exist in that form in other Community institutions, with the result that the careers of the new officials, on the one hand, and of those transferred from other institutions, on the other, are not organized in a consistent manner, it is not entitled, to rely, in the case of officials transferred from other institutions, upon Article 46 of the Staff Regulations in order to justify the alleged difference between their status and that of the newly-recruited officials from outside the Communities.

In Case 9/81

CALVIN E. WILLIAMS, an official of the Court of Auditors of the European Communities, residing at 15 Route de Luxembourg, Bridel, represented by V. Biel of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18a Rue des Glacis,

applicant,

v

COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES, represented by its Secretary, J.-A. Stoll, assisted by A. Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

defendant,

APPLICATION in the terms set out in the applicant's conclusions,

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

On 16 December 1976, Mr Williams was appointed by the Council as a probationary official of the Audit Board and classified in Grade A 7. He was established in that grade by decision of the Audit Board of 14 June 1977.

Following its creation under the Treaty of 22 July 1975, the Court of Auditors was built up progressively and recruited the staff required for its operations. In this manner the applicant came to be transferred to the Court of Auditors, pursuant to a decision of the appointing authority of the latter dated 18 April 1978, appointing him as an administrator in Grade A 7, Step 3, commencing on 1 May 1978.

By decision of 29 May 1979 he was promoted to Grade A 6, Step 1, his seniority in that step being antedated to 1 July 1977.

In a letter of 12 May 1980 the applicant referred to the recent appointments to Grade A 6 of colleagues with up to ten years' less experience than himself and inquired of the Court of Auditors under Article 90 (1) of the Staff Regulation whether it "could do anything to correct this anomaly".

Following that letter, the member of the Court of Auditors responsible for staff matters, Mr Leicht, sent a momorandum dated 13 June 1980 to the President, Mr Murphy. In that memorandum he observes that officials recruited from outside the institution under contract as temporary or auxiliary staff generally obtain a better classification on being appointed as officials than their established colleagues to whom Article 46 of the Staff Regulations has been applied. In the same memorandum Mr Leicht takes the view that there is no remedy for the anomaly disclosed by a comparison of the circumstances of the various officials classified in Grades A 4, A 5 and A 6

As for Mr Williams, whose case is considered an isolated one, Mr Leicht notes that, since he was appointed by the Audit Board and had freely accepted the classification assigned to him, any further promotion of Mr Williams would have to be in accordance with Article 46 of the Staff Regulations.

Thus, in a letter of 25 July 1980, the President of the Court of Auditors replied to Mr Williams that he saw no ground for regarding the situation as anomalous, in view of the fact that the applicant had been recruited by the Audit Board and that his promotion by the Court of Auditors had been in accordance with the provisions of the Staff Regualtions.

On 15 September 1980 the applicant lodged a complaint under Article 90 (2) of the Staff Regulations against the rejection of his request. That complaint was rejected by decisions of 13 November 1980.

In giving the above decision the Court of Auditors also replied to a further request by the applicant under Article 90 (1), concerning the fact that Mr Leicht's memorandum, which had still been in the applicant's personal file on 4 August 1980, was no longer there in September 1980. The appointing authority alleged that the memorandum, being an internal administrative document expressing an opinion, was not a document of the type contemplated by Article 26 and consequently should not have appeared in the personal file, for which reason it had been removed pursuant to a decision of 26 August 1980.

By application lodged at the Court Registry on 14 January 1981 the applicant brought an action before the Court of Justice against the decision of 13 November 1980.

The Court of Auditors objected under Article 91 of the Rules of Procedure that the action was inadmissible.

By order of 19 May 1981, the Third Chamber of the Court of Justice reserved until final judgment its decision on the objection of inadmissibility raised by the defendant.

