Staff Regulations than an official who has completed the required minimum period of service.

2. An official eligible for promotion who had to complete a probationary period before being established must, even after completion of the probationary period, complete the minimum period of service required by the Staff Regulations.

In Joined Cases 20 and 21/83

ARISTIDES VLACHOS, a lawyer-reviser at the Court of Justice of the European Communities, residing at 21 Rue Bertels, Luxembourg, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Biel, 18 A Rue des Glacis,

applicant,

v

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, represented by Francis Hubeau, Head of the Personnel Division, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Bonn, 22 Côte d'Eich,

defendant,

APPLICATION for the annulment of two decisions of the Court rejecting the applicant's complaints seeking a change of grading,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

At the end of a selection procedure the Court, by letter dated 21 July 1980, offered Mr Vlachos an auxiliary servant's contract as lawyer-linguist in Category A II, Class 4, with effect from 15 September 1980.

Mr Vlachos was not happy with the offer and on 29 July 1980 he sent a letter asking the Administration of the Court to reconsider his grading in the light of his professional experience. In a letter dated 25 August 1980 the Court assured Mr Vlachos that

"once the 1981 Budget has been adopted, the best lawyer-linguists will have the opportunity to be appointed as revisers (Grade L/A 5)".

Consequently, Mr Vlachos decided to accept the offer of employment and entered the service of the Court on 15 September 1980.

From 1 January 1981 Mr Vlachos performed *de facto* the duties of a reviser and from 1 April 1981 until 1 July 1982 he performed the same duties on a temporary basis under three separate decisions of the appointing authority.

In 1981 the Court obtained a number of posts for the Greek translation division and with effect from 1 January 1981 it converted Mr Vlachos' original contract into a temporary servant's contract by which he was engaged as a lawyer-linguist in Grade L/A 6, Step 3.

On 20 January 1982 Mr Vlachos submitted a request to the President of the Court under Article 90 (1) of the Staff Regulations. He asked to be appointed as a lawyer-reviser in the grade and step corresponding to his training and experience. In his request, he suggested that he should be established as a lawyer-reviser in Grade L/A 5, Step 4.

In the meantime Mr Vlachos entered internal competition No CJ 149/81 and, on the basis of the Selection Board's report, the Court, at its administrative meeting on 29 June 1982, appointed him as a Greek lawyer-reviser in Grade L/A 5, Step 1, as from 1 July 1982. That decision was notified to the applicant on 5 October 1982.

On 28 July 1982 Mr Vlachos submitted a complaint under Article 90 (2) of the Staff Regulations against the decision impliedly rejecting the request which he had submitted on 20 January 1982. His complaint was rejected by a decision of 28 October 1982, which was notified to Mr Vlachos on 10 November 1982.

On 15 October 1982 Mr Vlachos submitted a second complaint against the Court's decision taken at its administrative meeting on 29 June 1982. He asked the appointing authority to

revoke the contested decision and to adopt a new one appointing him to Grade L/A 4 or, alternatively, to Grade L/A 5, Step 3. That further complaint was rejected by the Court on the ground that, at the time of his appointment to Grade L/A 5, Mr Vlachos was not an official newly recruited by the Court for the purposes of Article 32 but an established official promoted from Grade L/A 6 to Grade L/A 5 and his grading was therefore governed by Article 46.

The applications were lodged on 8 February 1983.

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

By order of 12 January 1983, the Court (First Chamber) joined Cases 20 und 21/83 for the purposes of the oral procedure and the judgment.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. In Case 20/83:

   (i) declare the application admissible;

   (ii) annul the decision communicated to him on 27 January 1983 rejecting the second complaint;

   (iii) declare that he has been recruited for the purposes of Articles 29 to 32 of the Staff Regulations and accordingly declare that he cannot be regarded as having been promoted;

   (iv) accordingly declare Article 46 of the Staff Regulations inapplicable;

   (v) remit the case to the appointing authority;

   (vi) order the Court to pay the costs;

2. In Case 21/83:

   (i) declare the application admissible;

   (ii) declare it well founded and accordingly annul the decision notified to the applicant on 10 November 1982 rejecting his complaint of 28 July 1982;

   (iii) declare that he has been "recruited" for the purposes of Articles 29 to 32 of the Staff Regulations;

   (iv) accordingly declare Article 46 of the Staff Regulations inapplicable;

   (v) remit the case to the Court in its capacity as appointing authority;

   (vi) order the defendant to pay all the costs.

In both cases the *defendant* contends that the Court should dismiss the application and make an appropriate order as to costs in accordance with the applicable provisions.

III — Submissions and arguments of the parties

The *applicant* refers the Court to the submissions set out in his second complaint. Those submissions may be summarized as follows:

First submission: Wrong application of the Staff Regulations

In order to recruit five Greek-speaking lawyer-revisers the appointing authority published, in accordance with Article 29 (1) (b) of the Staff Regulations, the Notice of internal competition No CJ 149/81 based on qualifications and tests. Its reason was that it had been impossible to fill the five posts by promotion, since none of the Greek employees met the required conditions (none was an established official who had completed two years' service in Grade L/A 6).

Both the aforementioned vacancy notice and the notice of internal competition, which both had the same number, indicated quite clearly through the use of the word "recruitment" what their purpose was.

The contested decision was therefore wrongly based on Articles 45 and 46 of the Staff Regulations and the grounds on which that decision are based are thus defective.

This case involves nothing other than the applicant's recruitment in another capacity, namely as a lawyer-reviser. Consequently, Article 31 (2) (b) and the second paragraph of Article 32 of the Staff Regulations must be applied and not the provisions concerning promotion contained in Title III, Chapter 3, of the Staff Regulations.

The fact that it is possible under Article 31 (2) (b) of the Staff Regulations for up to half the appointments to newly created posts to be at a grade higher than the starting grade shows that the Community legislature's intention was

(i) to allow a sufficient number of officials to be appointed to a grade higher than the starting grade,

(ii) to provide an incentive so that the most capable and most experienced candidates would enter the competition and

(iii) to enable the best hierarchical structure for the service and one which was as efficient as possible to be set up within a short period of time.

The fact that the Staff Regulations enables up to half the candidates appointed to be recruited at a grade higher than the starting grade indicates that the exercise of the appointing authority's discretion for this purpose should not be regarded as limited and fettered since the provision itself lays down the framework and the limits within which that discretion must be exercised.

Consequently, if the candidate appointed objectively meets the formal and substantive conditions for occupying the post, the appointing authority would be misusing the discretion in question if if refused to apply Article 31 (2) (b).

The argument advanced on this point is compatible with the consistent practice of the Court to appoint all lawyer-linguists without exception to the higher grade, L/A 6, and not to the starting grade, L/A 7, even though that practice involves exceeding the figure laid down by the provision in question.

Consequently, the contested decision involves unequal treatment and discrimination between officials in Career Bracket L/A 5 - L/A 4 and officials in Career Bracket L/A 7 - L/A 6 which is harmful to the applicant.

Second submission: Breach of the principle of the protection of legitimate expectation

Mr Vlachos contends that he had reason to believe that he would be appointed to Career Bracket L/A 5 - L/A 4 in view of the written and verbal promises made to

him by his superiors and the relevant reports concerning his efficiency and qualifications. Although he was appointed to Grade L/A 5 after the tests, this was after having been disappointed in his legitimate expectation as to the kind of treatment he was entitled to expect.

Third submission: Breach of the principle of equal treatment of officials serving the same Community institution

In the past, when the appointing authority appointed lawyer-revisers of British and Danish nationality in exactly the same circumstances as those in which the applicant was appointed, it took into account their previous experience, training and age, and, depending on the case, appointed them to a grade or step higher than their starting grade or step.

Fourth submission: Breach of the principle of equal treatment of officials of all the Community institutions

According to the decisions in force adopted by the other institutions with regard to the grading of appointed officials and the application of Articles 31 and 32 of the Staff Regulations, the situation was as follows:

(i) (a) Besides the favourable provisions concerning the award of an additional step depending on experience, the Commission grants Grade L/A 4 if the official appointed has at least 10 years' experience.

(b) Furthermore, the Commission may grade an appointed official who has performed military service for a period of at least 24 months in the grade immediately above the starting grade. The applicant completed 28 months of military service.

(ii) The European Parliament may grade an appointed official in Grade L/A 4 if he has more than 10 years' relevant experience.

(iii) Under Decisions 81-5 and 82-9 of 3 December 1982 the Court of Auditors may appoint an official to Grade L/A 4 if he has more than 10 years' experience.

(iv) By a decision of 17 January 1975, the Council adopted similar rules; it applies various coefficients according to the number of months of experience and in doing so rightly takes no account of age.

In adopting the contested decision the appointing authority was clearly out of step with the appointing authorities of other Community institutions. It improperly applied criteria which were unfamiliar and in any event unfavourable to the applicant and this constituted discrimination against him as an official of the Court compared with his colleagues in other institutions doing the same work. It is also clearly contrary to the principle of fairness which is recognized as a general principle of the Community legal order.

Fifth submission: Breach of the principle of good administration in conjunction with the fourth submission

The principle of good administration requires the Administration of the Court

to take account of all the factors on which it might base its decision.

The reason for the insufficient and extremely brief statement of reasons for the contested decision as well as for the grading of the applicant in the first step of the new grade is that the appointing authority did not consider the contents of his personal file.

Sixth submission: Breach of the prohibition of discrimination

The appointing authority's failure to apply Article 31 (2) (b) and the second paragraph of Article 32 of the Staff Regulations placed a serving official in an unfavourable position compared with an official who had recently entered the service of the Court.

Seventh submission: Unjustified departure from the established practice of the Court

In the contested decision the appointing authority departed from its previous practice regarding the grant of additional seniority to an appointed official depending on his training and experience and thus acted in breach of any internal instructions of the Court regarding the way in which Articles 31 and 32 of the Staff Regulations are to be applied.

The applicant also relies on the provisions of Article 5 (3) of the Staff Regulations, which the Court sought to disregard in this case.

In view of the defendant's failure to reply to the submissions in his complaint, the applicant asks whether it must be inferred that it has no arguments to offer.

In his application, the *applicant* contends that in law he must be regarded as having being recruited and not as having being "promoted". The Administration of the Court itself informed him in its memorandum of 5 April 1982 (Annex 8 to the second application) that he was not eligible for transfer or promotion. Notice of Competition No CJ 149/81 announced the "recruitment" of five lawyer-revisers. None of the candidates who took part in the competition was eligible for promotion and it is therefore illogical to maintain that the five persons selected were promoted. The candidates who were successful in the competition have been recruited and the Administration must treat them as such and apply Article 32 of the Staff Regulations instead of Article 46, which reduces the scope for granting steps according to merit, experience and other qualifications.

The concepts of "recruitment" and "promotion" have been discussed and examined before the Court on several occasions. In *Van Belle* v *Council* (Case 176/73 [1974] ECR 1361), Mr Advocate General Reischl stated:

"... the concept of 'recruitment' must in fact not be understood in the narrow sense of appointment to the service, that is to say in the sense of external appointment. Rather, it is the general concept which, understood correctly, embraces all possible forms of appointment to posts."

Since, in the present case, it was impossible to fill a post of lawyer-reviser by promotion, competition No CJ 149/81 must have ended in genuine recruitment within the meaning of Articles 31 and 32 of the Staff Regulations.

Even if it is accepted for the sake of argument that the Administration is right and that the applicant was promoted, his grading is not necessarily and exclusively governed by the restrictive provisions laid down in Article 46 of the Staff Regulations.

In its judgment of 6 October 1982 in Case 9/81, *Williams* v *Court of Auditors*, [1982] ECR 3301 the Court held that Article 46 of the Staff Regulations governing the classification of promoted employees, applies only when careers are "organized in a consistent manner from the outset". However, that is not the case at the Court as regards the career of lawyer-reviser in the English and Danish divisions.

In Case 20/83, the defendant refers to its arguments in Case 21/83.

In that case, the *defendant* contends that the applicant's claim set out in his request of 20 January 1982 has been overtaken by events because he was appointed to Grade L/A 5 as from 1 July 1982. Consequently, the request and subsequent complaint have been met.

The only question which remains is that of grading in step within Grade L/A 5; that matter is governed by Article 46 of the Staff Regulations.

The defendant contends that Article 32 of the Staff Regulations is not applicable to the applicant. It is clear from the general scheme of the Staff Regulations and in particular Title III ("Career of Officials") that "recruitment" must be understood as meaning the first employment by a Community institution of a person who until then did not belong to the staff of the institutions of the European Communities. It is indisputable that Mr Vlachos was already a serving official and that he was "promoted" within the meaning of Article 45 of the Staff Regulations, that is to say, he was appointed to the next higher grade in the category to which he belonged.

His classification in the grade to which he was promoted is therefore governed by Article 46. Consideration of that provision led to the applicant's classification in the first step of Grade L/A 5. It should be added that it is the consistent practice of the Administration of the Court to apply Article 46 to all cases similar to that of the applicant.

It is irrelevant that Notice of Competition No CJ 149/81 referred to the "recruitment" of five lawyer-revisers because the competition was internal to the institution and was thus intended, in particular, to enable officials in a lower grade to qualify for promotion.

Before formally requesting the Court to dismiss the application, the defendant makes a general observation. Mr Vlachos entered the service of the Court on 15 September 1980 as a member of the auxiliary staff. After less than two years of service he was established in Grade L/A 5. His career has therefore progressed at lightning speed.

In his reply, the *applicant* objects to the defendant's remarks. He has not had a "meteoric" career but on the contrary has felt frustrated in his expectations. He has had to accept every kind of contract and enter normal competitions in order to reach Grade L/A 5.

With regard to Case 21/83, the applicant notes that the principal argument for rejecting his complaint of 20 January 1982 was that he had obtained what he had requested. However, although the applicant was appointed to Grade L/A 5 as from 1 July 1982, that appointment followed a normal competition.

If he had taken part in Competition No CJ 149/81 as an official in Grade L/A 5, he would have been appointed to Grade L/A 4.

The applicant maintains that he was recruited by way of competition and not promoted. The competition procedure involves a number of candidates from whom the Selection Board selects those who deserve to pass. Promotion, on the other hand, is carried out by the appointing authority after considering the comparative merits of officials and the reports on them. He cannot be regarded as having been promoted; after all, the appointing authority certified to him, before the competition, that he was not eligible for promotion.

In its rejoinder, the *defendant* maintains that in treating Mr Vlachos as having being promoted it was faithful to the letter of the provisions in question and the concepts on which it based its view. It also followed the established practice of the Administration of the Court.

The *Williams* v *Court of Auditors* judgment, cited above, does not advance the debate or add anything useful to it. Since 1973, no lawyer-reviser at the Court in Career Bracket L/A 5 - L/A 4 has been directly recruited from outside the Communities.

The defendant contends that Article 46 governs the appointment of an established official to a higher grade. It is immaterial that the promotion of the official in question could only take place following an internal competition, which happens in two types of cases:

(a) Not only in the case of an official "transferred from one service to another or promoted from one category to another" — the case expressly referred to in Article 45 (2) of the Staff Regulations,

(b) but also, under a consistent administrative practice, in the case of advancement in grade if the official concerned has not completed the minimum period in his grade as required by the first paragraph of Article 45 (1) of the Staff Regulations.

The memorandum sent to Mr Vlachos on 5 April 1982 by the Personnel Division must be understood in that light. It did not mean that it was absolutely impossible for the applicant to be promoted, that is to say, advanced in grade. It meant that, since the applicant had not completed the required minimum period in his grade, he could not be promoted solely on the basis of a consideration of his merits and the reports on him and that his promotion, that is to say, his advancement in grade, could only take place after he had passed an internal competition.

If Article 45 (1) of the Staff Regulations was interpreted in the opposite sense, it would mean that, in order to advance in grade, every official would have to wait at least six months or two years after his appointment as an official, depending on his case.

Even if it is accepted that Article 32 of the Staff Regulations applies to the applicant, it must be pointed out that the second paragraph of that provision permits the appointing authority to grant additional seniority. However, it is under no obligation to do so.

III — Oral procedure

The parties presented oral argument at the sitting on 23 February 1984.

The Advocate General delivered his opinion at the sitting on 22 March 1984.

Decision

1 By an application lodged at the Court Registry on 8 February 1983, the applicant, a lawyer-reviser at the Court of Justice of the European Communities, brought an action (Case 21/83) under Article 91 of the Staff Regulations for the annulment of the decision of 28 October 1982 rejecting his complaint of 28 July 1982, submitted under Article 90 (2) of the Staff Regulations, in which he asked to be appointed to a grade and step corresponding to his age and experience.

2 By a second application lodged on the same day, the applicant brought a further action (Case 20/83) under Article 91 of the Staff Regulations for the annulment of the decision of 19 January 1983 rejecting his complaint of 15 October 1982 lodged against the Court's decision of 29 June 1983 appointing him at the end of an internal competition to a post of lawyer-reviser in Grade L/A 5, Step 1, with seniority in step backdated to 1 September 1980.

3 The applicant was engaged as a member of the auxiliary staff on 15 September 1980 in the capacity of a lawyer-linguist. On 1 January 1981 he was appointed a temporary servant in Grade L/A 6, Step 3. On 1 April 1981 he was made a temporary reviser for a period of six months. By a supplementary clause dated 15 September 1981 his contract was amended to the effect that from 1 April 1981 he was employed as a lawyer-reviser and classified in Grade L/A 5, Step 1. At the end of internal competition No CJ 14/81 he was appointed a probationary official employed in the capacity of a lawyer-linguist and classified in Grade L/A 6, Step 3, with effect from 1 October 1981. His temporary appointment as a reviser was renewed and he received an allowance covering the difference between his pay in Grade L/A 6 and the pay he would have received in Grade L/A 5 in which he had been classified as a temporary servant.

4 On 20 January 1982 the applicant submitted a request to the President of the Court asking to be established as a lawyer-reviser Career Bracket L/A 5 - L/A 4. Having received no reply to his request, he submitted a complaint,

dated 28 July 1982, under Article 90 (2) of the Staff Regulations in which he asked to be appointed to a grade and step which corresponded to his age and experience.

5 By decision of 30 June 1982 the applicant was established in Grade L/A 6, Step 3, with seniority in step backdated to 1 January 1981.

6 At its administrative meeting on 29 June 1982 the Court, upon hearing the report of the Selection Board in internal competition No CJ 149/81, appointed the applicant a lawyer-reviser in Grade L/A 5, Step 1, as from 1 July 1982 with seniority in step backdated to 1 September 1980. On 15 October 1982, the applicant submitted a complaint against that decision, which was notified to him on 5 October 1982, and asked to be appointed to Grade L/A 5, Step 4.

7 The complaint dated 28 July 1982 was rejected by a decision of 28 October 1982 and the complaint of 15 October 1982 by a decision of 19 January 1983. The applicant has brought these actions against those decisions.

8 In Case 21/83 the applicant asks the Court to annul the decision of 28 October 1982 and to declare that he must be regarded as "recruited" for the purposes of Articles 29 to 32 of the Staff Regulations and that consequently Article 46 of the Staff Regulations is not applicable to him. In Case 20/83 he asks the Court to annul the decision of 19 January 1983 and to declare that he must be treated as a newly recruited official for the purposes of Articles 29 to 32 of the Staff Regulations and that consequently Article 46 is not applicable to him.

9 In its decision of 28 October 1982 the appointing authority stated that in his request of 20 January 1982 the applicant asked to be appointed to a post of lawyer-reviser and classified in Grade L/A 5, Step 4, without taking part in a competition and moreover without meeting the conditions laid down in Article 45 of the Staff Regulations. In so far as the applicant's request was for his immediate appointment to Grade L/A 5, it had lost its purpose from

the time when the applicant, who was at that time a lawyer-linguist in Grade L/A 5, Step 3, entered the competition for the recruitment of revisers or at any rate once he was appointed a reviser and classified in Grade L/A 5, Step 1. In any case, it would have been impossible to grant his request without infringing the provisions of the Staff Regulations. At the time of his appointment to Grade L/A 5, the applicant was not a newly recruited official for the purposes of Article 32 of the Staff Regulations but an established official promoted from Grade L/A 6 to Grade L/A 5. His grading was therefore governed by Article 46 of the Staff Regulations.

10 In its decision of 19 January 1983 the appointing authority rejected the complaint of 15 October 1982 for those reasons.

11 In both actions the applicant's submissions are as follows:

(i) wrong application of the Staff Regulations;

(ii) breach of the principle of the protection of legitimate expectation;

(iii) breach of the principle of equal treatment of officials within the same institution;

(iv) breach of the principle of equal treatment of officials having regard to the practice of all the community institutions;

(v) breach of the principle of sound administration considered with submission (iv);

(vi) breach of the principle of non-discrimination and

(vii) unjustified departure from the Court's consistent practice.

Case 21/83

12 The decision of 28 October 1982, which the applicant asks to be annulled, was taken by the appointing authority in response to the applicant's complaint of 28 July 1982. That complaint was lodged after the applicant had submitted the request to the President of the Court on 20 January 1982

asking to be established as a lawyer-reviser (Career Bracket L/A 5 - L/A 4). When he submitted that request the applicant was a probationary official in Grade L/A 6, having been classified among the successful candidates in Competition No CJ 14/81. It must be pointed out that the purpose of that competition was to recruit lawyer-linguists in Career Bracket L/A 7 - L/A 6 and that the Court could not establish the applicant in a post in Career Bracket L/A 5 - L/A 4 without infringing the provisions of the Staff Regulations. The action must therefore be dismissed, it being unnecessary to consider the submissions set out in the application.

Case 20/83

The first submission

13 The applicant's argument is that in order to "recruit" five Greek-language lawyer-revisers the Court published Notice of Internal Competition No CJ 149/81 in accordance with Article 29 of the Staff Regulations because it was impossible to fill those five posts by promotion, since none of the Greek staff in the service of the Court met the formal requirements — none of them was an established official who had completed two years' service in Grade L/A 6. The same reason was given by the Court's Administration when it informed him in its letter of 5 April 1982 that the application he had submitted in response to Vacancy Notice No CJ 149/81 could not be accepted since he was not eligible for transfer or for promotion.

14 He contends that the appointing authority was therefore wrong to base its decisions on Articles 45 and 46 of the Staff Regulations. It was not a question of promotion but of recruitment in another capacity, namely as a lawyer-reviser. He considers that he must, in any event, be regarded as having been recruited at the outset as a lawyer-reviser and that Article 31 (2) (b) and the second paragraph of Article 32 of the Staff Regulations must be applied to his case. Chapter 1 of Title III of the Staff Regulations is entitled "Recruitment" and comprises Articles 27 to 34. It follows that the successful candidates in an internal competition are not promoted but recruited under Article 29 (1) (b).

15 It is first of all necessary to recall the provisions of the Staff Regulations on which the applicant relies. Chapter 1 of Title III of the Staff Regulations

deals with "recruitment" procedures while Chapter 3 governs staff reports, advancement to a higher step and promotion. Article 29 of the Staff Regulations provides that, except in the case of the recruitment of officials in Grade A 1 or A 2 and in exceptional cases, the appointing authority must first consider, before filling a vacant post in an institution, (a) whether the post can be filled by promotion or transfer within the institution, (b) whether to hold competitions internal to the institution and (c) what applications for transfer have been made by officials of other Community institutions and then follow the procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests.

16 Article 31 provides that the candidates selected are to be appointed as follows:

Officials in Category A or the Language Service: to the starting grade of their category or service;

Officials in other categories: to the starting grade for the post for which they have been recruited.

However, paragraph (2) of the same article allows the appointing authority to derogate from those provisions within certain limits.

17 Article 45, which forms part of Chapter 3, governs promotion. It provides that promotion is to be by decision of the appointing authority. It is effected by the appointment of the official to the next higher grade in the category or service to which he belongs. To be promoted, an official must have completed a minimum period in his grade. For officials appointed to the starting grade in their service or category, that period is six months from the date of their establishment; for other officials, it is two years. Paragraph (2) of the same article provides that an official may be transferred from one service to another or promoted from one category to another only on the basis of a competition.

18 It appears from the facts set out above that, simply by virtue of Article 45 of the Staff Regulations, in April 1982 the applicant was not eligible for promotion. He had been appointed a probationary official in Grade L/A 6 as from 1 October 1981 by decisions of 11 and 25 November 1981. Before being established, he had to serve a probationary period of nine months. Even after completion of the probationary period, an official eligible for promotion had to complete a minimum period in his grade which in the applicant's case was two years.

19 According to Article 29 of the Staff Regulations, when the appointing authority intends to fill a vacant post, it must first consider whether the post can be filled by promotion or transfer within the institution and then whether to hold competitions internal to the institution. The order of preference thus established is the very expression of the principle that recruited officials are entitled to reasonable career prospects.

20 While recruitment marks entry into a category or a service of the Community institutions, promotion governs the advancement of the career thus begun within the category or service which the candidate has entered.

21 The decision of 29 June 1982 has the effect of both appointing and promoting the applicant at the same time, its preamble referring in fact to Article 29 and Articles 45 and 46. It applies the rules for grading officials to the case of an official appointed to new duties as a lawyer-reviser as a result of his having succeeded in internal competition No CJ 149/81. It thus concerns the advancement of the applicant's career.

22 It is true that, if Articles 31 and 32 of the Staff Regulations had been applicable to his case and not Articles 45 and 46, the derogations contained in Article 31 (2) and the second paragraph of Article 32 might have been applicable to him. It must be pointed out however that those derogations are to be applied at the discretion of the appointing authority, although that authority could not refuse to apply them to the applicant if it was proved that this was the consistent practice of the institution. In this regard, it appears that since 1973 no lawyer-reviser in Career Bracket L/A 5 - L/A 4

employed at the Court of Justice has been directly recruited from outside the Community institutions and that the Court's established practice is to treat the appointment of a serving official to the next higher career bracket following an internal competition as promotion and to apply the rule contained in Article 46 of the Staff Regulations in such a case.

23 That practice does not infringe any provision of the Staff Regulations. It is in the interests of sound administration for the institution to consider whether a post can be filled by way of an internal competition. In such a case the procedure chosen to fill the vacant post must be equated with the promotion procedure; in any event the official "promoted" through the procedure cannot be treated more favourably under the Staff Regulations than an official who has completed the required minimum period of service.

24 It follows from those considerations that the Community institutions are right to treat an official's appointment to a higher grade following an internal competition as promotion and in that regard to apply the rules of the Staff Regulations on promotion properly so called.

25 The applicant is therefore wrong in complaining in his first submission that the appointing authority erred in applying the Staff Regulations. That submission must therefore be rejected.

The second submission

26 The applicant states that in December 1979 the Court published a notice of competition in various Greek newspapers with a view to recruiting a head of department and lawyer-revisers and translators of Greek mother tongue. The applicant submitted an application and in the section for indicating the post applied for he put "chief or equivalent". The Court offered him a contract as a member of the auxiliary staff in Category A II, Class 4. He complained about this by telephone and in a letter dated 29 July 1980 in reply to which he received towards the end of August 1980 a letter dated 25 August 1980 in which he was assured that, once the 1981 Budget was adopted, "the best lawyer-linguists will have the opportunity to be appointed as revisers (Grade L/A 5)". He contends that he was thus legitimately entitled to expect that

after the initial interim period of six months, which would be a probationary period or test or both, he would be established as a lawyer-reviser. He thinks that at the end of competition No CJ 14/81 he ought to have been established as a lawyer-reviser (Category L/A 5 - L/A 4). The applicant contends that the Court thus acted in breach of the legitimate expectation which that letter had given him.

27 That submission cannot be accepted. The letter of 25 August 1980 was meant to allay the misgivings of the applicant who was disappointed at having been engaged as a member of the auxiliary staff in Category A II, Class 4, by pointing out that that situation was only temporary owing to the budgetary situation at the time. However, the letter offered the prospect of a career in the new language division once budget funds had been appropriated. That letter was therefore only informative in nature and did not commit the appointing authority to appoint the applicant to the desired grade.

The third submission

28 The applicant points out that when the Court previously appointed English- and Danish-language lawyer-revisers in exactly the same circumstances as the applicant it took account of their previous experience, training and age and appointed them, depending on the circumstances of each case, to a grade or step higher than their starting grade or step. In support of that argument, the applicant refers to the case of a lawyer-reviser who, according to him, was appointed to Grade L/A 4.

29 That submission cannot be accepted either. The appointing authority has stated, without being contradicted by the applicant, that the consistent practice of the Court has been to appoint lawyer-linguists to Grade L/A 6, which was the grade given to the applicant when he was appointed as a lawyer-linguist by the decisions of 11 and 25 November 1981. The applicant has not succeeded in showing that his allegations are true. It emerged at the

hearing that the lawyer-reviser to whom he was referring was not an official but a temporary servant whose situation is subject to different considerations.

The fourth submission

30 The applicant relies on decisions of other Community institutions regarding the classification of appointed officials and the application of Articles 31 and 32 of the Staff Regulations. He contends that in adopting the contested decisions the appointing authority acted out of step with the appointing authorities of other institutions. It improperly applied criteria which were unfamiliar and in any event unfavourable to him, which constituted discrimination against him in relation to his colleagues in other institutions doing the same work and a breach of the principle of fairness which is recognized as a general principle of the Community legal order.

31 This submission cannot be accepted either. The cases mentioned by the applicant concern only measures taken at the time of initial recruitment and are therefore irrelevant in the case of an appointment made after an internal competition.

The fifth, sixth and seventh submissions

32 In these submissions the applicant contends that the principle of sound administration required the appointing authority to take account of all the factors on which it might base its decision. It did not take account of information contained in his personal file, particularly information regarding his training in general and his special experience. By not applying Article 31 (2) (b) and the second paragraph of Article 32 of the Staff Regulations, the appointing authority put an official already in the service of the Court in a worse position than an official who had just entered its service. In adopting the contested decision the Court departed from the practice which it had previously followed regarding the award of additional seniority to the appointed official depending on his qualifications and experience and thus acted in breach of any internal instructions of the Court which may be in force regarding the application of Articles 31 and 32 of the Staff Regulations.

33 Those arguments cannot be accepted. Starting from the view that since his appointment resulted from a competition the Court could regard him as having been promoted, the applicant is trying to demonstrate that the Court could not apply the rules on promotion in his case. Those arguments were dealt with in connection with the first submission. The fifth, sixth and seventh submissions must therefore be rejected.

34 Since the applicant has failed in all his submissions, the application must be dismissed.

Costs

35 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, the institutions are to bear their own costs in proceedings by servants of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

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

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 13 December 1984.

For the Registrar

D. Louterman
Administrator

G. Bosco
President of the First Chamber