Such reconciliation is, under the terms of the notice of competition, the responsibility of each Selection Board and is guaranteed by its independence and the secrecy of the proceedings laid down by the Regulations.

3. The examination of ability which Selection Boards must undertake is above all of a comparative nature and, for this reason, covered by the cloak of secrecy inherent in such deliberations, so that they cannot be subjected to control by the Court except in the event of obvious infringement of the rules which govern the proceedings of Selections Boards.

4. The decision on the organization of the competition takes its legal and final form from the notices of competition brought to the notice of the personnel. The deliberations of the competent body as they appear from the minutes cannot override the clear wording of the decision in question unless they obviously show that the form of decision is not in accord with was in fact laid down at the end of the deliberations.

In Cases 112, 144 and 145/73

ANNA MARIA CAMPOGRANDE, official of the Commission of the European Communities, living at 19, avenue de l'Orée, Brussels,

ALFRED DE VLEESCHAUWER, official of the Commission of the European Communities, living at 65, avenue F. Leemans, Auderghem, 1160 Brussels,

and

JEANNE-MARIE BOUYSSOU, official of the Commission of the European Communities, living at 10, Drève St. Michel, Kraainem, 1950 Brussels,

all represented by Marcel Slusny, Advocate with the Court of Appeal at Brussels, with an address for service in Luxembourg at the chambers of Ernest Arendt, Avocat Avoué, Centre Louvigny, 34 B IV, rue Philippe II,

applicants,

v

THE COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Pierre Lamoureux and Giorgio Pincherle, acting as co-agents, with an address for service in Luxembourg at the office of Pierre Lamoureux, 14, boulevard Royal,

defendant,

Application for the annulment of competitions COM/A/264 to COM/A/268 and the resulting appointments,

THE COURT (First Chamber)

composed of: C. Ó Dálaigh, President, J. Mertens de Wilmars (Rapporteur) and A. M. Donner, Judges,

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

gives the following

JUDGMENT

Facts

The facts and the arguments developed by the parties in the course of the written procedure may be summarized as follows:

I — Facts and procedure

All three applicants are Administrative Assistants, Miss Campogrande in Directorate-General XIV (Approximation of Legislation) with grade B 3, Mr De Vleeschauwer in the Directorate-General for External Relations (commercial policy directorate) with grade B 2, and Miss Bouyssou in the Directorate-General for Competition (agreements and dominant positions directorate) with grade B 1.

It was announced in the 'Staff Courier' No 186 a for 3 November 1971 that the Commission had drawn up notices for five 'internal competitions on the basis of qualifications and tests' with a view to forming a reserve list for recruiting purposes, successful candidates being eligible for appointment, with change of category if applicable, to vacancies for administrators in career-bracket A 7/A 6 with initial classification in grade A 7. The competitions covered five fields which were enumerated in the announcement:

1. legal and administrative
2. economic
3. finance and accountancy
4. social
5. agricultural and technical

In each field various options were further provided for. The five notices of competitions which appeared on 3 November 1971 specified a written test giving a choice between drawing up a staff memorandum or the minutes of a meeting, an oral test on a subject of general interest, an oral test on the chosen option, and language tests, written and oral.

Since the Commission had urged that the various Selection Boards should harmonize the tests so far as possible, it was decided that the subject of the written test and that of the oral test on a subject of general interest should be common to all the competitions. After

the publication of the notices the applicants submitted their candidatures for competitions COM/A/264 (Campogrande and Bouyssou) and COM/A/265 (De Vleeschauwer).

When the Selection Board for competition COM/A/264 decided not to admit Miss Campogrande to the tests, she applied to the chairman of the Board to have the decision reversed and when this was refused, she applied by letter dated 21 March 1972 to Mr Coppé, a member of the Commission. On 22 March 1972, that is to say the day before the day fixed for the written test, she was informed that she might take part. On 18 May 1972, while the Selection Boards were still deliberating, she wrote to Mr Coppé telling him of information relating to changes made in the conditions for inclusion on the lists of suitable candidates. She was told in reply, by letter dated 11 July 1972, 'that the provisions of the notices of competitions have been observed'. Meanwhile, by letter dated 15 June 1972, the three applicants had been informed that it had not been possible to include them on the list of suitable candidates.

The complaint of the applicant Campogrande was registered at the Commission's Secretariat on 6 September 1972. The Commission's reply of 19 March 1973 was communicated to Miss Campogrande only on 28 March 1973, after the submission of application 112/73 on 22 March 1973. The complaints of the applicants De Vleeschauwer and Bouyssou, registered at the Secretariat on 13 and 14 September 1972, were not expressly rejected by the Commission until 20 March 1973. Applications 144/73 (De Vleeschauwer) and 145/73 (Bouyssou), submitted on 19 June 1973, were registered at the Court on 20 June 1973.

The Court, after hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, decided that no preliminary inquiry was necessary.

II — Conclusions of the parties

A — In Case 112/73 the applicant Campogrande claims that the Court should:

In the application:

Declare null and void the implied rejection of administrative complaint No 527;

Take note that the applicant's request for annulment is based on grounds of lack of competence, infringement or disregard of the Staff Regulations, more particularly of Annex III, misuse of powers and/or of procedure, and also the erroneous or incorrect evaluation of the facts of the case on the part of the opposing party;

1. More particularly for the reasons in 11, 12, 13, 14, 15, 16 (grounds I-II-III-IV-V-VI), annul the entire procedure of competition COM/A/264, including the notice of competition;
2. Annul, insofar as necessary, the procedures of competitions COM/A/266, COM/A/267, and COM/A/268, including the notices of competitions;
3. *Alternatively,* Annul the procedure of competition COM/A/264 insofar as concerns the applicant alone;

   Declare and rule that the opposing party must reopen the competition insofar as concerns her;
4. Annul the express rejection by the opposing party in the letter of 11 July 1972 of the applicant's administrative complaint;
5. Annul, insofar as necessary, the appointments made as a result of the annulled competitions;
6. Order the opposing party to pay the costs and expenses of the case;

As a subsidiary matter as to the evidence

7. Order the opposing party to produce the entire administrative file relating

to competitions COM/A/264/265/266/267/268, including all the memoranda, documents and minutes of meetings preceding the notices of competitions;

8. Order evidence to be heard from witnesses:

   (a) of the facts appearing under 13, 14 and 15 of the legal argument;

   The applicant designates the following as witnesses, this list not being exhaustive:

   Mr G. Krauss, Miss De Corne, Messrs R. Baeyens, J. Reyneir, Rogalla, W. Verheyden, Miss Merck;

   (b) of the following fact:

   That when the applicant complained to Mr J. Reynier that she had not been admitted to the tests, the latter telephoned to Mr Krauss, the chairman of the Selection Board, in her presence, and then told the applicant that she would not be admitted to the tests but that she had no cause to regret this, since, in any case, even if she had been admitted, she would not have been successful in the competition;

   The applicant designates Mr. J. Reynier as a witness;

   (c) of the following fact:

   That Mr Eeckhout told Mr Hans-Udo Pfeiffer, a colleague of the applicant, that we (Mr Coppé's Office) 'are having the greatest difficulty with the agricultural Selection Board (COM/A/268)';

   The applicant designates Mr Hans-Udo Pfeiffer as a witness;

In the Reply:

Take note that the applicant persists in her original conclusions which appear in the operative part of her application and are to be taken as herein reproduced in their entirety with the benefit of the following additions:

1. Declare and rule that the opposing party must produce all the documentation over and above the material already mentioned in the operative part of the application, the present list being declaratory but not exhaustive, and in particular:

