JUDGMENT OF THE COURT (SECOND CHAMBER)
12 JULY 1984 [1]

Sophie Moussis
v Commission of the European Communities

(Recruitment and promotion)

Case 227/83

Officials — Appeals — Prior administrative complaint — Time-limits — Matter of public policy — Right of action definitively time-barred
(Staff Regulations, Arts 90 and 91)

The time-limits prescribed in Articles 90 and 91 of the Staff Regulations for the lodging of complaints and appeals are a matter of public policy and are not subject to the discretion of the parties or the Court, since they were laid down with a view to ensuring clarity and legal certainty.

The fact that an institution, for reasons related to its staff policy, deals with the substance of a request submitted out of time and therefore inadmissible cannot have the effect of derogating from the system of mandatory time-limits and re-establishing a right of action which is definitively time-barred.

In Case 227/83

SOPHIE MOUSSIS, an official of the Commission of the European Communities, residing in Brussels, represented by Georges Vandersanden of the Brussels bar, with an address for service in Luxembourg at the Chambers of Janine Biver, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

APPLICATION for the annulment of a Commission decision refusing to alter the grade to which the applicant was appointed following a competition,

THE COURT (Second Chamber)

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

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — The facts

In March 1961 Sophie Moussis, a Greek national, obtained a degree in economics and political science at the University of Thessalonika and, in 1962, a diploma in advanced European studies at the European University Centre of Nancy.

In 1963, after completing a training course at the ECSC, she joined the Centre of Planning and Economic Research in Athens where she worked until June 1968. From November 1964 to May 1965 she attended a training course on national planning for which she received a diploma from the Agency for Industrial and Economic Cooperation in Paris.

After undergoing a period of training at the Commission of the European Communities in 1967, she was employed at the Commission as an expert from 1968 to 1971.

On 15 November 1971, Mrs Moussis was appointed a temporary servant in Grade A 7 in the Directorate General for

Agriculture. Having passed Competition No COM/A/268 she was appointed as a probationary official in Grade A 7 on 1 August 1972 and established in that grade on 1 May 1973. She was promoted to Grade A 6 on 1 August 1975.

Having passed Open Competition No COM/A/337, to which only Greek nationals were admitted, Mrs Moussis was appointed, by a decision of 8 June 1982, which became effective on 1 June 1982, as a Principal Administrator in the Directorate General for Agriculture, Directorate for Agricultural Structure and Forestry, Division for Implementation of Common Measures and Secretariat of the Standing Committee on Agricultural Structure (DG VI-F-2) and classified in Grade A 5, Step 3.

On 11 January 1983 Mrs Moussis submitted a request to the Grading Committee pursuant to Article 90 (1) of the Staff Regulations for a review of her classification and for appointment to Grade A 4. That request, based on the Commission's decision of 6 June 1973 entitled "Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment" and distributed to the staff in March 1981, was refused by a letter dated 20 January 1983 from the Head of the Careers Division of the Directorate General for Personnel and Administration which Mrs Moussis received on 20 February 1983.

On 25 March 1983 Mrs Moussis submitted a complaint under Article 90 (2) of the Staff Regulations against that refusal. Her complaint was rejected by a Commission decision of 14 July 1983.

II — Written procedure and conclusions of the parties

On 6 October 1983 Mrs Moussis brought the present action against the decision of 14 July 1983 rejecting her complaint.

The applicant claims that the Court should:

Declare the application admissible;

Declare the application well founded and annul the decision rejecting her complaint and confirming her grading in Grade 5, Step 3, following Open Competition No COM/A/337/81;

Order the Commission to place the applicant in the correct grade following that competition in accordance with the criteria contained in the Commission's decision of 6 June 1983;

Order the Commission to pay the costs.

The Commission contends that the Court should:

Dismiss the application as inadmissible and unfounded;

Order the applicant to pay the costs.

The written procedure followed the normal course.