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

II — Conclusions of the parties

The *applicant* claims that the Court should:

"1. Declare that the action is admissible;

2. Declare that it is well-founded and accordingly declare that the classification criteria applied by the Court of Auditors are discriminatory and unequal inasmuch as they confer much higher grades on the newest recruits than on the existing staff;

3. Declare that the Court of Auditors must assure the applicant of a classification which is at least comparable with that of his colleagues of about the same age, who have university qualifications of the same level and the same experience, and that this shall have effect from the date on which this action is brought;

4. Annul the decision of 13 November 1980 inasmuch as it rejects the applicant's complaint;

5. Declare that the Court of Auditors has made an official error for which it must pay compensation, the damages being estimated, subject to all necessary reservations, at BFR 1 080 000, and accordingly order the Court of Auditors to pay the applicant by way of damages the said sum plus interest at the rate of 6% from the date on which this action is brought until the sum is paid in full;

6. In any event order the Court of Auditors to pay the costs."

In its statement regarding the objection of inadmissibility, the defendant contends that the Court should:

"(a) Take formal note of its objection of inadmissibility under Article 91 of the Rules of Procedure;

(b) Declare the action to be inadmissible and dismiss the same;

(c) Award costs in accordance with the relevant provisions of the Staff Regulations."

In his observations on the objection of inadmissibility, the *applicant* claims that the Court should:

"(a) Primarily, dismiss the objection of inadmissibility as unfounded;

(b) In the alternative, reserve its decision on the procedural issue until final judgment and, in any event, prescribe new time-limits for the further steps in the proceedings."

In its defence, the *Court of Auditors* supplements its previous conclusion and claims, in the alternative, that the Court should declare the action unfounded and dismiss the same.

III — Summary of the submissions and arguments of the parties

A — Admissibility

The *defendant* contends that both the applicant's claim and his subsequent action are inadmissible on the ground that they are manifestly out of time, since no complaint was made nor any action brought regarding the original grade assigned to him by the Audit Board or his appointment and promotion by the Court of Auditors.

In order to secure a different and better classification the applicant must begin by having his present and allegedly unfavourable classification cancelled. Yet since — according to the defendant — he knows that is a legal impossibility, the applicant claims to be entitled to a better classification in the future, by comparing his situation with that of his colleagues.

However, to do so is wholly inappropriate since any comparison, quite apart from being impossible because of the difference of the relative positions, must take account of his own classification, which became definitive a considerable time ago and is not therefore subject to review.

Furthermore, by taking as the commencement of the prescribed period for lodging a complaint the day on which he became aware of the measures specifically affecting him and giving rise to the inequality of treatment of which he is a victim, the applicant is treating those measures as a measure "adversely affecting him" within the meaning of Article 90 (2) of the Staff Regulations.

Since the classification of other officials recruited after the applicant cannot as such amount to a measure adversely affecting him, he expresses a different view, namely that his own classification has been shown to be inappropriate in the light of the classifications assigned to other officials.

Moreover, by contesting the decision rejecting his complaint the applicant has not contested the measure adversely affecting him since it necessarily antedated that decision and therefore could not be embodied in it. Indeed, the decision rejecting the complaint was no more than the confirmation of a previous decision and, seen in isolation, could not amount to a measure subject to review, as is apparent from the judgment of 28 May 1980 in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677.

Thus, in the view of the Court of Auditors the action is inadmissible in any case, either because, since it relates to the applicant's classification, it was commenced out of time or because it is without foundation, since, in view of the fact that the subsequent classification of other officials cannot amount to a measure adversely affecting the applicant, no measure adversely affecting him has been specified.

Lastly, the fact that the applicant claims re-classification *hic et nunc* clearly indicates that he is seeking amendment of his previous classification and it is therefore the latter which must be regarded as the real subject-matter of the action; however, it relates back to decisions which are no longer subject to review.

The *applicant* admits that his action is out of time in so far as it refers to his initial classification.

On the other hand, he submits that inequality of treatment and discrimination favouring officials recruited after him do adversely affect him. To maintain — as the Court of Auditors does — that the classification of officials entering employment after the applicant cannot adversely affect him would be tantamount to acknowledging that there is no defence against discrimination, abuse and inequality.

The applicant asserts that officials recruited later do not hold qualifications superior to his own, that they undeniably belong to the same category and that they should therefore not have been recruited on more favourable conditions. Hence it is the breach of the principle of equality of treatment and the resultant discrimination which adversely affect the applicant and that situation is one which he should be able to contest by reliance upon Article 5 of the Staff Regulation.

Turning to the argument of the Court of Auditors that he had contested only the decision of 13 November 1980 rejecting his complaint, the applicant admits that his fourth head of claim seeks the annulment of that decision but does so merely because, if the Court of Justice were to uphold his claim and to recognize the discriminatory character of his classification, it would have to annul that negative decision as well.

The applicant further maintains that the decision rejecting his complaint does not amount merely to a confirmatory measure since the first memorandum, of 25 July 1980, was not, by contrast with that official rejection, a reply dealing with in detail his actual problems.

As to the defendant's argument that the action is inadmissible because it lacks the specific grounds of complaint required by the Staff Regulations, the applicant claims that the later classification of other officials does, in the circumstances, adversely affect him since his career prospects have been blocked by new officials' being "parachuted in" at higher levels despite major differences of age and experience. In his view, it is precisely the admission of new candidates on more favourable conditions which amounts to a measure adversely affecting him; he adds that there is no dispute as to the classification of those new officials but his aim is to ensure that he is assigned a comparable classification so as to restore equality to the career structure and give effect to Article 5 (3) of the Staff Regulation.

B — Substance

In his application, the *applicant* claims that there is no comparability between the classification of the original officials, on the one hand, and on the other, that of those who were recruited hastily and as temporary or auxiliary staff and for the classification of whom the Court of Auditors claims to be entitled to lay down the criteria.

Although is is true that the defendant was entitled to prescribe the length of experience required, it should none the less apply the same standards to all officials within the same category and service.

Article 5 (3) of the Staff Regulations prevents an institution's giving preference to newcomers at the expense of established officials in the same organization. That provision is the written embodiment of a universal principle, namely the Anglo-Saxon concept of equity, which basically means fairness.

As to the argument adopted by the appointing authority in its memorandum of 13 November 1980 to the effect that the obligation contained in Article 5 (3) of the Staff Regulations relates solely to procedure, the applicant denies ever having asserted that promotion should be automatic but claims that conditions should be the same for all officials from the outset.

In the applicant's opinion, however, his present classification is vitiated by discrimination and is contrary to Article 5 (3) of the Staff Regulations in view of the criteria and staff policy adopted by the new appointing authority.

The applicant therefore accuses the Court of Auditors of classifying its officials in a discriminatory fashion and claims that the unequal treatment accorded to him is wholly without justification.

The defendant's failure to classify the applicant on an equal and non-discriminatory basis amounts to an error for which the applicant claims compensation. He calculates that, since joining the Court of Auditors, he has suffered a loss of salary of the order of BFR 30 000 per month which, over a period of three years, amounts to BFR 1 080 000. He requests the Court to award him that sum by way of damages.

In its defence the *Court of Auditors* argues that, since the dispute relates to a comparison between Mr Williams's position and that of other officials of the Court of Auditors, their respective situations must be examined.

In the first place, the defendant points out that when the Court of Auditors was being set up, it decided to comply with the Staff Regulations and Conditions of Employment of Other Servants and recruited temporary and auxiliary staff who were later appointed as officials exclusively on the basis of competitions organized in compliance with the Staff Regulations. It is thus incorrect to speak of haphazard recruitment or the award of generous grades and it is no less mistaken to say that the competitions in which the present officials were successful were specially tailored to suit them.

The defendant argues on the other hand that the applicant has taken part in virtually all the competitions for Career Brackets A 5/A 4 and A 3. He was admitted to the tests in nine competitions but had not been placed on any of the lists of suitable candidates drawn up by the various selection boards.

Thus the unfavourable comparison which Mr Williams seeks to draw between himself and other officials supposedly placed at an advantage is due not to any favouritism or to a system of recruitment and classification which is open to criticism, but rather to the candidates' respective qualities, seen objectively.

After emphasizing that the applicant's reading of Mr Leicht's internal memorandum of 13 June 1980 is incorrect, the defendant notes that the applicant, by contrast, makes no mention of the decision of the Court of Auditors on the criteria for the classification and appointment of staff, which took effect on 21 February 1980. That decision, the preamble to which refers to Article 5 (3) of the Staff Regulations, is clearly designed to achieve equality of treatment, especially as between successful candidates.

The defendant concludes that the applicant is wrong in believing that he has superior training and wider experience than other officials who have reached grades comparable with his own and also considers that, in the circumstances, the administration of the Court of Auditors acted properly, making its assessments calmly and objectively.

In his reply, the *applicant* refers first to his career with the Community. In that connection he points out that the Audit Board usually promoted its A 7 officials to A 6 when they were established in their posts but that that had not occurred in his case, on the ground that the Audit Board had decided to hold back all promotions pending the creation of the Court of Auditors. In those circumstances, it would have been perfectly normal for the court to have promoted him — a year later than such promotion would have occurred under the procedure adopted by the Audit Board — to Grade A 6.

After this reference to his Community career, the applicant repeats that he is not seeking an amendment of his initial classification but considers that, as far as career development is concerned, it should be impossible for officials recruited at a later stage to be granted more favourable conditions than officials of longer standing. The circumstances constitute a new development, the emergence of which enables the previous situations to be reviewed, as the Court of Justice held in its judgment of 12 July 1973 in Case 28/72 *Tontodonati* v *Commission* [1973] ECR 779.

Comparing his own situation with that of another official in the same grade as himself, he adds that the latter was classified in Step 4 although he had ten years' less experience than the applicant, which irrefutably demonstrates the existance of discrimination, regardless of all the competitions for Career Brackets A 5/A 4 and A 3. In the circumstances, by virtue of Article 5 (3) of the Staff Regulations, the applicant should be classified in Step 8 at the least. Since the difference between the remuneration of an official in Grade A 6, Step 2, and that of an official in Grade A 6, Step 8, is of the order of BFR 30 000, the applicant alleges that he has suffered damage to the extent of BFR 30 000 per month over a period of three years, giving a total of BFR 1 080 000.

In that connection the applicant states that, long before its decision of 21 February 1980, the Court of Auditors had appointed its temporary staff to "generous" grades and he maintains that most of the officials of the Court of Auditors were indeed recruited in a random fashion, without the normal advertising when they were initially engaged as temporary staff. In his opinion, Document M 287/78 shows that the President of the Court of Auditors had expressed regret that the new recruits included a number of poorly-qualified people. The status of the temporary staff had been regularized by a competition in which, although the formalities had been complied with, the essential purpose had been completely ignored in so far as no knowledge of accountancy had been required of the so-called auditors. Furthermore, there was a success rate of 91.66 % in the competitions thus organized. In those circumstances it is, in his view, impossible to speak of jealousy on his

part when what he seeks is not the annulment of the competitions but merely an equal and non-discriminatory classification in relation to other officials recruited after him.

As regards the argument of the Court of Auditors that he had been unsuccessful in nine competitions, the applicant maintains that in reality that was not the case — although he had been permitted to apply for nine posts, he had been allowed to take part in only three competitions, namely one for Grade A 3 and two for Career Bracket A 5/A 4. In any case, he maintains that those three competitions had only one objective, namely to establish temporary staff members who had been recruited without any entrance competition.

In support of his argument the applicant examines the circumstances of those candidates who were successful in the three competitions.

On the subject of Mr Leicht's memorandum, whilst admitting that it was of an internal character, the applicant claims that the information contained in it should be of relevance to the Court of Justice and that even an "isolated case" should be a matter of concern for a public service.

The applicant also admits the usefulness and even the fairness of the decision of the Court of Auditors of 21 February 1980, but he criticizes its failure to find a way to apply the same generous criteria to its existing staff. It is from that situation that the discrimination inconsistent with Article 5 of the Staff Regulations arises.

Lastly, in reply to the defendant's argument that he is wrong in believing that he has superior training and wider experience than other officials in grades comparable with his own, the applicant states as follows:

(a) As far his training is concerned, in view of the fact that fewer than 12 of the 65 officials assigned to the auditing of the Communities' accounts have university degrees in accountancy or certificates qualifying them as accountants, the superiority of his training is unarguable;

(b) As far as experience is concerned, the applicant has spent seventeen years in accountancy and finance and considers that he is the only official at the Court of Auditors to have been responsible for the accounts of the subsidiaries of several multi-national companies. Furthermore, when he was classified only in Grade A 7 at the Audit Board, the applicant had discharged responsibilities which bore no relationship to his grade from 1974 to the end of 1978.

Consequently, the applicant maintains that his action is well founded both on legal grounds and on grounds of equity, since the Court of Auditors has infringed Article 5 (3) of the Staff Regulations by practising discrimination.

In its rejoinder the *defendant* expresses regret that the applicant should have discussed the circumstances of individual officials at the Court of Auditors and adds that, despite the risk that its silence may be interpreted as prevarication, it refuses to give details, in proceedings to which they are not parties, of the qualifications, merits, careers and prospects of officials who are not involved.

As regards the *Tontodonati* judgment referred to by the applicant in support of his argument, the defendant contends that in that case the Court refused the classification sought by an official on the strength of a new development, a fact which contradicts the applicant's view in this case. It is also apparent from that judgment that the Court had interpreted as a new development a factor relating to the applicant official's individual situation, namely the fact that he had been carrying out tasks appropriate to a grade higher than his own. Hence, in view of that case the defendant considers that a new development may emerge from the particular circumstances surrounding a party to the dispute. However, the classification of other officials within the same institution cannot constitute a new development.

Yet, according to the defendant, the applicant bases his entire argument upon such a comparison. Moreover, a view such as that of the applicant would lead to incessant complaints from officials of a particular age or seniority who saw younger or less senior members of staff obtain similar of even better posts than their elders, by virtue of valid qualifications or successful participation in competitions.

After thus rejecting the applicant's assertion, the Court of Auditors nevertheless goes on to examine his various arguments relating both to the situation of other officials and to the propriety of the competitions organized by the Court of Auditors. In that connection it stresses that none of the many competitions cited in the reply had given rise to a complaint or an action on the part of Mr Williams or of any other candidate.

As regards the applicant's criticisms of the method of recruitment adopted by the Court of Auditors, the latter vigorously asserts that never since its establishment has it undertaken any recruitment provided for in the Staff Regulations without publishing a vacancy notice for the post to be filled. As for Document M 287/78 prepared by the President of the Court of Auditors, the defendant contends in the first place that it was designed exclusively for discussion within the Court and in the second place that it is irrelevant to the present case because it is confined to future recruitment policy.

The defendant does not dispute the applicant's qualifications but considers that they are not at issue.

Finally, the defendant maintains that, after checking, it finds that the applicant did indeed participate in nine competitions.

IV — Oral procedure

At the sitting on 10 June 1982, oral argument was presented and questions put by the Court were answered by the applicant, represented by V. Biel of the Luxembourg Bar; and by the Court of Auditors, represented by J.-A. Stoll, acting as Agent, and by A. Bonn of the Luxembourg Bar.

The Advocate General delivered his opinion at the sitting on 15 July 1982.