   (a) the copies of the 'Staff Courier' mentioned in the pleadings of the parties and not yet produced;

   (b) an undated communication from Mr Coppé to the Commission, written following a meeting of the Commission on 21 January 1971;

   (c) memorandum No 4233 to the Commission from the Director-General for Personnel and Administration, Mr Lamberto Lambert, dated 16 July 1971;

   (d) a memorandum dated 31 May 1972 from Mr Lahnstein, Chef de Cabinet to Mr Commissioner Haferkamp, to Mr Cardon de Lichtbuer, Chef de Cabinet to Mr Coppé;

   (e) a covering letter dated 27 June 1972 from Mr Cardon de Lichtbuer forwarding the above memorandum to Mr Lamberto Lambert, Director-General for Personnel and Administration;

2. Order evidence to be heard from witnesses of the following facts:

   (a) That the Selection Board for competition COM/A/268 allowed candidates to offer English in the language test;

   The applicant designates as witnesses the candidates admitted to the competition, appearing in the minutes of the said competition, this list not being exhaustive;

   (b) That Mr Krauss, chairman of Selection Board COM/A/264,

told Mr Rudolf Schneider that although he had been successful in the written test, it was not worth his while to take the oral test, since he could not be successful in the competition;

The applicant designates Mr Rudolf Schneider as a witness;

B — In Case 144/73 the applicant De Vleeschauwer claims that the Court should:

In the application

Declare null and void the express rejection of his administrative complaint; Take note that the applicant's request for annulment is based on grounds of lack of competence, of infringement or disregard of the Staff Regulations, more particularly of Annex III, misuse of powers and/or of procedure, and also the erroneous or incorrect evaluation of the facts of the case on the part of the opposing party;

1. More particularly for the reasons in 11, 12, 13, 14, 15, 16 (grounds I-II-III-IV-V-VI), annul the entire procedure of competition COM/A/265, including the notice of competition;

2. Annul, in so far as necessary, the procedures of competitions COM/A/264, COM/A/266, COM/A/267 and COM/A/268, including the notices of competitions;

3. *Alternatively,* Annul the procedure of competition COM/A/265 so far as concerns the applicant alone;

   Declare and rule that the opposing party must reopen the competition insofar as concerns him;

4. Annul, insofar as necessary the appointments made as a result of the annulled competitions;

5. Order the opposing party to pay the costs and expenses of the case;

As a subsidiary matter as to the evidence

6. Order the opposing party to produce the entire administrative file relating to competitions COM/A/264, COM/A/265, COM/A/266, COM/A/267, COM/A/268, including all the memoranda, documents and minutes of meetings preceding the notices of competitions;

7. Order evidence to be heard from witnesses:

   (a) of the facts appearing under 13 and 14 of the legal argument;

   The applicant designates the following as witnesses, this list not being exhaustive:

   Mr G. Krauss, Miss de Corne, Messrs R. Baeyens, J. Reynier, Rogalla, W. Verheyden, Miss Merck;

   (b) of the fact appearing under 17 of the legal argument;

   The applicant designates the following as a witness, this list not being exhaustive: Miss Marisa Marenco;

   (c) of the facts appearing under 21, 22 and 23 of the legal argument;

   The applicant designates the following as a witness, this list not being exhaustive: Mr Etienne de Clercq;

   (d) of the facts appearing under 13 of the legal argument;

   The applicant designates the following as witnesses, this list not being exhaustive:

   1) Mr Carlo Vernimb of Directorate-General XIII at Luxembourg,

   2) Mr Udo Wartenburg of Directorate-General VI at Brussels.

In the Reply:

Take note that the applicant persists in his original conclusions which appear in

the operative part of his application, and are to be taken as herein reproduced in their entirety, with the benefit of the following additions:

1. Declare and rule that the opposing party must produce all the documentation over and above the material already mentioned in the operative part of the application, the present list being declaratory but not exhaustive, and in particular:
   (a) the copies of the 'Staff Courier' mentioned in the pleadings of the parties and not yet produced;
   (b) an undated communication from Mr Coppé to the Commission written following a meeting of the Commission on 21 January 1971;
   (c) memorandum No 4233 to the Commission from the Director-General for Personnel and Administration, Mr Lamberto Lambert, dated 16 July 1971;
   (d) a memorandum dated 31 May 1972 from Mr Lahnstein, Chef de Cabinet to Mr Commissioner Haferkamp, to Mr Cardon de Lightbuer, Chef de Cabinet to Mr Coppé;
   (e) a covering letter dated 27 June 1972 from Mr Cardon de Lichtbuer forwarding the above memorandum to Mr Lamberto Lambert, Director-General for Personnel and Administration;
   (f) the bibliography for the Economic Field, ref. IX/1928/71 — F.D.I.N.;
2. Order evidence to be heard from witnesses of the following facts:
   (a) That the Selection Board for competition COM/A/268 allowed candidates to offer English in the language test;
   The applicant designates as witnesses the candidates admitted to the competition, appearing in the minutes of the said competition, this list not being exhaustive;
   (b) That Mr Krauss, chairman of Selection Board COM/A/264 told Mr Rudolf Schneider that although he had been successful in the written test, it was not worth his while to take the oral test, since he could not be successful in the competition;
   The applicant designates Mr Rudolf Schneider as a witness;

C — In Case 145/73 the applicant Bouyssou claims that the Court should:

In the application:

Declare null and void the express rejection of her administrative complaint; Take note that the applicant's request for annulment is based on grounds of lack of competence, of infringement or disregard of the Staff Regulations, more particularly of Annex III, misuse of powers and/or procedure, and also the erroneous or incorrect evaluation of the facts of the case on the part of the opposing party;

1. More particularly for the reasons in 11, 12, 13, 14, 15, 16 (grounds I-II-III-IV-V-VI), annul the entire procedure of competition COM/A/264 including the notice of competition;
2. Annul, insofar as necessary, the procedures of competitions COM/A/265, COM/A/266, COM/A/267 and COM/A/268, including the notices of competitions;
3. *Alternatively,* Annul the procedure of competition COM/A/264 so far as concerns the applicant alone;
   Declare and rule that the opposing party must reopen the competition insofar as concerns her;
4. Annul, insofar as necessary, the appointments made as a result of the annulled competitions;

5. Order the opposing party to pay the costs and expenses of the case;

As a subsidiary matter as to the evidence

6. Order the opposing party to produce the entire administrative file relating to competitions COM/A/264, COM/A/265, COM/A/266, COM/A/267, COM/A/268, including all the memoranda, documents and minutes of meetings preceding the notices of competitions;

7. Order evidence to be heard from witnesses:

   (a) of the facts appearing under 13 and 14 of the legal argument;

   The applicant designates as witnesses, this list not being exhaustive:

   Mr Krauss, Miss de Corne, Messrs Baeyens, Reynier, Rogalla, Verheyden, Miss Merck;

   (b) of the fact appearing under 17 of the legal argument;

   The applicant designates as a witness, this list not being exhaustive:

   Miss Marisa Marenco;

   (c) of the facts appearing under 18 of the legal argument;

   The applicant designates as witnesses, this list not being exhaustive:

   Mr G. Krauss and Miss Dusseaux;

   (d) of the facts appearing under 13 of the legal argument;

   The applicant designates as witnesses, this list not being exhaustive:

   Mr Carlo Vernimb of Directorate-General XIII at Luxembourg and Mr Udo Wartenberg of Directorate-General VI at Brussels.

