OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 28 October 1987 *

Mr President,
Members of the Court,

1. The actions brought by Mr Del Plato, Mr Ferrari, Mr Paruccini and Mr Rodari against the Commission (Joined Cases 181 to 184/86) raise the problem of the rules applicable to the transfer from Category B to Category A of officials in the scientific or technical services of the Communities.

2. The Staff Regulations provide expressly for only two methods of advancement, that is to say the competition procedure and the promotion procedure.

3. In the competition procedure, the details of which are set out in Article 30 and Annex III of the Staff Regulations, it is the task of a Selection Board, appointed by the appointing authority, to examine all the candidates and to draw up a list of those whom it considers suitable to occupy the posts in question. The appointing authority draws on that list of eligible candidates when it appoints candidates to vacant posts (see Article 30). It accepts totally the assessments made by the Selection Board and does not re-examine the case of candidates who do not appear on the list.

4. By contrast, in the promotion procedure the appointing authority must undertake a comparative examination of the merits of all the officials who are eligible for promotion, that is to say all the officals who have completed a minimum period in their grade.

5. For some time the institutions have been in the habit of making annual collective promotions within career brackets (for Category A, from A 7 to A 6 and from A 5 to A 4). To facilitate their task, they have set up 'Promotion Committees' of a consultative nature which pre-select the most deserving candidates, since the available posts are hardly ever sufficient to allow all candidates with the requisite seniority to be promoted.

6. The Court has not questioned that system but has insisted that the appointing authority undertake a comparative examination of the merits of *all* the candidates, including those who do not appear on the list of the most deserving candidates, before formally accepting that list.[1] (Naturally in both systems the making of the appointments themselves is the prerogative of the appointing authority.)

7. Clearly, when an official in Category B is appointed to an A 7 post he has been promoted in the broad sense of the term (see on this point the judgment of 9 October 1984 in Joined Cases 80 to 83/81 and 182 to 185/82 *Adam and Others* v

* Translated from the French.

1 — See in particular the judgment of 12 October 1978 in Case 86/77 *Ditterich* v *Commission* [1978] ECR 1855, at paragraph 17.

Commission [1984] ECR 3411, at paragraph 29, and D. Rogalla: *Fonction publique européenne*, pub. Fernand Nathan, Paris, and Labor, Brussels, 1982, pp. 137-8). However, the Staff Regulations regard that type of promotion as a special type of advancement, dealt with in Article 45 (2) which 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*'.

8. However, under the second paragraph of Article 98 the provisions of Article 45 (2) are not applicable to officials who occupy posts in the field of nuclear science calling for scientific or technical qualifications and who are paid from appropriations in the research and investment budget. Under what procedures, therefore, may such officials transfer from D to C, C to B and B to A?

9. One interpretation, which is maintained by the applicants in their first submission, consists in saying that since Article 45 (2) is inapplicable, Article 45 (1), in other words the 'normal' promotion procedure, comes into play. That interpretation overlooks the fact that Article 45 (1) refers only to promotions within the category to which an official already belongs ('promotion . . . shall be effected by appointment of the official to the next higher grade in the category or service to which he belongs').

10. However, it might be maintained in support of that argument that the restriction concerned is due to the simple fact that the article also contains a second paragraph which provides for a competition for transfers from one category to another; once that latter rule is waived, as in the case of Euratom researchers, there is no logical reason which precludes the application of the promotion procedure for transfers from one category to a higher category.

11. Be that as it may, it is in any event not possible to ignore the other restriction contained in Article 45 (1), namely that promotion may only be effected by appointment to the next higher grade. Thus, on the hypothesis that Article 45 (1) were applicable in the present case, only officials in Grade B 1 could be transferred by way of promotion to Category A.

12. For its part, the Commission considers that Article 45 (1) of the Staff Regulations cannot be applicable in the present case because there is a very clear difference between promotion *stricto sensu* and transfer from one category to another. It considers that by waiving the requirement of a competition the second paragraph of Article 98 gives the appointing authority a wide discretion in organizing that type of advancement, provided of course that the fundamental principles of objectivity, equality and so forth are observed.

13. The Commission used that power when adopting the 'Procedures to be implemented prior to decisions on the transfer from Category B to Category A of officials and temporary staff in the scientific and technical services' (hereinafter referred to as the 'Procedures') with which the present

cases are concerned. Those arrangements provide for a procedure which, whilst different from the competition procedure, none the less displays numerous similarities with it.

14. In the present context two characteristics of those Procedures must be particularly stressed.

15. (a) Whereas in the context of Article 45 (1) promotion is possible only to the next higher grade, the Procedures regard not only officials in Grade B 1 but also officials in Grades B 2, B 3 and B 4 who have completed a particular period in their grade as eligible for appointment to Grade A 7.

16. The Commission probably considered that this method of proceeding was in accordance with the spirit of Articles 92 *et seq.* of the Staff Regulations which provide for great flexibility in the career possibilities of Euratom researchers. In its judgment of 20 October 1977 in Case 5/76 *Jänsch* v *Commission* [1977] ECR 1817, at paragraphs 16 to 18, the Court considered that the possibility for Euratom officials of promotion from one category to another without a competition was one of the advantages which the Staff Regulations were intended to bestow on researchers in order to compensate for the insecurity which results from the fact that research programmes are of limited duration.

17. In passing, I should draw attention to the fact that in so doing the Court adopted an interpretation different from that put forward by one of the first commentators on the Staff Regulations, A. M. Euler, a Director-General at the Euratom Commission.[2] He considered that under Article 98 the officials in question could not be appointed to a grade other than the grade immediately above their own, whether in another category or the same category. He considered that the justification for this *restrictive provision* was that the officials in question could benefit from numerous advantages when first appointed, under Article 95 and the first paragraph of Article 98, when promoted, under the third paragraph of Article 98, or under other provisions in Title VIII.

18. Although that interpretation may perhaps correspond to the intention of the drafters of the Staff Regulations it does not necessarily follow from the wording and, had it adopted it, the Court would have introduced excessive rigidity in the career possibilities of those officials.

19. (b) Secondly, the system instituted by the Commission sets up an *ad hoc* committee which is *not* described as a consultative committee. Following its deliberations, that committee submits a reasoned report to the appointing authority with the list of candidates considered capable of performing Category A duties. That list of successful candidates remains valid until a new list has been drawn up (see the Procedures, Section III (2) (c) and (f)).

20. The appointing authority thus does not examine the merits of all of the candidates who have applied. It adopts the list of successful candidates and, when posts become vacant, appoints persons appearing on that list. *In this essential aspect the* ad hoc *procedure therefore clearly resembles the competition procedure.*

2 — A. M. Euler: 'Europäisches Beamtenstatut', Dritter Teilband, p. 692, *Kölner Schriften zum Europarecht*, Carl Heymanns Verlag KG, 1966.

The objection of inadmissibility raised by the Commission

21. For reasons which I will deal with later, the applicants consider that the Procedures are illegal and they therefore claim that under Articles 184 of the EEC Treaty and 156 of the EAEC Treaty those arrangements should be declared inapplicable by the Court.

22. The Commission considers that this objection of illegality is inadmissible.

23. Under the two articles relied on by the applicants, the measure in respect of which illegality is alleged must be 'a regulation of the Council or of the Commission'.

24. In spite of that terminology the Court considers that Article 184 of the EEC Treaty and Article 156 of the EAEC Treaty express a fundamental principle of Community law whereby a plea of illegality can be raised against any measure of the institutions which lays down general rules provided that there is a direct and necessary legal link between the measure challenged and the general measure alleged to be illegal. [3]

25. As regards the Staff Regulations, the Court ruled in its judgment of 18 March 1975: [4]

'in the context of the right of action made available by Article 91 of the Staff Regulations and in the case of a measure of a general nature designed to be implemented by means of a series of individual decisions affecting all or a large proportion of the officials of an institution, an official taken individually cannot be deprived of his right to invoke the illegality of that measure in order to attack the individual decision which alone allows him certain knowledge of the manner in which and the extent to which his individual interests are affected'.

26. Can the Procedures be considered to be such a measure?

27. In this respect the Court has already taken a position in the following terms: [5]

'although the Court has consistently held that internal directives or measures of an internal nature such as the procedural arrangements laid down by the Commission may not be regarded as rules of law which the administration is always bound to observe, they nevertheless form rules of practice from which the administration may not depart without giving the reasons which led it to do so, since otherwise the principle of equality of treatment would be infringed.' [6]

28. Under no circumstances can such an internal measure establish rules which derogate from the provisions of the Staff Regulations. [7]

3 — See, most recently, the judgment of 10 June 1986 in Joined Cases 81 and 119/85 *Usinor* v *Commission* [1986] ECR 1777, at paragraph 13.

4 — Joined Cases 44, 46 and 49/74 *Acton and Others* v *Commission* [1975] ECR 383, at paragraph 7; in that case the 'measure of a general nature designed to be implemented' was a Commission decision of 21 March 1973 to withhold the salary of officials who had participated in strike action.

5 — Judgment of 9 October 1984 in Joined Cases 80 to 83/81 and 182 to 185/82 *Adam and Others* v *Commission* [1984] ECR 3411, at paragraph 22; see also my Opinion in Case 15/85 *Consorzio cooperative d'Abruzzo* v *Commission* and judgments cited therein, namely the judgment of 30 January 1974 in Case 148/73 *Louwage* v *Commission* [1974] ECR 81, at paragraph 12; the judgment of 1 December 1983 in Case 343/82 *Michael* v *Commission* [1983] ECR 4023, at paragraph 14; the judgment of 13 December 1984 in Joined Cases 129 and 274/82 *Lux* v *Court of Auditors* [1984] ECR 4127, at paragraph 20.

6 — See also the judgment of 21 April 1983 in Case 282/81 *Ragusa* v *Commission* [1983] ECR 1245, at paragraph 18: the decision of an internal nature in question to which the Court ascribed legal effect was a memorandum of the appointing authority setting out the promotion procedure (which was not provided for in the Staff Regulations).

7 — See judgment of 1 December 1983 in Case 343/82, *supra*, at paragraph 16.

29. It may therefore be concluded that if one or more officials affected by such a rule consider that it contravenes a provision of the Staff Regulations or a general principle of Community law they must be allowed to raise an objection of illegality against that rule.

30. The Commission, however, considers that such an objection of illegality is inadmissible in the present case in the light of the similarity between the Procedures and a competition notice. The Commission bases its argument on the judgment of 11 March 1986 in Case 294/84 *Adams and Others* v *Commission* [1986] ECR 977, the relevant passage from which is cited in Section II — A of the Report for the Hearing.

31. The Commission is not wrong to stress that the Procedures '*like a notice of competition*, set up a well-defined procedure for the transfer to Category A' under the conditions indicated therein, of officials and temporary staff of the scientific and technical services in Category B who applied before 30 September 1983.

32. On the other hand, it must be recalled this is not formally a notice of competition and that the text in issue contained rules of a normative nature, which are not normally found in notices of competition.

33. Moreover, in the *Jänsch* judgment of 20 October 1977 in Case 5/76 [1977] ECR 1817, the Court has already had occasion to dismiss an application for the annulment of the Procedures (in an earlier version largely identical to the present one); it therefore impliedly held that the action brought against those rules was admissible.

34. Finally, it must be noted that since the *Adams* judgment of 11 March 1986 the Court has heard another case (Case 307/85 *Gavanas* v *Council* [1987] ECR 2435) in which the defendant institution argued that an application to annul an appointment because of the irregularity of a competition was inadmissible because the applicant had not challenged the organization of the competition within the requisite time period. Mr Advocate General Lenz [8] stressed that most of the Court's case-law admitted that in such cases measures adopted earlier (competition notices, measures incidental to the competition) could be included in the proceedings and challenged as preparatory measures. In this respect he referred to the judgment in Cases 11/65, [9] 21/65, [10] 37/72 [11] and 101/77 [12] and proposed that the submissions concerned should not be dismissed on the basis that a separate action should have brought in respect of them at the appropriate time.

35. At paragraph 16 of its judgment of 10 June 1987 in Case 307/85 *Gavanas* (cited above), the Court declared that 'since the illegality of acts preliminary to the act

8 — See the Opinion of Mr Advocate General Lenz of 21 January 1987 in Case 307/85 *Gavanas* v *Council* ECR 2435 at paragraphs 27 and 28.

9 — Judgment of 14 December 1965 in Case 11/65 *Morina* v *Parliament* [1965] ECR 1017.

10 — Judgment of 14 December 1965 in Case 21/65 *Morina* v *Parliament* [1965] ECR 1033.

11 — Judgment of 15 March 1973 in Case 37/72 *Marcato* v *Commission* [1973] ECR 361.

12 — Judgment of 13 April 1978 in Case 101/77 *Ganzini* v *Commission* [1978] ECR 915.

adversely affecting the official, in particular acts of the selection board, may be relied on in the course of proceedings against the final decision in which they culminated, the fact that the applicant did not bring a direct action against the acts of the selection board cannot be regarded as acquiesence'.

36. For all the above reasons I suggest that the submissions of the applicants with regard to the legality of the Procedures should not be dismissed as being out of time.

(a) *The* ad hoc *committee's role*

37. In their first submission the applicants raise an objection of illegality with regard to one of the essential features of the Procedures, namely the fact that they authorize the *ad hoc* committee to draw up a definitive list of suitable candidates, as in the case of a competition.

38. In so doing the Procedures infringe Article 45 (1), the only relevant provision in this case. The applicants submit that according to the wording of that provision appointments must be made freely by the appointing authority after consideration of the comparative merits of the officials eligible for promotion and of the reports on them, and its discretion *cannot be fettered by the drawing up of a list of suitable candidates.*

39. However, it seems that the applicants cannot legitimately rely on that argument since, as I have indicated above, were it applicable, Article 45 (1) would only allow promotion 'to the next higher grade', that is to say from B 1 to A 7 or even to A 8. However, when the actions were brought one applicant was an official in grade B 2, two were in grade B 3 and the fourth in Grade B 4.

40. It therefore follows that the objection of illegality raised by the applicants with regard to the Procedures is inadmissible for lack of interest.

41. The Court will recall that it has on a number of occasions in the past delcared submissions to be inadmissible for lack of interest: see in particular Case 37/72 *Marcato* v *Commission* [1973] ECR 361, Case 90/74 *Deboek* v *Commission* [1975] ECR 1123 and the judgments cited by Mr Advocate General Warner in his opinion in that case, [1975] ECR 1141.

42. However, it is my duty to examine in the alternative the substance of the applicants' arguments.

43. It seems to me first of all that it would hardly be possible to criticize the Commission if it had granted promotion to officials in Grade B 1 on the basis of the criteria and procedure provided for in Article 45 (1).

44. However, this does not mean that the Commission chose an illegal procedure when it adopted the Procedures.

45. In the *Jänsch* judgment (Case 5/76, *supra*), the Court gave a wide interpretation to the second paragraph of Article 98 since it recognized that the possibility for the officials referred to in Article 92 to be transferred from one category to another without a competition was *set out* in that article. In the Court's view this is therefore a different possibility from that which might

flow from Article 45 (1) and is not limited to officials in grade B 1.

46. The essence of the question is therefore whether the Commission, proceeding on the basis of the second paragraph of Article 98, was or was not entitled to take as a model the competition procedure and in particular to adopt the format of a list of suitable candidates drawn up definitively by a selection board.

47. In other words, what is the effective scope of the second paragraph of Article 98, which provides that 'Article 45 (2) shall not apply' to officials paid from the research and investment budget? Under the terms of Article 45 (2) 'an official may be . . . promoted from one category to another only on the basis of a competition'. Since Article 98 removes that requirement, transfer from one category to another *may* take place *without a competition.*

48. However, to my mind it would be contrary to the rules of logic to draw the conclusion from those two texts that, for Euratom officials, transfer from Category B to Category A *must* take place *without* a competition.

49. If the Commission is entitled to organize a competition it is also entitled to apply a procedure which adopts certain distinctive features of the competition procedure but nevertheless remains different from it.

50. In fact, the Court has already had occasion to state that

'in principle nothing prohibits the appointing authority from laying down in a general internal decision rules governing the exercise of the discretion which it has under the Staff Regulations' (see judgment of 6 June 1985 in Case 146/84 *De Santis* v *Court of Auditors* [1985] ECR 1723, p. 1734, at paragraph 11).

51. Secondly, the Court has also held that even in cases where the Commission could have filled a vacant post by promotion because there was a candidate with the necessary seniority, it could nevertheless, by virtue of its wide discretion, decide to organize a competition instead (see judgment of 25 November 1976 in Case 123/75 *Kuster* v *European Parliament* [1976] ECR 1701).

52. Finally, it is quite obvious that, contrary to the applicants' arguments, the Procedures do not imply that the appointing authority has delegated its 'promotion power'. The appointing authority decides in its own discretion on transfers from one category to another on the basis of the list of suitable candidates. Persons whose names are entered on that list do not automatically have the right to be appointed.

(b) *Breach of the rules concerning competitions*

53. The applicants submit that once the Commission had introduced a competition system it should have observed all the rules concerning the competition procedure which are set out in Annex III of the Staff Regulations.

54. I think that I have already set out the reasons why the Commission was not obliged to do that.

55. Furthermore, the Commission would not have been able to observe the rule whereby the notice of competition must specify the type of duties and tasks involved

in the post to be filled (see Article 1 (1) (c) of Annex III) since at the time when the Procedures were published it was not possible to know with any certainty what posts would become vacant during the period of validity of the list of suitable candidates.

56. The Commission was of course obliged to avoid infringing a superior rule of law.

57. The applicants lay stress on the fact that the list should have contained at least twice as many names as the number of posts to be filled, as provided by the fifth paragraph of Article 5 of Annex III.

58. The text concerned specifies that this must be done 'wherever possible'.

59. Furthermore, even if the number of candidates on the list did not greatly exceed the likely number of posts in the budget, the Court's case-law makes it clear that that cannot vitiate the result of the work of the committee. As the Court stated in its judgment of 26 October 1978 in Case 122/77 *Claes* v *Commission* [1978] ECR 2085, p. 2099, at paragraph 22, 'the fifth paragraph of Article 5 of Annex III is only a recommendation to the selection board, intended to facilitate the decisions of the appointing authority, and whether or not it is followed depends on the nature and circumstances of the competition, the number of candidates and their qualifications'. The provision concerned is not therefore a fundamental principle which must be observed in all circumstances.

60. The *ad hoc* committee was asked to take into account the budgetary situation, that is to say the posts likely to become vacant and to be filled by transfer from one category to another during the period of validity of the list of suitable candidates. That period is not fixed in advance: it was simply stipulated that the list would remain valid until a new list was drawn up (see the Procedures, Section III (2) (f)). As this sort of promotion procedure does not take place regularly some uncertainty remained as to the period of validity of the list and consequently the total number of posts likely to become available. In those circumstances it was not possible for the Commission to decide with any certainty the 'number of posts to be filled' and thus the committee was not in a position to calculate by extrapolation twice the number of those posts.

61. Now, after the event, it is apparent from the data made available by the Commission that on the date of the oral proceedings nine appointments had been made and two appointments were about to be made from a list of suitable candidates which contained 15 names. Thus even three years after the selection procedure the number of candidates on the list still significantly exceeds the number of posts filled.

62. Consequently the applicants' submission cannot be upheld.

(c) *Breach of the principle of equal treatment to the detriment of candidates holding a degree or diploma*

63. For the reasons set out in more detail in the Report for the Hearing the applicants consider that the fact that the Procedures

exempted officials or temporary staff holding a university level degree or diploma in reality placed them at a disadvantage in relation to the other candidates.

64. It should be recalled first of all that as the Court has consistently held the general principle of equal treatment, which is one of the fundamental principles of Community law, does not forbid differing treatment of situations which are not identical.

65. It cannot be denied that there was an objective difference between holders of a university degree or diploma and other candidates. To my mind the Commission did not make a manifest error of assessment in taking the view that the possession of a degree or diploma at least partly established the suitability of the first group and that there was therefore no need for them to submit a dissertation.

66. The possibility can certainly not be excluded that in a particular case a candidate might be better able to display his ability by submitting a dissertation and answering questions based on that dissertation than by being obliged to give an impromptu talk on a subject chosen by himself from three subjects given by the *ad hoc* committee.

67. On the other hand, the only graduate candidate who was invited to present a dissertation and who in fact did so took the view that that choice worked to his detriment.

68. In general the applicants, who consider, moreover, that the possession of a degree or diploma should automatically give them the right to be entered on the list of suitable candidates, cannot deny that they are assumed to have a wider and a more thorough basic knowledge than the candidates who acquired their skills 'on the job' and that that knowledge should enable them without too much difficulty to give a talk on a subject which is at least close to their own speciality. If we examine the list of subjects for the talk amongst which the candidates were required to choose we can see that this was in fact true of the subjects given.

69. Nor could the questions subsequently put by the committee on certain aspects of the chosen subject catch the candidates entirely unawares.

70. However, counsel for the applicants considers that Mr Del Plato, an architect, was placed at a particular disadvantage by the system adopted by the *ad hoc* committee. That candidate chose, from the three subjects offered to him, to give a talk on 'the role of the architect in a nuclear research centre which is already in operation'. It is difficult to imagine that that subject and the questions which he was asked on it in the following quarter of an hour could have deprived him of the possibility of demonstrating his competence and put him in a worse position than the candidates who were required to present a dissertation.

71. For the above reasons I consider that the principle of equal treatment was not infringed to the detriment of holders of a university degree or diploma.

(d) *Complaints concerning the last part of the interview*

72. The last quarter of an hour of the interview concerned questions of a general scientific and technical nature. The applicants maintain that those questions, which had no connection with their specialities, were so general that candidates could answer only in general terms.

73. In this respect it must be noted at the outset that that phase of the interview was identical for candidates of both groups. The five questions asked of each candidate were drawn from one and the same list. For each candidate one of the questions was connected with his area of special knowledge. Since there were four other questions there was little danger that all four would be very difficult or very easy. The wider the scientific and technical background of a candidate, the greater the number of questions which would appear to him to be easy.

74. It might even be thought that holders of a degree or diploma from an establishment of higher education ought, in principle, to be a little better able to answer those questions than other candidates.

75. The *ad hoc* committee was perfectly entitled to proceed as it did, in light of the wide discretion which the Court considers selection bodies to have. The method followed was not likely to lead to a manifestly erroneous assessment of the suitability of the candidates.

(e) *Absence of a detailed record of the different interviews*

76. I can deal with this point extremely briefly. In its reasoned report the *ad hoc* committee explained in detail how it proceeded. The appointing authority and the Court were enabled to conclude that the committee proceeded seriously and methodically. The committee explained how it marked the different phases of the procedure. Such a committee cannot, on top of this, be required to record in its report all the questions asked of the candidates or the answers which they gave. Finally, there could be no question of annexing to the report the marks obtained by each candidate for each phase and in total, since any discretions might have caused harm to the candidates with the lowest marks.

(f) *Failure to observe the time-limits which were originally envisaged*

77. It is quite evident that those time-limits were only guidelines.

(g) *Failure to disclose the marking method*

78. I have already dealt with this question under point (e).

(h) *The irregularity of using questionnaires sent to candidates' superiors and the breach of the* audi alteram partem *principle*

79. The applicants submit that the standard-form questionnaire sent by the *ad hoc* committee to the candidates' superiors

cannot be considered to be equivalent to the interview with the superiors of each candidate provided for in the Procedures, and that there has therefore been an infringement of those Procedures.

80. It must be acknowledged that the use of such a questionnaire was not provided for by the procedural rules. However, it seems to me that there is not such a difference between a questionnaire and an interview that the one cannot be considered as being equivalent to the other. Since a questionnaire requires more reflection and more careful drafting, to my mind it offers the candidates more guarantees than a simple interview.

81. Furthermore, it appears from the applicants' reply that if the selection board had undertaken the interviews in question they would in any event have contested the legality of those interviews if they had not been given the opportunity to comment on the oral observations of the superiors. They would have relied on the same judgment of 11 March 1986 in Case 294/84 *Adams* v *Commission* [1986] ECR 977, which they are now invoking in connection with the fact that their superiors' answers to the questionnaire were not submitted to them for comment.

82. It is therefore sufficient to consider whether the applicants should have been given the opportunity to comment on the answers given by their superiors. In this respect it should be noted first of all that there is a considerable difference between the *Adams* case and this one, in that in *Adams* the interviews played a much more important role. The question in issue was whether 53 officials should have been entered on the list of candidates admitted to the tests in a competition. A negative decision had been taken with regard to them exclusively on the basis of their files and interviews between the selection board and the assistants to the Directors-General concerned.

83. In the present case the decision not to enter the applicants' names on the list of suitable candidates was taken after interviews which *they themselves* had with the *ad hoc* committee.

84. Marks were awarded to the candidates solely on the basis of the two interviews. The marks for the first interview were sometimes amended by the award of a bonus for publications of the candidates, which were read and commented on by a member of the selection board. No marks were awarded in respect of their superiors' replies to the questionnaire.

85. Nor is this the same type of situation as the *Rittweger* case (judgment of 3 February 1971 in Case 21/70 [1971] ECR 7, at pp. 17-18), in which the Court concluded that a telex sent by the personnel department to the members of the Commission during a selection procedure and which, although it contained assessments of the candidates, had not been brought to their attention was sufficient to vitiate the procedure. In that

case the candidates sat no tests and there was no interview with the appointing authority before the decision was adopted. Furthermore, in its judgment the Court expressly pointed out that the telex in question had a decisive influence on the content of the decisions challenged and that it contained assessments unfavourable to the applicant which differed strikingly from the opinion which appeared from her periodic report.

86. This was not so in the present case. For the reasons set out above it cannot be concluded that the replies given by the superiors to the questionnaire exercised a decisive influence on the decisions of the *ad hoc* committee. Secondly, it is common ground that none of those replies contained an unfavourable assessment.

87. During the course of the hearing counsel for the applicants even expressed the opinion that the replies to the questionnaires should have led the *ad hoc* committee to enter the applicants' names on the list of suitable candidates. According to the Court's case-law, a procedural irregularity will entail the annulment of a decision in whole or in part only if it is shown that in the absence of that irregularity the decision challenged might have been different (see the judgment of 23 April 1986 in Case 150/84 *Bernardi* v *Parliament* [1986] ECR 1375, at paragraph 28, and the judgment of 29 October 1980 in Joined Cases 209 to 215 and 218/78 *Van Landewyck* v *Commission* [1980] ECR 3125, at p. 3239).

88. Consequently, these two submissions cannot be accepted.

(i) *Mr Paruccini's particular submissions*

89. Mr Paruccini submits first that his dissertation was not examined by the selection board. If by that the applicant means that not every member of the selection board read his dissertation it must be stated that there is no such requirement in the Procedures. If, on the other hand, the applicant means that he did not have the opportunity of making an oral presentation of the dissertation for 15 minutes before the *ad hoc* committee then he has not provided any proof of such an irregularity.

90. Secondly, the applicant considers that the *ad hoc* committee should have called on the assistance of an expert, in light of the very specialized nature of the subject of his dissertation.

91. The text of the Procedures provides that 'the Committee may call on the assistance of experts when the dissertation is presented and examined in the candidate's presence'. The committee was therefore entitled to take the view that there was no need to call on the assistance of an expert in that particular case. Furthermore, no evidence was cited or adduced to the effect that the member of the committee who examined the applicant's dissertation (and gave him the mark 'good') did not have the necessary qualifications to assess its worth.

Conclusion

92. Since I have not been able to accept any of the complaints made by the applicants I can only propose that the Court dismiss the application.

93. Costs should be awarded on the basis of Article 70 of the Rules of Procedure.