By order of the President of the Court dated 17 October 1983, the case was assigned to the Second Chamber.

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 without any preparatory inquiry.

The parties were invited to give their views at the hearing on two questions relating to the admissibility and substance of the case.

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

A — Admissibility

The *Commission* claims that the action is inadmissible on the ground that it is out of time.

(a) By virtue of Article 91 (2) of the Staff Regulations an action for annulment is admissible only if the appointing authority has previously received a complaint under Article 90 (2) against the act adversely affecting the complainant. The complaint must be lodged within three months from the date on which the contested decision was not notified to the complainant or the date on which he received such notification. In the present case, however, the act adversely affecting the applicant is the appointing decision of 8 June 1982 which was notified to her on 18 June 1982. She did not submit a complaint against that decision within the period prescribed in the Staff Regulations.

(b) The applicant cannot rely on the fact that the Commission did not point out that the complaint was out of time either in its decision of 20 January 1983 refusing the request or in its decision of 14 July 1983 rejecting the complaint. As a matter of law, the Administration is not obliged under Article 90 of the Staff Regulations to reject a complaint as inadmissible. From a practical point of view, it considers that, in order to maintain good relations with its staff, it must give a reasoned reply to all complaints, even those submitted out of time.

Since time-limits for bringing actions are a matter of public policy and are not at the discretion of the parties or the Court, the Commission is content to leave this issue for the Court to decide as it thinks fit.

The *applicant* considers that the action meets all the requirements of admissibility.

(a) The Commission's practice is initially to consider any complaints of its officials in a non-contentious context. Relying on that practice, the applicant was perfectly within her rights to initiate the procedure by submitting a request — which Article 90 (1) of the Staff Regulations does not make subject to any time-limit — for an adjustment of her grade.

(b) The Commission did not raise the objection of inadmissibility either in its decision refusing the request or in its decision rejecting the complaint. It thereby ratified the procedure followed by the applicant and accepted the internal dispute procedure which moreover it advocated itself.

(c) Since grounds of inadmissibility can be raised by the Court of its own motion, it must be stated that in the present case the requirements regarding the admissibility of an appeal by an official are satisfied under Articles 90 and 91 of the Staff Regulations. The applicant's interest in requesting a revision of her grading cannot be contested. All the time-limits, in particular the three-month limit following the date of notification of the rejection of the complaint provided for in Article 91 (3), were observed. The complaint procedure had been exhausted as a first step. The act adversely affecting the applicant, against which she is now appealing, is the Commission's decision of 8 June 1982, grading her in Grade A 5, Step 3, and upheld by the decision of 14 July 1983 rejecting her complaint. That point is not at issue.

B — Substance

The *applicant* advances five submissions against the contested decision. They are based on the infringement of a number of provisions of the Staff Regulations and on the failure to observe certain general rules of law.

The *Commission* considers that all of her submissions are unfounded.

Submission based on the infringement of Articles 29, 30, 31 and 32 of the Staff Regulations

The *applicant* points out that the word "recruitment" appearing in Chapter 1 of Title III of the Staff Regulations, dealing with the career of officials, has more than one meaning.

In some cases, it refers exclusively to the initial appointment, that is to say, the engagement of the official in the service of one of the institutions of the Community. Thus, Articles 27 and 28 lay down the objective requirements to be met upon each appointment, while Articles 33 and 34 make it necessary to pass a medical examination and to serve a probationary period. Those requirements do not have to be met during the rest of the official's career.

The scope of Articles 29, 30, 31 and 32 is quite different. Broadly, they lay down conditions for filling vacant posts and criteria for grading the persons appointed.

The Court has given a wide meaning to the word recruitment which has been construed as meaning appointment to any vacant post. On the basis of that wide interpretation of the word, it has held that officials who have already been appointed may take part in recruitment procedures in the form of open competitions.