In the Reply:

Take note that the applicant persists in her original conclusions which appear in the operative part of her application, and are to be taken as herein reproduced in their entirety, with the benefit of the following additions:

1. Declare and rule that the opposing party must produce all the documentation over and above the material already mentioned in the operative part of the application, the present list being declaratory but not exhaustive, and in particular:

   (a) the copies of the 'Staff Courier' mentioned in the pleadings of the parties and not yet produced;

   (b) an undated communication from Mr Coppé to the Commission, written following a meeting of the Commission on 21 January 1971;

   (c) memorandum No 4233 to the Commission from the Director-General for Personnel and Administration, Mr Lamberto Lambert, dated 16 July 1971;

   (d) a memorandum dated 31 May 1972 from Mr Lahnstein, Chef de Cabinet to Mr Commissioner Haferkamp, to Mr Cardon de Lichtbuer, Chef de Cabinet to Mr Coppé;

   (e) a covering letter dated 27 June 1972 from Mr Cardon de Lichtbuer forwarding the above memorandum to Mr Lamberto Lambert, Director-General for Personnel and Administration;

2. Order evidence to be heard from witnesses of the following facts:

   (a) That the Selection Board for competition COM/A/268 allowed candidates to offer English in the language test;

   The applicant designates as witnesses the candidates admitted to the competition, appearing in

the minutes of the said competition, this list not being exhaustive;

(b) That Mr Krauss, chairman of Selection Board COM/A/264 told Mr Rudolf Schneider that although he had been successful in the written test, it was not worth his while to take the oral test, since he could not be successful in the competition;

The applicant designated Mr Rudolf Schneider as a witness.

D — In the course of the oral procedure the applicants further elaborated their previous offers of evidence and presented new offers, claiming that the Court should:

1. Take note that the applicants designate Mr Udo Wartenberg as a witness to the fact mentioned in II a of the Reply of the applicant De Vleeschauwer (Case 144/73, p 45);

2. Take note that the applicants offer evidence of the same fact concerning competition COM/A/264;

They designate Mr H. Winkler as a witness;

3. Take note that they request evidence from witnesses of the fact contained in the Application of the applicant De Vleeschauwer, repeated in the Reply under F (p. 27);

They designate as witnesses, this list not being exhaustive:

(a) Mr Etienne De Clercq;

(b) Mr Theodoor Taks;

(c) Mr Henri Florin.

E — In Cases 112, 144, 145/73 the Commission contends that the Court should:

— find against the applicants, rejecting their applications in their entirety as being without foundation;

— order the applicants to pay the costs.

III — Submissions and arguments of the parties

First Part: Submissions common to the three applications

1. According to the applicants a first defect sufficient to nullify competitions COM/A/264 and COM/A/265 is to be found in the omission of an age limit in the notices relating to these two competitions. This omission infringes the provision of Article 1 (1) (g) of Annex III to the Staff Regulations and constitutes grounds for annullment, as appears from the Court's Judgment of 22 March 1972 (Case 78/71, *Costacurta,* Rec. 1972, p. 163). The Commission's notice (which appeared in the supplement to the 'Staff Courier' No 204, dated 29 March 1972) explaining that the omission in the notices of the internal competitions mentioned 'meant that it had decided that no age limit was necessary for those competitions' does not remedy the initial illegality.

In its statement of defence the Commission argues that as a result of the notice published on 29 March 1972, the reference to the Judgment of 22 March 1972 is ineffective. Since this was a matter of internal competitions open to staff already in service the said notice explained that the Commission, acting within this authority to assess the needs of the service, had decided that an age limit was not necessary. The Commission also cites the Judgment of 15 March 1973 (Case 37/72, *Marcato,* E.C.R. 1973, p. 361), in which the Court rejected as inadmissible, for want of interest, a request for the annulment of a notice of competition containing no age limit, pointing out that Regulation No 1473/72 (OJ L 160, of 16 July 1972, p. 1) had rendered this previously obligatory specification optional, so that the annulment of the notice of competition could not afford the applicant satisfaction. Further, specification of an age limit could only have been unfavourable to the applicants in

Cases 144/73 and 145/73, who were born in 1932 and 1931 respectively, since the posts to be filled were to a large extent intended for the recruitment of young officials.

The applicants reply by emphasizing the ineffective nature of a notice *ex post facto*, when the possible candidates, officials or other servants, had held back because no age limit or extension of the age limit had been specified. It is of slight importance that the applicants were not in that position: every official has an interest in regard for the Staff Regulations. The precise effect of the Marcato judgment is a matter for the Court to amplify.

The applicants dispute the Commission's argument that in view of their age they have no interest in the fixing of a specific age limit because the posts to be filled were, to a large extent, intended for the recruitment of young officials. In reality, the disputed competitions were 'promotion competitions', intended to favour the transition of officials of category B, already established in the service, into category A under Article 45 (2) of the Staff Regulations and in view of the coming accession of the new States. It was only later that the Commission changed its attitude and decided to reserve these same posts for young newcomers by organizing external competitions and, in consequence, changed the nature of the tests by giving instructions to the Selection Boards to make them much more difficult. This is the explanation for the relative severity of the Selection Boards, with the exception of the board of competition COM/A/268. The restrictive policy of the Selection Boards was aggravated by the fact that the competitions were conceived as a juxtaposition of ad hoc competitions intended to permit the promotion of a certain number of officials whose superiors wanted them to obtain specific posts.

In its Rejoinder the Commission objects there is no liklihood of the results of the disputed competitions 'telescoping' into those of the external competitions because the period of validity of the lists is different and because of the priority accorded to successful candidates in the internal competitions, a priority which is made clear by appointments made up to the end of 1973.

2. The applicants secondly point to the discrimination between candidates in competitions COM/A/264/265/266/267/268. Whereas these in fact constituted a single competition resulting in the establishment of a single list of suitable candidates, certain selection boards showed themselves more lenient than others, as appears from the striking differences in the numbers of candidates admitted (17 out of 55 for competition COM/A/264, 10 out of 64 for competition COM/A/265, 12 out of 44 for competition COM/A/266, 8 out of 39 for competition COM/A/267 and 28 out of 51 for competition COM/A/268).

The Commission replies that it is not correct that the competitions were to result in the establishment of a single list of suitable candidates. Under Article 13 of the Staff Regulations a list of suitable candidates is drawn up for each competition. There were in the present case five different competitions, each intended to establish a reserve for the future recruitment of administrators in career bracket A 7/A 6 in different fields. The applicants are accordingly wrong in pointing to the unequal results of the five competitions. The latter being different both in their nature and their purpose, the results could not but be different. From a practical point of view the only thing which the Commission could do and in fact did was to make every effort, by urging the selection boards to act in unison, to arrive at a certain harmonization of the organization and working of the tests.

The applicants reply that, behind the appearance of independent competitions, these were in fact linked competitions intended to provide a common reserve

for future recruitment. The results of the various competitions were in fact combined in a single list, published in the 'Staff Courier' No 216 dated 26 June 1972. By stressing its efforts to harmonize the competitions the Commission had implicitly recognized that they were not independent. Any such harmonization was impracticable and unpractised, since it implied either lateral contacts between the Selection Boards, not mentioned in the minutes of meetings, or vertical contacts, which are prohibited. The applicants offer as supporting evidence the award of different marks in the same test to a candidate taking part in two competitions, the differing assessments by the Selection Board as to the admissibility of certain candidates, the discussions within the Selection Boards over the drawing up of the lists of suitable candidates, as well as the divergencies over the presentation of the marks.

In its Rejoinder the Commission explains, concerning the argument that behind the appearance of independent competitions the purpose in view was the provision of a common reserve for future recruitment, that according to the terms of the 'Notice to Staff' dated 30 July 1971 the intention was actually 'to allow officials and servants . . . to benefit in 1972 from a change of category'. Recourse to a general internal competition for this purpose is neither unusual nor discriminatory. The distinction between the different fields reflected the necessity for providing separate but uniform reserves which could be drawn upon according to the nature of the posts to be filled. The notice published by the Administration in the 'Staff Courier' No 216 for 26 June 1972 in no sense constituted a single list of suitable condidates; it merely gave the results of the different competitions in alphabetical order, showing clearly in the case of each candidate the competition in which he had been successful. The Selection Boards, for their part, drew up separate lists, which they transmitted to the Commission and circulated among the Directorates-General and other services in order to encourage offers of recruitment corresponding to the vacant posts.

Finally, the arguments advanced by the applicants to show that harmonization could not be achieved simply prove the independence of the Selection Boards. Such harmonization, which is necessary where a series of competitions is organized, was limited, since it could not extend into the domain strictly reserved for the selection boards, nor, *a fortiori,* could it impose a levelling out of the results.

3. The applicants thirdly claim discrimination due to the fact that the Selection Board for competition COM/A/268 agreed to the use of English in the language test, in anticipation of the entry of new Member States into the European Communities, although this oppurtunity was not granted by the boards of the other competitions. This situation was especially detrimental to the applicant Bouyssou who has obtained a certificate for the teaching of English from the University of Paris and holds a diploma of higher education in English.

The Commission asserts that the applicants' allegations are incorrect and without merit. It does not appear from the minutes of the meetings of the Selection Board for competition COM/A/268 that English was accepted in the language test. This could not in any case amount to discrimination against candidates in other competitions nor against the applicants who did not enter for competition COM/A/268.

In their Reply the applicants object that the Commission does not formally deny that English was used, while sheltering behind the minutes which make no mention of that fact. They offer to produce witnesses to testify to their allegation. Concerning their lack of interest in establishing this complaint,

the applicants point out that since the competitions constituted 'communicating vessels', opportunities granted in one competition but refused in another eventually diminished their chances of inclusion in the single reserve.

In its Rejoinder the Commission states, further to its previous comments, that it is perfectly admissible for a Selection Board, following the language stipulated by the notices of vacancies, to allow candidates to display their knowledge of languages other than a second official language, knowledge of which is mandatory. The provision of this opportunity does not limit the chances of success of candidates in other competitions.

4. The applicants fourthly complain that the Commission changed the original purpose of the disputed competitions by giving the chairmen and members of the Selection Boards instructions to limit, so far as possible, the number of suitable candidates included on the list, with a view to allowing further recruitment by way of external competition. This was especially apparent from the fact that the chairman of Selection Board COM/A/268 suggested to his members the systematic reduction of the candidates' marks, a suggestion which the members of the board refused to follow, which explains the proportion of successes in this competition compared with the others. These practices, which resulted in only 75 suitable candidates being included on the list whereas there were 91 posts to fill, were contrary to Article 5 of Annex III to the Staff Regulations, under which the list of suitable candidates shall wherever possible contain at least twice as many names as the number of posts to be filled. The instructions for the adoption of a restrictive policy in the drawing up of the list of suitable candidates constitute a misure of powers.

The Commission rejects this complaint, pointing out that under the terms of Article 5, paragraph 5, of Annex III to the Staff Regulations, the rule therein laid down is to be observed only 'wherever possible' and that, by definition, this cannot be so in the case of a reserve for future recruitment.

The applicants reply that their complaint is based not so much on the infringement of the principle formulated in Article 5 of Annex III to the Staff Regulations, taken by itself, but on the fact that there is a real misuse of powers involved. In disregarding the rule by which it was bound to hold a 'promotion competition' and substituting the plan merely to draw up a list containing a reduced number of suitable candidates, the accent therefore being placed on recruitment by way of external competitions, the Commission violated the rule *patere legem quam ipse fecisti*. The reduction in the number of successful candidates and the consequent infringement of Article 5 is not to be explained by considerations of *force majeure* but by deliberate intent. Moreover, this manipulation of the marks was the subject of a memorandum dated 31 May 1972 addressed by Mr Lahnstein, Chef de Cabinet to Mr Haferkamp, to Mr Cardon de Lichtbuer, Chef de Cabinet to Mr Coppé, and transmitted by the latter to Mr Lambert, Director-General of Personnel and Administration. The applicants request its production.

The Commission in its Rejoinder does not deny that the object of the competitions was to permit officials in category B to pass into category A. On the contrary, this is quite apparent from the nature of the competitions, which were specifically internal competitions. But it does not follow that there was any obligation to admit candidates who were not qualified or who were insufficiently qualified. That would be a false and tendentious view of the Commission's intentions. Nothing in the notices to the staff (especially those appearing in the 'Staff Courier' No 173a for 30 June 1971, No 174 for 13 August 1971, and No 183a for 3 November 1971) supports

the imputation of misuse of powers on the part of the Commission and violation of the principle *patere legem quam ipse fecisti.* As for Mr Lahnstein's memorandum of 31 May 1972, the Commission is opposed to the use by the applicants of memoranda or even correspondence exchanged between high officials which were not intended for the applicants. As for the contents of the memorandum, Mr Lahnstein made it clear that a harsh assessment by the Selection Boards with a view to not exceeding a set number of candidates already agreed in advance would be unacceptable, a *numerus clausus*, though acceptable for appointment to a specific post from among accepted candidates, being in his opinion unacceptable as a criterion for determining the fitness of these candidates. As a result of this memorandum Mr Cardon de Lichtbuer suggested some liaison between the Administration and Mr Krause, the chairman of one of the Selection Boards, who also took the chair at the so-called 'harmonization' meetings.

It was apparent from this exchange that there was not a *numerus clausus* and that the Selection Boards acted quite independently.

The applicants also claim a 'manipulation of marks', Orders were allegedly given, with a view to reducing the number included, to reject candidates who obtained between 48 and 52 points, as appears clearly from the minutes of the meeting of the Board for competition COM/A/268, where the chairman's recommendations to this effect were rejected and whence it can be inferred that similar recommendations were accepted by the other Boards. As a result of the said manipulations, the applicant Campogrande's score in the tests was reduced from 52 to 47, while other candidates who had obtained between 48 and 52 points were, nevertheless, kept on the list of suitable candidates. In this connexion, the applicants offer the evidence of various witnesses.

According to the Commission this complaint rests only upon statements that are unproven and incorrect. All candidates who obtained 48 points according to the Selection Boards' assessments were included on the list of suitable candidates and the Boards were independent and autonomous in this respect.

Concerning the hearing of witnesses, and particularly the evidence of Selection Board members relating to their work, the Commission holds this to be inadmissible because of the secrecy surrounding the work and deliberations of Selection Boards and the collegiate nature of such bodies.

6. The Commission notes that the applicants claim, in the alternative, the annulment of the procedure of competitions COM/A/264 and COM/A/265 and the re-opening of the competition insofar as concerns them. In the Commission's view, it is not clear how such a course would be possible, since any irregularity involves the total annulment of the competition, at the risk otherwise of impairing the equality among candidates.

The applicants reject this statement, pointing out that the competitions were not 'competitions' in the strict sense, that is to say comparative eliminatory tests, but rather examinations simply to establish the level of ability.

The Commission is also opposed to the claim for the annulment, insofar as necessary, of the appointments made as a result of the annulled competitions.

The applicants reply that if the competitions are considered to be vitiated by reason of illegality the resulting appointments must be so also.

Second Part: Submissions special to the various applications.

A — Application 112/73, Campogrande

7. The applicant Campogrande is said to have been the victim of discrimination by reason of the fact that she was originally denied admission to the tests

of competition COM/A/264 and it was only on 22 March 1972 that she was finally allowed to take the tests, whereas the written test took place on the following day, 23 March 1972. She was accordingly unable to acquaint herself with the documentation until 13 days later than the other candidates.

The Commission rejects this complaint, pointing out that the documentation communicated by the letter of acceptance for the tests only concerned the oral tests which were to take place later, and that a time-lag in communicating with candidates was, in any case, inevitable, given the large number of candidates which made it necessary to spread the oral tests over several days.

The applicant replies that the inevitable inequalities resulting from the nature of the competitions cannot include the more or less deliberate disparities due to the intentions or inadequacies of the organizers. Her uncertainty as to her acceptance for the competition amounted to discrimination.

8. The applicant who, by letter dated 18 May 1972, had already explained to the appointing authority her complaints regarding manipulation of marks and discrimination, requests the annulment of the decision of 11 July 1972 expressly rejecting her request. She further submitted a complaint registered at the Commission's Secretariat under No 527, based on the same grounds. This remained for the period laid down in Article 90 (2) of the Staff Regulations, which is thus equivalent to an implied rejection and which is also challenged in the present application.

The Commission objects that in its judgment dated 8 May 1973 (Case 60/72, *Campogrande v Commission*, E.C.R. 1973, p. 489), the Court has already declared inadmissible the application directed against Mr Coppé's letter of 11 July 1972, since the applicant's letter dated 18 May 1972 could not be considered as a complaint against an act adversely affecting the applicant under Article 90 of the Staff Regulations.

The applicant replies that the objection upheld by the Court in the judgment of 8 May 1973 is no longer valid, since a complaint has since been submitted to the Commission.

B — Application 144/73, De Vleeschauwer, and 145/73, Bouyssou

9. The applicants De Vleeschauwer and Bouyssou claim that irregularities took place during the course of the written test. The chairman of the Selection Board informed the candidates that the test mentioned under III (1) of the notice of competition, the drafting of a staff memorandum or the minutes of a meeting on subjects to be determined by the Selection Board, would also include a critical assessment. This statement, adding an unforeseen test, was, furthermore interpreted in varying ways by the examiners, who also disagreed in the value given to the critical assessment in their marking.

According to the Commission this complaint has no basis either in fact or in law. A test composed of drafting a staff memorandum or the minutes of a meeting necessarily includes a critical summary, i.e. an assessment, when it is required of candidates for posts in category A. In each case the correction of the candidates' tests was carried out by two different examiners, all examiners being supplied with the same documents informing them of the criteria to be observed in assessment.

The applicants reply that, leaving aside the question of what may be relevant to the drafting of the minutes of a meeting, the text of a notice of vacancy is binding upon the Selection Board in the same way as upon the candidates.

The Commission replies that the minutes of a meeting cannot be reduced to a bare summary and that both the instructions to candidates and the further explanations provided at the time of the written test made abundantly clear the kind of work required of the candidates.

10. The applicants De Vleeschauwer and Bouyssou also claim that further discrimination among the candidates for the various competitions arose out of the fact that the results of competition COM/A/268 consisted only of a single figure for each candidate, and did not distinguish the scores for the written, oral and language tests as was done for the other allied competitions. Any control by the appointing authority, by the opposing party or by the Court was thus made impossible.

According to the Commission the Selection Board for competition COM/A/268 was not obliged to present detailed results, either by the Staff Regulations, especially Annex III thereto, or by the notice of competition.

In reply the applicants state that if they had known in advance that Selection Board COM/A/268 would adopt this method of presenting results, facilitating the award of favourable results to the point where the successful candidates represented 33·7 % of participants, they too would have taken part in this competition. The Commission rejects this argument *ex post facto*.

11. It is claimed to be a matter of common knowledge that three candidates for competition COM/A/268 received intensive coaching for that competition from Mr Ries, Head of Division, and Miss Hoeller, who both sat on the Selection Board.

The Commission states that it does not consider that the act of a superior in helping his subordinates to prepare for a competition on which their promotion may depend can be, in itself, reprehensible. The applicants' allegation is in any case unsupported by evidence.

According to the applicants, superiors who find themselves in the position of having helped certain of their subordinates to prepare for a competition ought to refuse to sit on the Selection Board. From the point at which they take part in the tasks of the Board, its entire proceedings are vitiated.

C — *Application 144/73, De Vleeschauwer*

12. The applicant in Case 144/73 considers that the candidates for competition COM/A/265 suffered two additional disadvantages by comparison with the candidates for the other competitions. Firstly, a new specialist option (Use of Energy) was announced only 10 days before the competition opened, thus favouring candidates already working in that field.

Secondly, certain information relating to the bibliography to be consulted by the candidates for competition COM/A/265 was only given in the 'Staff Courier' No 187 dated 8 November 1971.

Concerning the addition of the sub-option 'Use of Energy', the Commission points out that this measure could only benefit candidates for the competition. The advantage enjoyed by candidates working in the field concerned was the same for all specialist fields. The addition of the 'Use of Energy' option was made only 9 days after the announcement of the options for the oral test appearing in the 'Staff Courier' No 186 dated 3 November 1971, the closing date for the submission of entries remaining fixed for 22 November 1971. The oral tests based on these options, to which the documentation in issue relates, did not in any case take place until 18 and 19 April 1972.

The applicant replies, concerning the 'Use of Energy' option, that the

publication in the 'Staff Courier' No 188a dated 12 November 1971 took place more than three months after the notice to staff appearing in the 'Staff Courier' No 173a dated 2 August 1971, which even then gave 'International Trade' as a sub-option. As for the bibliography, it is difficult at the present time to show what time-lag took place to the detriment of candidates who had chosen the 'International Trade' or 'Statistical economics' options, but the time-lag existed and was inadmissible.

In its Rejoinder the Commission stresses the provisional and purely informative character of Mr Coppé's notice which appeared in the 'Staff Courier' No 173a. It denies that there was any discrimination over the bibliography, since the applicant was left ample time to prepare his chosen option.

13. The applicant De Vleeschauwer further raises a series of complaints based on discrimination of a linguistic nature in the course of the competition procedure:

(a) Insufficient information as to the precise identity of the text for summary, in the context of the written test, handicapped Dutch-speaking candidates;

(b) Instructions to candidates, for the same written test, were first given in French, to the disadvantage of candidates who were not French-speaking;

(c) The recommended bibliography included an internal Commission document, which was originally written in German and also existed in a French translation but of which there was no Dutsch translation;

(d) For the language test, candidates who had received their summons in Dutch had to translate into their mother tongue, whereas other candidates who had chosen to take the competition in another language had the advantage of translating out of their mother tongue.

On the first point the Commission replies that the loss of time was minimal; the applicant counters by referrring to the general confusion which did not cease for half an hour.

The second complaint has only minimal merit, in the Commission's view, since the applicant has a perfect command of French and in any case had the prescribed time at his disposal. The applicant replies that what matters is that the other candidates had more time at their disposal.

As to the complaint concerning the bibliography, the Commission again refers to the applicant's knowledge of German and French. The applicant states in rebuttal that responsibility lies with the Commission since one of its own documents was in question.

Finally, as to the language test, the Commission considers that in any case the applicant cannot have been at a disadvantage, since translation into one's mother tongue is well-known to be easier. In the applicant's view this is not an absolute rule, since it could have been in his interest to translate into French, which is his working language. The Commission points out the confusion in the applicant's argument: he claims first that it would be in his interest to translate into French rather than into his mother tongue and then complains that he was compelled to study certain documents in the French version only.

After closing the written procedure the Court asked the parties to supply certain supplementary information and to produce certain documents.

Miss Bouyssou, the applicant in Case 145/73, was invited to explain her present interest in the annulment requested, in view of her appointment to a post at grade LA 7 with the Council. She pointed out that she had not yet been established in the Council's

Language Service and that in any case she would prefer to continue her career with the Commission because of her past knowledge and experience and also because of the more numerous possibilities of promotion.

The Commission was requested to explain the effect on its case of the date of publication of the correction relating to the age limit. It replied that this correction, dated 29 March 1972, became necessary as a result of the judgment of the Court of Justice of 22 March 1972 in Case 78/71, *Costacurta v Commission* (Rec. 1972, p. 163) and that it was anxious to abide most strictly by the precepts in that judgment.

In the case of competitions COM/A/264 to 268 which, at the time that judgment was given, had already reached the stage of the written tests, the Commission had a choice of two solutions:

— to annul the notices of competitions, publish new ones and recommence the entire procedure, although the latter had been carried out under conditions such that the age of the candidates could have no significance, and all this for the sole purpose of fulfilling a purely formal requirement, when no Selection Board had excluded a candidate from admission to the competition on grounds of age;

— to explain the reasons for not including a specific age limit in the notices of competitions. Thus the current procedure could continue without any discrimination resulting, the Commission having made it clear that it did not wish to make any distinctions based on the age of the candidates.

The detriment which would have been caused both to the Commission and to the candidates by recourse to the first solution encouraged the Commission to prefer the second.

The Commission was also invited to explain its method of recruitment after drawing up a so-called general reserve.

The Commission explains that after the circulation among the various Directorates-General of the reserve lists bracketing candidates of similar abilities, the Directorate-General for Administration assembles requests reaching it and checks whether they correspond with the training and abilities of the candidates and the competitions in which they have been successful. The file is forwarded to the Commission. The latter decides the appointment of successful candidates, ensuring that posts correspond not only with the abilities noted in the personal file or personal information but also with the specialist branch chosen.

In the present case the candidates included on the list of suitable candidates were qualified for appointment to vacant posts corresponding to their training and experience. Exact correspondence between the qualifications of candidates and each of the vacant posts is of course unobtainable.

Examination of the lists of appointments of successful candidates in the competitions in question to specific posts shows that in no case was a candidate appointed to a job which did not correspond to his aptitudes as established by the Selection Boards.

The Commission produced the following documents required by the Court:

— the communication from Mr Commissioner Coppé following the meeting on 21 January 1971;

— the memorandum from the Director-General, Mr Lamberto Lambert, dated 16 June 1971;

— the memorandum from Mr Lahnstein, Chef de Cabinet to Mr Commissioner Haferkamp, to Mr Cardon de Lichtbuer, Chef de Cabinet to Mr Coppé; also Mr Cardon de Lichtbuer's letter forwarding that memorandum to Mr Lamberto Lambert and the reply of Mr Krauss, chairman of Selection Board COM/A/264;

— the list of appointments made from among the successful candidates in the competitions, showing the competition and the option chosen, together with the occupation and position to which they were appointed.

In the course of the oral procedure, on 13 June 1974, the applicants, represented by Me Slusny, and the Commission, represented by G. Pincherle, expanded the arguments set out in the course of the written procedure.

The Advocate-General delivered his opinion on 9 July 1974.

Law

1 The main object of the applicants is to obtain annulment of competitions COM/A/264, COM/A/265 and, insofar as is necessary, competitions COM/A/266, COM/A/267 and COM/A/268 and of the appointments made as a result of these competitions.

2 Alternatively they seek an injunction from the Court that the Commission should reopen the competitions for which the applicants were enrolled, insofar as they are concerned.

3 Further, Case 112/73 seeks the annulment of the letter sent on 11 July 1972 by a member of the Commission refusing to take account of the complaints of the first applicant as regards the organization of the competitions in question.

4 This claim is completely covered by the main object of the applications.

5 Since these applications relate, to a large extent, to the same facts and are supported by identical submissions, it is appropriate to deal with them in a single judgment.

6 At its session on 22 July 1971 the Commission discussed, for the purpose of constituting a reserve for future recruitment to posts in the career bracket A 7/A 6, the organization of internal competitions on the basis of qualifications and tests, whereby those entered on a list of successful candidates — according to the applicants — or on several such lists —

according to the defendant — would be entitled to be appointed to vacant administrative posts and thereby move to another grade.

7 The minutes of this meeting mentioned, *inter alia*, that they were 'promotion competitions for officials in category B', that six competitions, specialized according to subject, would be organized to cover all the different sections of the Commission and that procedure would be laid down ensuring the harmonization of the criteria to be followed by the various Selection Boards.

8 On 3 November 1971 the Commission published five notices of competition, relating to five different spheres, that is: COM/A/264 legal and administrative, COM/A/265 economic, COM/A/266 finance and accounting, COM/A/267 social and COM/A/268 agricultural and technical, each of them moreover containing different options.

9 These notices of competition did not state an age limit.

10 Admission to the tests was not limited only to employees of category B; officials of grades LA and C took part in the tests.

11 The first applicant enrolled for competition COM/A/264 (legal and administrative) and opted for 'institutional questions on the Communities'; the third applicant entered the same competition and opted for 'rules of competition' and the second applicant entered competition COM/A/265 (economics) and opted for 'international trade'.

12 On 15 June 1972 each was informed that having regard to the result of the tests it had not been possible to include him or her on the list of suitable candidates.

13 The applicants, apart from certain submissions special to their own case, direct their arguments in particular to four submissions, the first three relating to the regularity of the organization of competitions for the purpose of drawing up a reserve for future recruitment and the fourth relating to the infringement of Article 1 (g) of Annex III to the Staff Regulations relating to the requirement to state an age limit in notices of competition.

14 It is proper to consider these submissions first.

I — Submissions common to the three applications

15 The applicants state in the first place that all the competitions in dispute are vitiated by illegality by reason of the fact that the Commission did not harmonize the criteria to be used by the various Selection Boards and the conditions of the tests, as it ought to have done, having regard to the fact that it was really a single competition or at least the competitions were to result in a single list of suitable candidates, since it was intended to constitute a single reserve for future recruitment.

16 Discrimination had therefore arisen, in particular to the detriment of the applicants, between candidates in certain competitions in relation to candidates enrolled in others.

17 Further, as regards their legality, these competitions must, for the same reasons, be dealt with as a whole, so that irregularity in one — to the advantage of certain candidates — would involve the illegality of all.

18 Under Article 45 (2) of the Staff Regulations: 'an official may be transferred from one service to another or promoted from one category to another only on the basis of a competition'.

19 Moreover, recruitment by means of competition for the purpose of constituting a reserve for future recruitment is expressly provided for in Article 29 (1) of the same Regulations.

20 The combination of these provisions unquestionably permits the organization of competitions aimed at constituting a reserve for future recruitment of successful candidates belonging to a lower category who are intended to be appointed subsequently, according to the requirements of the service, to administrative posts in the career bracket A 7/A 6.

21 Since the constitution of such a reserve aims, by reason of its general nature, at providing for vacancies relating to the same post and career bracket, but comprising the performance of different duties, it can be achieved by means of several competitions which are harmonized to a certain degree.

22 This harmonization, which the Commission sought, was achieved first by the organization of common tests of a general nature and then completed by different tests relating to spheres of specific knowledge.

23 Finally it found expression in the constitution of a committee composed of members of the various Selection Boards, which met twice before the tests took place for the purpose of planning the work of the Selection Boards and once afterwards to harmonize the marks to a certain extent, of a working party which laid down instructions to be given to the markers, all for the purpose of achieving, while respecting the independence of the Selection Boards, lists of suitable candidates 'of comparable quality'.

24 The Commission, while seeking to harmonize to a certain extent the tests in question, was entitled, as it has done, to organize different competitions leading to different lists of suitable candidates to meet the requirements to provide for different duties, although all relating to the post of administrator, subject nevertheless to the condition that only officials who had been successful at a competition in a sphere relating to the duties to be performed would as a result be promoted.

25 It appears from a comparison of the subjects chosen by the candidates with the notices of vacancies to which they have subsequently been promoted that such was the case, at least in the great majority of cases.

26 If in certain cases the necessity for such correspondence has been disregarded, it does not follow that the competitions are illegal but only that the regularity of these promotions would be doubtful.

27 The Selection Board of each competition therefore had to reconcile the advisability of harmonizing to a certain extent the test conditions and the necessity to judge, according to the appropriate criteria, the experience of the candidates for the purpose of performing the duties for which success at the competition selected marked them out.

28 Such reconciliation is, under the terms of the notice of competition, the responsibility of each Selection Board and is guaranteed by its independence and the secrecy of the proceedings laid down by the Regulations.

29 Thus differences in assessment from one competition to another are not only inevitable but proper, even as regards the common tests, since the assessment of the importance of these latter may vary in the eyes of the different Selection Boards in relation to the various abilities which the performance of different duties requires.

30 No purpose is served by the applicants, citing in support of their point of view that it was in truth a single competition, the fact that in the Staff Courier No 216, of 26 June 1972, the Commission published a single list of suitable candidates comprising all the candidates.

31 This publication comprises the alphabetical list of all the candidates who constitute the reserve for future recruitment to the compilation of which each of the different competitions had to contribute, but beside the name of each official there is noted the competition in which he took part and, moreover, lists of suitable candidates in relation to each competition were transmitted by the Selection Boards to the Commission.

32 Since, therefore, it is established in the present case that there were separate competitions, the tests for which were judged by separate Selection Boards, the applicants cannot complain of differences between the conditions of the competition in which each of them participated and the others.

33 Their indication of evidence in this respect must therefore be rejected as irrelevant to the case.

34 The applicants allege in the second place that the competitions were conceived and organized, not in the interests of the service, but for the purpose of advancing certain specific candidates.

35 In spite of the seriousness of this allegation, there has been no evidence nor indication of evidence in support of it and therefore it must be rejected.

36 The applicants further state that the competitions are vitiated by misuse of powers in that, although they were conceived as 'promotion competitions' mainly to open admission to category A for officials of category B, pressure was subsequently exerted on the Selection Boards to induce them to be more severe so as to restrict the number of successful candidates and thus make possible a larger recruitment by means of external competitions.

37 The provision of reserves for future recruitment is a factor in the recruitment policy of the appointing authority.

38 It is established that the Commission, before the enlargement of the Community by the accession of the new Member States, intended by this means to open up to experienced officials in category B who gave proof of their ability, access to posts in category A, the number of which was about to be increased.

39 However, from 22 July 1971, parallel with the organization of internal competitions in October 1971, it had provided for the organization before the end of 1971 of external competitions for the purpose of filling the same posts.

40 Having decided to combine the two methods for the additional recruitments in category A, in the light of the enlargement of the Community, the Commission was justified in asking the Selection Boards to have regard, in their assessment criteria, to the nature and objectives of the recruitment envisaged, while nevertheless respecting the independence of the said Selection Boards.

41 The Commission could therefore ask the Selection Boards to have regard to the approximate number of posts in the career bracket A 7/A 6 which it anticipated filling from the reserve for future recruitment to be constituted.

42 The applicants put forward the fact that, first, the minutes of the meetings of the Selection Board for competition COM/A/268 show that the members of this Selection Board refused to follow a suggestion by the chairman to reduce *en bloc* all the marks less than 53 to less than 48 points — the limit for entry on the list of suitable candidates — and that, secondly, the proportion of

candidates entered on the list of suitable candidates from this competition is much higher than in the others.

43 They infer that the Selection Boards in the other competitions and in particular those in the competitions in which they participated, complying with the directions, altered the marks.

44 In support of this allegation the third applicant stated that a member of the Selection Board COM/A/264 told a third person that the applicant had been successful in the competition, whereas it appeared subsequently that her mark was 47.

45 The first applicant states for her part that her marks were reduced from 52 to 47 by the Selection Board COM/A/264.

46 The applicants indicate oral testimony of the facts which they state.

47 It appears from a comparative examination of the results of the different competitions that the proportion of successful candidates may be set out in a decreasing order as follows: 55 % (COM/A/268: 28 out of 51); 30·9 % (COM/A/264: 17 out of 55); 21·2 % (COM/A/266: 12 out of 44); 20·5 % (COM/A/267: 8 out of 39) and 15·7 % (COM/A/265: 10 out of 64).

48 Although these figures certainly reveal marked differences capable of being explained either by the difficulty of the subjects, or by the severity of the Selection Boards or the state of preparation of the candidates, they do not in any way show a sharp division between the competition COM/A/268 on the one hand and all the other competitions on the other, and do not in any way support the presumption that the Selection Boards of the other competitions had yielded to pressure or considerations alien to their task, which the Selection Board COM/A/268 has resisted.

49 Further it appears from the file that in their contacts with the department entrusted with the organization of the competitions, the Selection Boards did not cease to assert their independence to reject the suggestions which the Commission had made.

50 Finally it appears from the letter written, *in tempore non suspecto,* by Mr Krauss, chairman of the Selection Board COM/A/268, that 'when there were signs that the Selection Boards were not having regard to the figures assessed by Mr Coppé, there was another meeting, which failed to influence the Selection Boards, who insisted on their independence' and that 'there was no *numerus clausus* and that moreover the Selection Boards acted in the independence which is not only guaranteed them but imposed upon them by the Regulations'.

51 In these circumstances, indication of evidence to show even an exceptional severity on the part of certain Selection Boards in relation to others cannot lead to finding that the competition in question is vitiated by illegality by reason of this, since it appears from the file that this severity was not the result either of external pressure or of considerations alien to the proper functioning of the service.

52 The same would apply to the fact, if it were established, that the marks of certain candidates had been reduced during the deliberations.

53 Moreover, the examination of ability which Selection Boards must undertake is above all of a comparative nature and, for this reason, covered by the cloak of secrecy inherent in such deliberations, so that they cannot be subjected to control by the Court except in the event of obvious infringement of the rules which govern the proceedings of Selection Boards.

54 Since this is not so in the present case the submission must be rejected.

55 The applicants also maintain that the procedures of competition were irregular by reason of the fact that, in infringement of Article 1 (g) of Annex III of the Staff Regulations 1968, the notices of competition dated 3 November 1971 do not contain an age limit.

56 This provision, as it stood before its amendment by Article 48 of Regulation No 1473/72 of 30 June 1972, (OJ L 160 of 16. 7. 1972, p. 10), required the mention, in the notice of competition, of the age limit as well as the extension of this limit as regards officials who have completed not less than one year's service.

57 The Commission, which was competent to issue these notices, had interpreted this provision as dispensing it from mentioning an age limit when it did not intend to impose one.

58 In the present case, having regard to the nature of the competitions in question and in particular the fact that internal competitions were involved, which were intended to provide a reserve for future recruitment of a limited period of validity, the Commission considered, as it could well do, that an age limit was not required in the interest of the service.

59 Following the judgment of this Court, First Chamber, of 22 March 1972, in Case 78/71 *(Costacurta)*, according to which this decision must be expressly stated, it formally gave notice of the decision which it had taken in this respect in the Staff Courier of 29 March 1972, at a time when the procedures of competition had already been initiated.

60 This notice, although late, nevertheless satisfies, in the circumstances of the case, the requirements of Article 1 of Annex III, the objective of which it realized by precluding the elimination of candidates by reason of their age.

61 It is established that neither at the stage of admission to the tests, nor at any stage in the procedure of the competition or the subsequent procedures of promotion, has an official been excluded on the grounds of age.

62 The submission must therefore be rejected.

63 Following the production, during the oral procedure, of the minutes of the meeting of 22 July 1972, at which the organization of the competitions in question were being considered by the Commission, the applicants put forward additional considerations among which it is possible to discern three new submissions.

64 They state that at the meeting reference is made to six competitions whereas only five were organized, that it indicates that the competitions were to be reserved for officials of category B whereas officials of the LA service took part, and finally that each candidate was to have a card giving his particulars

which was to be made out by the administration and not by the candidates, as was the case.

65 According to the applicants this involved irregularities vitiating the legality of the competitions in question.

66 Without dealing with the question of whether, at this stage of the procedure, the production of new submissions is admissible, it is right in the first place to observe that the decision on the organization of the competition takes its legal and final form from the notices of competition brought to the notice of the personnel.

67 The deliberations of the competent body as they appear from the minutes cannot override the clear wording of the decision in question unless they obviously show that the formal decision is not in accord with what was in fact laid down at the end of the deliberations.

68 This is not so in the present case.

69 The file shows that the fact six competitions were provided for and only five organized arose because competition COM/A/268 combined tests relating on the one hand to agricultural subjects and on the other hand to data processing.

70 Althoug this fact does not reveal a punctilious method of proceeding, it is nevertheless in no way such as to vitiate the legality of the acts challenged.

71 Further, although it is established that the competitions in question were certainly intended to enable officials in category B to advance to category A, neither the wording nor the spirit of the minutes provides any basis for the conclusion that they were to be limited exclusively to officials in this category.

72 On the contrary, given the fact of providing a general reserve, having regard to the arrival of officials from the new Member States, discrimination against

the officials of other categories, fulfilling the conditions of admissibility, would have been objectionable.

73 The minutes contain no reference enabling the conclusion to be drawn that the cards with the particulars of the candidates could not be completed by the candidates.

74 The submissions must therefore in any event be rejected.

II — Submissions special to the various applications

Application 112/73, Campogrande

75 Miss Campogrande, who at first was not accepted as a candidate for competition COM/A/264, was advised on 22 March 1972 that she was admitted to the tests.

76 She is thus said to have been the victim of discrimination, first because the written tests began the following day, 23 March 1972, and secondly, because she was accordingly unable to acquaint herself with the documentation sent with the letter of admission to the tests until 12 days later than the other candidates.

77 According to the notice of competition COM/A/264 the written test comprised 'the drafting of a departmental note or minutes of a meeting on subjects to be determined by the Selection Board'.

78 A test of this nature does not presuppose on the part of the candidates any preparation in a particular subject.

79 Further, the nature of this test was made public as from 3 November 1971 by a notice in the Staff Courier of that date.

80 Further, the documentation communicated by the letter of acceptance for the tests concerned only the oral tests which took place from 10 to 28 April 1972.

81 The refusal with which she was at first confronted having been withdrawn at her request, the applicant is no longer entitled to challenge under this heading the legality of the competition in which she voluntarily took part.

Applications 112 and 145/73, Campogrande and Bouyssou

82 The applicants Campogrande and Bouyssou state, and indicate evidence, that a candidate in competition COM/A/264 was able to take the language test in English.

83 Even if this is so it does not appear that it was taken into account by the Selection Board in its comparative assessment, since the candidate in question was not entered on the list of suitable candidates.

Applications 144/73 and 145/73, De Vleeschauwer and Bouyssou

84 According to the applicants De Vleeschauwer and Bouyssou the written test did not correspond with the description which was given of it in the notice of competition.

85 It is alleged that it was stated orally to the candidates at the beginning of the test that the test would comprise, in addition to the memorandum, a critical assessment, whereas the notice of competition provided for the 'drafting' of a staff memorandum or minutes of a meeting, on subjects to be determined by the Selection Board.

86 This fact, it is claimed, led to discrimination between candidates, since the oral instructions were variously translated and understood.

87 A competition was involved, the successful candidates in which would be called upon to be appointed to administrative posts in the career bracket A 7/A 6.

88 Under Article 5 of the Staff Regulations this category comprises career brackets 'containing . . . staff engaged in administrative and advisory duties'.

89 Although the 'drafting' of a staff memorandum or minutes of a meeting does not necessarily involve a critical assessment, it does not however exclude it, and a call upon the critical faculty of candidates for a post in category A should not so surprise them as to constitute an irregularity involving the annulment of the competition.

Application 144/73, De Vleeschauwer

90 The second applicant notes further a series of points of detail relating to the preparation of competition COM/A/265 or to the conduct of the tests.

91 He refers to the inclusion, subsequent to the notice of competition, of an additional option relating to the use of energy, to irregularities in the provision of information as to the bibliography to be consulted by candidates and to differences of a linguistic nature in the course of tests.

92 The late inclusion of a new option cannot be discriminatory except as regards candidates who have chosen this option, which is not the case with the applicant.

93 The irregularity in the information as to the bibliography consists in the fact that there was reference to an internal document of the Commission which exists only in French and German.

94 Although the applicant, who had chosen Dutch for the tests, is entitled to have them conducted in that language as far as he is concerned, there is no

discrimination with regard to the different candidates in referring from among the texts and works intended to facilitate the preparation of the competition, *inter alia,* to texts and works written in languages different from that which they have selected for the tests.

95 Finally the second applicant complains of having been the victim of discrimination in that, having chosen, allegedly as a result of a wrong interpretation of the phrase 'mother tongue' in the notice of competition, to do the tests in Dutch, he was required to translate into that language, whereas French is his main working language.

96 It is the rule in language tests to require translation into the language chosen by the candidate in which to take the test and this rule has been observed in the case of the second applicant.

97 These various complaints cannot be upheld.

98 The applications must therefore be rejected.

Costs

99 The applicants have failed in their applications.

100 By Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.

101 Nevertheless, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the applications.**

2. **Orders each party to bear its own costs.**

A. M. Donner J. Mertens de Wilmars

Delivered in open court in Luxembourg on 9 October 1974.

A. Van Houtte
Registrar

C. Ó Dálaigh
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 9 JULY 1974

My Lords,

On 3 November 1971 the Commission published five notices of internal competition which were, except in one respect, in the same terms. Each notice stated that the competition to which it related would be on the basis of both qualifications and tests and that it would have as its purpose the constitution of a reserve for the future recruitment of administrators in grades A 6 and A 7. There is no doubt that the main object of the Commission in holding these competitions was to open up careers in category A to seasoned category B officials on its staff.

The difference between the notices lay in the descriptions they contained of the duties to be performed by the successful candidates. Each competition was for officials qualified in a particular field, as follows: —

COM/A/264 — Legal and administrative,

COM/A/265 — Economic,

COM/A/266 — Finance and accountancy,

COM/A/267 — Social,

COM/A/268 — Agricultural and technical.

Within each field candidates were given a choice of subjects (referred to as 'options') on which, as part of the tests, they could offer to be examined orally.

The publication of these notices of competition resulted from a decision taken by the Commission at a meeting on 22 July 1971. The relevant extract from the minutes of that meeting has