325

16 The Court cannot, without trespassing upon the prerogatives of the administrative authority, order a competition to be opened or re-opened. Consequently, and in any event, such a claim is inadmissible.

17 It follows from all the considerations set out above that Mr Lipman's application must be dismissed.

Costs

18 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

19 However, under Article 70 of the Rules of Procedure, costs incurred by the institutions in applications by officials of the Communities are to be borne by the institutions themselves.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

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

Everling Mackenzie Stuart Galmot

Delivered in open court in Luxembourg on 28 April 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber