On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

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

Mackenzie Stuart Touffait Everling

Delivered in open court in Luxembourg on 1 October 1981.

J. A. Pompe
Deputy Registrar

A. J. Mackenzie Stuart
President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 16 JULY 1981 [1]

Mr President,
Members of the Court,

1. Allow me first of all to rehearse the facts of the present case. On 25 June 1979 the European Parliament decided to hold an internal competition on the basis of qualifications and tests for the purpose of filling a vacancy for an administrator (Career Bracket A 7/A 6) in its Information Office in Rome. The relevant notice of competition received the number A/66. At the same time three other notices of competition were published for similar posts in the Information Offices in Paris, Brussels and Dublin. Mrs Anna Guglielmi, a Category B official of the European Parliament in the Rome office since 1967, took part in Competition No A/66 but did not pass

1 — Translated from the Italian.

the first written test and was therefore eliminated from subsequent tests.

Even before learning of the result of the test, Mrs Guglielmi and two other candidates, who had taken part in the competitions for the posts in Brussels and Paris, wrote to the chairman of the single Selection Board on 26 March 1980 and complained about the essay which they had had to write ("Describe in the form of an article for a magazine having a wide circulation the advantages or disadvantages of your country's belonging to the Community"). In their view the subject of that essay went outside the particulars stated in the notice of competition because it required a university standard to tackle it and because it had nothing to do with the actual work of the Information Offices. The three signatories therefore requested that their efforts be considered in the light of those observations. The chairman of the Selection Board wrote to the three applicants on 8 April 1980 saying that he could not divulge any information about the work of the Board since it was confidential.

After learning that they had been eliminated from the further tests the three candidates wrote again (on 18 April 1980) to the chairman of the Selection Board requesting "detailed explanations". On 14 May the chairman stated in reply that the board was under no obligation to give candidates the particulars they were seeking about the results of the test. On 1 July 1980 Mrs Guglielmi lodged a complaint with the European Parliament seeking annulment of the competition. Having received no answer, she reiterated her request in the form of an application to the Court lodged on 3 December 1980. In support of that claim the applicant alleged a breach of the principle of the protection of legitimate expectation and of the principle of equality as well as misuse of powers. She also claimed damages from the defendant.

2. I should say straightaway that the only competition which is being challenged is that in relation to the post of administrator at the Information Office in Rome. That is apparent from the pleadings and was confirmed by the applicant's representative at the hearing.

In support of the alleged breach of the principle of the protection of legitimate expectation Counsel for the applicant submitted that the subject chosen by the Selection Board for the first written test had no connection with the actual duties of the post to be filled as described in the vacancy notice. Thus the administration and the Selection Board had not taken account of the fact that the applicants had relied on the terms of the notice of competition, on the basis of which they had expected that the main written test would be on a general subject connected with the work of the Information Office in Rome.

In my view those facts cannot be said to amount to a breach of the principle of the protection of legitimate expectation. It is well-known that, according to the decisions of this Court, in order to be relevant the expectation must be based on precise assurances given by the administration to the persons concerned.

In this respect I refer to the judgment of 5 June 1973 in Case 81/72 *Commission* v *Council* [1973] ECR 575 where the Court held that there was a breach of the staff's confidence in the administration because the Council had undertaken that in exercising its powers under Article 65 of the Staff Regulations it would observe a particular method of calculating the effects of changes in purchasing power on salaries and had subsequently failed to adhere to that method. In the present case the administration on the other hand has assumed no obligations in respect of the candidates: it confined itself to drafting and publishing a notice of competition pursuant to the provisions of Annex III to the Staff Regulations.

Let us, however, overlook that erroneous aspect of the first submission and consider the applicant's argument from another point of view. If in conducting a competition by means of a Selection Board established for that purpose the administration does not comply with the particulars stated in the competition notice, it infringes the rules applying to competitions. Article 29 (1) of the Staff Regulations provides that "the appointing authority shall ... follow the procedure for competitions ... Annex III lays down the competition procedure". Amongst the conditions laid down by Article 28 for the appointment of an official is a requirement that he shall have "passed a competition ... as provided for in Annex III". Article 1 (b) of that annex in turn provides that the notice of competition must specify "the kind of competition". It seems clear to me therefore that if the Selection Board were to fail to observe the particulars in the notice that would constitute an infringement of the Staff Regulations and vitiate the whole competition.

It therefore remains to be ascertained whether in the present case the Selection Board did in fact disregard the terms of the notice, in particular the clause regarding the subject of the written test.

It must not be forgotten that the competition in question related to a post which involved the performance — under the authority of a superior — of duties connected with information and public relations. Paragraph I of the notice stated that the work involved contact with the press, specialist circles, lectures and drafting. In paragraph V (a) the subject of the first written test was given as follows: "Essay on a general subject bearing directly on the duties involved". We have already seen that candidates were asked to: "Describe in the form of an article for a magazine having a wide circulation the advantages or disadvantages of your country's belonging to the Community".

It seems to me that a subject of that kind was in accordance with the notice both as regards its content and the level of difficulty which it presented. In the first place, the subject was of general Community interest and the requirement to treat it in the form of an article for a magazine with a wide circulation was consonant with the qualifications required of the candidates and the kind of duties connected with the vacant post. It must be remembered that paragraph III of the notice stated that the

qualifications required of candidates included languages and knowledge of the "information media and the parliamentary systems in Italy" together with a "thorough knowledge of the structure and activities of the European Community". The subject chosen therefore represented an appropriate means of assessing the aptitude of the candidates not only as regards the specific duties described in the notice by the terms "lectures" and "drafting" but also the general level of education necessary for performing all the tasks associated with the post. Secondly, as regards the degree of difficulty, I must observe straightaway that investigation of that issue might entail a review of the administration's exercise of its discretion which of course this Court is not permitted to perform. If however that hurdle is overcome there seems to me no reason to doubt that the Selection Board complied with the notice in assessing the level of knowledge which the essay required of the applicants. It must also be borne in mind that the vacancy was in Category A and that according to the second subparagraph of Article 5 (1) of the Staff Regulations officials belonging to that category are engaged in administrative and advisory duties which require university education or equivalent experience. In addition, as I have already remarked, the notice required the applicants to have *inter alia* a *thorough* knowledge of the Community's activities.

3. Another contention relied on in the application alleges a breach of the principle of equal treatment. It is said that the subject chosen for the written test favoured candidates from a higher grade who were allowed to participate in the competition and in particular the candidate from the Parliamentary committees. It is apparent that the Staff Regulations do not prevent officials already in a higher grade than that required for the vacancy from participating in competitions. The underlying criterion of the Staff Regulations is to allow all who have the qualifications specified in the notice to participate on the basis of the principle of the interests of the service. Therefore the fact that in the present case one of the candidates admitted to Competition No A/66 was in Grade A 7 when the notice was published and in Grade A 6 at the time of the test could not give rise to any breach of the principle of equality.

As a matter of fact, it does not appear that the subject had already been dealt with by the successful candidate in the department to which he belonged, and so the allegation of a breach of the principle of equality cannot be upheld on that specific point. It has not been shown in the proceedings that the work of the particular candidate, who before the competition belonged to the Secretariat of the Parliament's Committee on Budgets, involved a study or investigation of the subject chosen for the written test. In the reply (p. 11) Counsel for the applicant offered to adduce evidence to prove that claim but in such

utterly vague terms as not to merit further consideration. I do not think it appropriate, therefore, to refer, as Counsel for the applicant did, to the judgment of the Court of 13 February 1979 in Case 24/78 *Martin* v *Commission* [1979] ECR 603 in support of the argument that the present competition procedure was vitiated for disregard of the principle of equality. That case was concerned with a candidate whom the Court held to have been given an unfair advantage in the choice of the subject for the written test because the subject had enabled him to profit from the special experience he had gained in the performance of his duties as an employee of the Communities. But in our case, as I have already said, it has not been shown that the successful candidate had, within the scope of his work for the Parliament's Committee on Budgets, been concerned with a study on the subject of the written test or even on a similar subject and the simple fact that the candidate had acquired by reason of his work an extensive knowledge of Community matters certainly did not give rise to a situation which might be described as discriminatory.

4. Finally, Counsel for Mrs Guglielmi maintains that the competition was vitiated for misuse of powers on the ground that the Selection Board chose the subject for the first written test with the intention of favouring the only candidate from Category A, the candidate later declared suitable.

This claim has no foundation. There is no evidence or anything in the pleadings to support the applicant's allegation. In truth it all amounts to presenting in another form the argument to the effect that the subject of the written test was exceptionally complicated with respect to the particulars stated in the notice, so complicated in fact as to be capable of being properly tackled only by someone already possessing a high qualification. I have already expressed my disagreement with that argument and it only remains for me to confirm what I have said.

5. For all the reasons stated above my opinion is that the Court should dismiss the action brought by Mrs Anna Guglielmi against the European Parliament by application lodged on 3 December 1980. As for the costs, I think the parties should be ordered to bear their own costs pursuant to Article 70 of the Rules of Procedure.