Sometimes, recruitment procedures are limited to serving officials only (Article 29 (1) (a), (b) and (c)). Sometimes, they are open to candidates from outside the institutions and to serving officials (open competition procedure, Article 29 (1), *in fine).* In the latter case, the criteria laid down in Articles 31 and 32 of the Staff Regulations for grading successful candidates apply without distinction to both categories of candidates.

The Commission's decision of 6 June 1973, on the criteria applicable to grade and step classification upon recruitment, must be read in that light. It applies mainly to the grading of officials when they are first recruited. However, it does not exclude the application of the criteria it lays down to internal candidates who have passed an open competition. The final recital of the preamble to the decision states that it is intended to ensure that identical conditions of recruitment and career prospects shall be enjoyed by all officials in the same category or the same service.

The Commission is wrong to link Articles 31 and 32 of the Staff Regulations to Article 27 only so as to limit their application to the initial recruitment of an official when they should be read with reference to Article 29. They merely lay down the criteria for grading successful candidates after an open competition in which, according to Article 3 of Annex III to the Staff Regulations, both external and internal candidates may participate. Both categories of candidates must be treated in the same way, both as regards the competition procedure and as regards the grading of

successful candidates, depending on their experience and specific training.

Since Articles 29, 30, 31 and 32 must be considered as a whole, the fact that the decision appointing the applicant is based on Articles 29 and 30 means that Articles 31 and 32 and the 1973 decision must be applied in order to determine her new grade and step. In view of her experience and specific training, the applicant was entitled to be classified in Grade A 4.

The *Commission* considers that the applicant's appointment to Grade A 5 is not recruitment within the meaning of Article 27. There has been a legal relationship between the Commission and the applicant since 15 November 1971, initially under a contract and then under the Staff Regulations. A subsequent modification of that relationship, in particular an improvement in her administrative status, cannot be regarded as recruitment. Articles 31 and 32 are applicable only once in an official's career.

The distinction which the applicant draws between two types of recruitment is arbitrary. The terms of Article 32 (1) are very clear: grading takes place only at recruitment and each official is recruited only once. A distinction should be drawn, not between two kinds of recruitment but between recruitment and appointment. An official is recruited only once during his career whereas he may be appointed several times, for example, after promotion. An official is graded only at the time of his recruitment and not after each appointment.

The applicant may not rely on the final recital of the preamble to the 1973 decision: it is the actual text of the decision which matters. Article 1, which defines the scope of the decision, refers to the appointment of "the selected candidate as a probationer", which clearly shows that the decision applies only to the "first" recruitment and not to each appointment after which the official is not required to serve a probationary period again.

The decision appointing the applicant mentions Article 29 only in order to refer to the filling of vacant posts and Article 30 only in order to refer to the competition procedure.

Submission based on the infringement of the Commission decision of 6 June 1973

The *applicant* considers that the Commission decision of 6 June 1973 was applicable to her. In particular, her experience ought to have been taken into account, which, by virtue of Articles 2 and 3 of the decision, would have enabled her to be appointed to Grade A 4. There is no doubt that she has the seniority and experience required by those provisions.

The Commission's argument for refusing to apply the decision to her, namely that at the time of her recruitment she was not classified in Grade A 5, is irrelevant. How could the Commission decision, which came into force on 1 July 1973, apply to the applicant who was nominated as a probationary official on 1 October 1972 and established on 1 May 1973?

The *Commission* points out that its decision of 6 June 1973 deals only with the grading of officials at the time of their recruitment. It is therefore inapplicable to the applicant's appointment to Grade A 5.

Moreover, as far as concerns the possible application of Article 32 of the Staff Regulations to the applicant's case, only the appointing authority and not the Court is competent to assess her experience.

Submission based on the infringement of Articles 45 and 46 of the Staff Regulations

The *applicant* considers that the appointing decision of 8 June 1982 did not promote her but graded her after and as a result of an open competition in which she had taken part.

Promotion, which is governed by Article 45 (1) of the Staff Regulations, is to be by selection from among officials who have completed a minimum period in their grade, after consideration of the comparative merits of the officials eligible for promotion and of the reports on them. In the present case, however, the grading was made after an open competition. According to Article 29 (1), promotion is an internal procedure which has higher priority than the holding of an open competition. The Commission cannot apply to an internal candidate who has passed an open competition the grading criteria appropriate to that internal procedure which ought normally to have been considered already. According to the decisions of the Court, a vacancy notice must not exclude applications from officials eligible for transfer or promotion; if it does, it may constitute an act adversely affecting such officials.

If, for reasons of public interest, an open competition is held without going through the prior internal procedural stages, it cannot logically be considered that successful internal candidates must be graded as if they were being promoted. Having deliberately decided not to use the promotion procedure, the appointing authority cannot, in such a case, refer to the criteria contained in Articles 45 and 46 "by analogy".

The special nature of the open competition in which the applicant took part, to which only Greek nationals were admitted and whose main purpose was to enable Greek nationals to be appointed to certain posts with a view to ensuring a geographical balance following the enlargement of the Community, is a further reason for considering that the applicant cannot be treated in the same way as a candidate who is promoted.

The Court has always been careful to distinguish between internal recruitment procedures and the external procedure of holding an open competition. If it were accepted that both methods of recruitment involved the same grading criteria when an internal candidate passes an open competition, this would cause deplorable confusion between the two procedures.

The *Commission* contends that the applicant's appointment to Grade A 5 following her success in an open competitions constitutes promotion within the meaning of Articles 45 and 46 of the Staff Regulations.

According to Article 45, promotion consists of the appointment of an official to the next higher grade in the category to which he belongs. It is possible for an official to be promoted after passing an open competition which must constitute a merit within the meaning of the second sentence of the first subparagraph of Article 45 (1).

The difference between promotion in the strict sense in which the word is used in Article 45 (1) and promotion after success in a competition is more a matter of form. Even in the case of competitions, candidates are selected after consideration of their comparative merits. It is thus logical to apply by analogy Articles 45 and 46 of the Staff Regulations to open competitions. The fact that the promotion procedure is a prior stage which must be gone through before an open competition is held does not prevent such an analogous application in view of the great similarity between the two cases.

To attach particular importance to the fact that the open competition in which the applicant took part was for Greek nationals only is not a legal approach.

Submission based on infringement of the principle of non-discrimination

According to the *applicant*, both the Staff Regulations and the decisions of the Court require the principle of non-discrimination to be respected in the matter of access to vacant posts. In particular, the Court has made it clear that all candidates in a competition must be treated equally.

In the case of an open competition, all candidates, external or internal, must be treated in the same way, both in the actual competition itself and in the matter of grading. In the present case, external candidates whose experience was less than or the same as that of the applicant were graded in Grade A 4.

The applicant's situation cannot be compared to that of officials in Grade A who entered into service at the same time as herself, since the career of each of those officials cannot be reviewed.

The principle of non-discrimination must be applied as between the applicant and the other candidates in the open competition. Nothing prevented other interested officials from entering that competition and thus putting themselves in the same situation as the external candidates and the other internal candidates.

Promotion presupposes that reports have been drawn up on the ability, efficiency and conduct in the service of officials eligible for promotion, those reports being a factor in the consideration of their comparative merits. A competition, however, is a procedure whereby an independent selection board selects the candidates it considers the most suitable after assessing their comparative abilities and/or comparing their formal qualifications. The two methods of recruitment are thus quite different and the situation of persons eligible for promotion cannot be compared to that of candidates in a competition. The principle of non-discrimination must be observed as between persons taking part in one or the other of those appointment procedures. In the Court's view, that principle is infringed when different situations are treated in the same way or when identical situations are treated differently.

It would not have been possible to be appointed by way of promotion to the post which the open competition was held to fill. Consequently, as far as the grading criteria are concerned, the applicant ought to have been treated in the same way as the external candidates. The Belgian Conseil d'Etat has clearly ruled that the choice of recruitment procedure constitutes an objective criterion. The different procedures cannot therefore be mixed by applying the grading criteria designed for the internal promotion procedure to the successful candidates in an external competition.

If, as the Commission states, the Staff Regulations do not treat officials and external candidates in the same way where it is a question of filling vacant posts, it is in order to give priority to internal candidates. However, the Commission's reasoning leads to the applicant's being treated less favourably than external candidates in the matter of grading.

The aim of the 1973 decision, according to its preamble, is to guarantee identical conditions of recruitment and career prospects. To avoid a break in career, all internal candidates taking part in an open competition must be treated in the same way. That does not mean that those who, either through inertia or because they do not meet the conditions of admission, did not take part in the open competition, must be considered for the regrading to which the successful internal candidates are entitled.

In the *Commission*'s view, the principle of non-discrimination must be applied as between the applicant and the other officials in Grade A who entered into service at the same time as she, and not as between the applicant and the external candidates who entered the competition. The principle of non-discrimination requires identical situations to be treated in an identical way. At the time of her participation in the competition, the applicant's situation was identical to that of officials who entered into service with her and not to that of the external candidates.

The Staff Regulations do not treat external candidates and officials in the same way where it is a question of filling vacant posts. The internal appointment procedures must be exhausted before an open competition is held. The notice of the open competition may increase the age-limit to the advantage of officials. The principle that candidates in the same competition should be treated equally requires that they should be tested under the same conditions. The question of grading is a different matter in so far as it does not concern the candidates but those who pass the competition. The applicant did not cease to be an official merely because she had passed a competition and her appointment to the next higher grade can only be regarded as promotion in the wide sense of that word.

Submissions based on the infringement of the principle that the most favourable provision should be applied

The *applicant* considers that if there is some doubt as to whether Articles 45 and 46 or the 1973 decision should be applied, the provision which is most favourable to her should be preferred.

Although the Commission has always applied Articles 45 and 46 of the Staff Regulations in order to grade successful internal candidates in an open competition, account must be taken of the special features of the competition in question, prior to which the internal procedures were not exhausted and to which only Greek nationals were admitted. In those circumstances, Articles 2 and 3 of the 1973 decision should have been applied without discrimination. In case of doubt, those provisions must prevail over Article 45 and 46 of the Staff Regulations.

The *Commission* points out that it has consistently applied Articles 45 and 46 of the Staff Regulations to this type of case. That practice has never been contested before, in any event not before the Court.

The fact that only Greek nationals were admitted to the competition in question is not a special legal feature which justifies a departure from its practice.

IV — Oral procedure

At the sitting on 17 May 1984 the applicant, represented by François Motulsky of the Brussels Bar, and the Commission, represented by D. Gouloussis, presented oral argument and replied to questions asked by the Court.

The *applicant* pointed out that, after asking officials of the Commission's Legal Department about the procedure to be followed, she was told that in disputes concerning grading it was established practice to allow the dispute procedure to be commenced by a request rather than by the immediate submission of a complaint so as to allow officials to present their case in the braodest way possible. That information was confirmed by the attitude of the Commission itself which at no stage in the proceedings contended that the request or the complaint was inadmissible.

It should be pointed out that a new three-month period started to run from the publication of the new decision of the Commisison of 21 October 1983, annulling and replacing the decision of 6 June 1973.

The request and the complaint complemented one another in view of the single purpose of the administrative procedure prior to the institution of legal proceedings.

It was questionable whether the decision of 8 June 1982 was an act adversely affecting her, in any event as far as the question of grading was concerned. The essential purpose of that decision was to inform her of her appointment to a post following her success in an external competition; her grading was a secondary matter. In any case, the contested decision did not state reasons for the grading.

As regards the substance of the case, the applicant maintained that she obtained the post to which she was appointed after taking part in an external competition. Even though she was already an official, she was, by analogy, in the same situation as the external candidates in that competition, at least as far as her grading was concerned.

The inanity of the criterion used by the Commission for grading its staff was clear from the fact that, if the applicant

had been in Grade A 7 before the competition, the criterion would not have allowed her to be appointed to one of the Grade A 5/A 4 posts which the competition was meant to fill. Moreover, it gave rise to discrimination between the applicant and external candidates.

According to the applicant, the preamble to the Commission decision of 6 June 1973 refers to recruitment, in the narrow sense of that word, and to career prospects and lays down objective criteria for both. The applicant stated that she was seeking to have Article 3 of that decision applied to her, not Article 1.

The *Commission* pointed out that the admissibility of an action was a matter of public policy, independent of the will of the parties. In this case, the action was inadmissible for failure to observe the time-limit laid down in Article 91 of the Staff Regulations regarding the decision appointing the applicant to Grade A 5, that decision being the act adversely affecting her.

As regards the substance of the case, it should be noted that recruitment takes place only once in an official's career and that recruitment must be distinguished from appointment.

The Advocate General delivered his opinion at the sitting on 21 June 1984.

Decision

1 By an application lodged at the Court Registry on 6 October 1983, Sophie Moussis, an official in Grade A 5 at the Commission of the European Communities, serving as a Principal Administrator in the Directorate General for Agriculture, brought an action for the annulment of the Commission's decision of 14 July 1983 refusing to classify her in Grade A 4.

2 It appears from the documents before the Court that from 1968 the applicant worked for the Commission as an expert and that she was engaged as a temporary servant in Grade A 7 by a decision of 15 November 1971. On 1 May 1973, after completing her probationary period in Grade A 7, she was appointed as an established official in that grade. On 1 January 1975 she was promoted to Grade A 6. In 1981 she passed Open Competition No COM/A/337, held to recruit officials to posts in Career Bracket A 5/A 4, and, by a decision of 8 June 1982, she obtained an appointment as a Principal Administrator in Grade A 5.

3 The 1982 decision has not been contested by Mrs Moussis. However, on 11 January 1983, she submitted a request to the "Grading Committee", seeking reclassification in Grade A 4 pursuant to Article 3 of the Decision of 6 June 1973 entitled "Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment".

4 By a memorandum dated 20 January 1983 the Head of the Careers Division of the Directorate General for Personnel and Administration informed the applicant that the decision of 6 June 1983 was "intended to govern the grading possibilities upon recruitment created by Articles 31 and 32 of the Staff Regulations" and drew her attention to the fact that, since she was an established official before her appointment, her classification in her new grade had been calculated on the basis of Article 46 of the Staff Regulations, dealing with promotions. It was also pointed out in the same memorandum that the applicant had immediately been appointed as an official in Grade A 5 without being required to serve a probationary period.

5 On 25 March 1983 Mrs Moussis submitted a complaint under Article 90 of the Staff Regulations. She contended that, since she had passed an "external" competition, her appointment was to be regarded as recruitment. On that basis, she was entitled to be treated in accordance with the provisions of the decision of 6 June 1973, Article 3 of which allowed the appointing authority to take account of her previous professional experience. Since she was able to produce evidence of more than twelve years' relevant professional experience, including one year, nine months and seven days of work in her country of origin and ten years, seven months and sixteen days of work in the service of the Directorate General for Agriculture, she was entitled to be appointed to Grade A 4 immediately.

6 That complaint was rejected by a Commission decision of 14 July 1983. In that decision the Commission once again made it clear that the applicant had been appointed under Article 46 of the Staff Regulations and that her appointment could not therefore be regarded as "recruitment" within the meaning of the decision of 6 June 1973.

7 The applicant asks the Court to:

(a) annul the decision rejecting her complaint in so far as it confirms her classification in Grade A 5; and

(b) order the Commission to place the defendant in the correct grade in accordance with the criteria contained in the decision of 6 June 1973.

8 The Commission objects in the first place to the admissibility of the application. It states that the act adversely affecting the applicant is the appointing decision of 8 June 1982 which was not contested within the prescribed period. The Commission's decision on a complaint submitted out of time does not cause time to start running again. The Commission's policy on this matter is to consider officials' complaints, even if submitted out of time, and to give a reasoned reply to them in order to maintain good relations with its staff. However, such a reply does not constitute a decision against which an appeal can be brought.

9 In answer to that objection of inadmissibility the applicant contends that she exercised the right granted to all officials by Article 90 (1) of the Staff Regulations which provides that "any person to whom the Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him". In her case the request was for the adjustment of the grade into which she had been placed by the appointing decision of 8 June 1982, adopted at the end of Open Competition No COM/A/337. The applicant states that her action is directed against the Commission's rejection of that request, given that it confirmed the decision of 8 June 1982 classifying her in Grade A 5.

10 The applicant criticizes the Commission for having raised the issue of admissibility for the first time in its defence and for not having pointed, during the administrative procedure, to any procedural irregularity on her part.

11 The act adversely affecting the applicant in this case for the purposes of Article 91 (1) of the Staff Regulations, which defines the jurisdiction of the Court in appeals by officials, is the Commission's decision of 8 June 1982 appointing her to Grade A 5. It is not disputed that that decision was not contested within the prescribed period.

12 It thus appears that the "request" which the applicant addressed to the Grading Committee on 11 January 1983 had no other purpose than to call in question an administrative decision which was no longer open to challenge after the expiry of the period for appealing against it. There can be no question of an official's being able, by so exercising the right conferred on him by Article 90 (1) of the Staff Regulations, to undermine the time-limits prescribed in Articles 90 and 91 for the lodging of complaints and appeals. Those time-limits are a matter of public policy and are not subject to the discretion of the parties or the Court, since they were laid down with a view to ensuring clarity and legal certainty (see the judgments of 12. 12. 1967 in Case 4/67, *Müller (née Collignon)* v *Commission*, [1967] ECR 365, of 7. 7. 1971 in Case 79/70, *Müllers* v *Economic and Social Committee*, [1971] ECR 689, of 5. 6. 1980 in Case 108/79, *Belfiore* v *Commission*, [1980] ECR 1769 and of 19. 2. 1981 in Joined Cases 122 and 123/79, *Schiavo* v *Council*, [1981] ECR 473).

13 The fact that the Commission, for reasons related to its staff policy, deals with the substance of a request, even though it is inadmissible, cannot have the effect of derogating from the system of mandatory time-limits laid down in Articles 90 and 91 of the Staff Regulations and re-establishing a right of action which is definitively time-barred.

14 Consequently, the application must be dismissed as inadmissible.

Costs

15 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules, institutions are to bear their own costs in proceedings commenced by officials, without prejudice to the second subparagraph of Article 69 (3) regarding costs which the Court considers to have been unreasonably or vexatiously caused.

16 The Court considers that Article 70 should not be applied in the applicant's case. It is clear from the foregoing that, in lodging a request which was manifestly inadmissible having regard to the system of complaints and appeals governed by Articles 90 and 91 of the Staff Regulations, she caused litigation to ensue which was futile and constituted a burden for the Commission's administration.

17 The applicant must therefore be ordered to pay the whole of the costs of these proceedings.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 21 JUNE 1984 [1]

Mr President,
Members of the Court,

The question in this staff case is whether an official's appointment to the next grade of a higher career bracket after successful participation in an open competition is governed by Article 45 *et seq.* of the Staff Regulations, which deal with promotion, or by the rules on recruitment laid down in Article 31 *et seq.* of those regulations.

A — The facts of the case, the details of which are to be found in the Report for the Hearing, may be summarized as follows:

1 — Translated from the German.