Decision

1 By application lodged at the Court Registry on 14 January 1981, Calvin E. Williams, an official of the Court of Auditors of the European Communities, brought an action seeking: first, a declaration by the Court of Justice that the classification criteria applied by the defendant are discriminatory; secondly a declaration that the defendant must assure the applicant of a classification which is at least comparable with that of his colleagues of about the same age, who have university qualifications of the same level and the same experience, the new classification to take effect from the date of commencement of this action; thirdly, annulment of the decision rejecting the applicant's complaint; and fourthly, compensation for the damage which he has suffered as a result of the error on the part of the Court of Auditors which he estimates af BFR 1 080 000, plus interest at the rate of 6 % from the date on which the action was brought.

Background to the dispute

2 On 16 December 1976 the applicant was appointed by the Council as a probationary official of the Audit Board in Grade A 7 and was established in that grade by decision of 14 June 1977.

3 When the Court of Auditors was being set up, the applicant put his name forward and was transferred to it by a decision of 18 April 1978 of the appointing authority of that Court. He was appointed an administrator in Grade A 7, Step 3, with effect from 1 May 1978. On 29 May 1979 he was promoted to Grade A 6, Step 1, his seniority in that step being antedated to 1 July 1977.

4 During that period the defendant recruited officials and other employees not already employed by the Communities, who were classified, as from 21 February 1980, on the basis of the criteria for the appointment and classification of staff laid down in a decision of the Court of Auditors.

5 In the applicant's view the classification criteria thus established led to discrimination, in so far as the classification of new officials and other staff was considerably more favourable than that of the existing officials transferred from the Audit Board. On 12 May 1980 he therefore sent a letter to the appointing authority requesting the Court of Auditors to examine the possibility of rectifying that anomaly.

6 By letter of 25 July 1980, the President of the Court of Auditors refused the request since there were, in his opinion, no grounds for regarding the situation as anomalous and the applicant had been transferred and promoted in conformity with the Staff Regulations and especially Article 46 thereof.

7 While consulting his personal file, the applicant noticed a memorandum of 13 June 1980 addressed to the President of the Court of Auditors by the member of that Court responsible for staff matters. It was stated in the memorandum that officials originally recruited from outside the institution under contract as temporary or auxiliary staff were generally accorded a better classification on being appointed as officials than their established colleagues who were subject to the provisions of Article 46 of the Staff Regulations and that that anomaly could not be remedied since the Court of Auditors was under an obligation to complete a recruitment campaign then being conducted in accordance with the same rules, for fear of giving rise to a new discriminatory situation; and that in any case, Mr Williams, whose case was regarded as an isolated one, could not be promoted otherwise than in accordance with Article 46 of the Staff Regulations.

8 On 15 September 1980 the applicant lodged a complaint under Article 90 (2) of the Staff Regulations, referring to the memorandum and asking for rectification of his classification.

9 The complaint was rejected in a memorandum from the President of the Court of Auditors of 13 November 1980, notifying the applicant that his complaint was inadmissible on the ground that his classification, which had been freely accepted by him both when he was recruited by the Audit Board and when he was transferred to the Court of Auditors, could no longer be rectified. It further stated that the memorandum of 13 June 1980 was no more than an internal preliminary document and thus was not binding upon the appointing authority.

10 Before expounding its arguments on the substance of the case, the Court of Auditors raised an objection pursuant to Article 91 of the Rules of Procedure that the action brought by Mr Williams was inadmissible.

Admissibility

11 In support of its objection of inadmissibility, the defendant contends that the action is manifestly out of time, since no action has ever been brought against the decisions which are relevant to the applicant's classification, namely his establishment by the Audit Board, his transfer to the Court of Auditors in the same grade as he had previously held and his promotion to Grade A 6 and that the classification of officials engaged later could not as such constitute a measure adversely affecting him. The defendant adds that the decision rejecting the complaint was merely a measure confirming previous decisions and was consequently not subject to review.

12 The applicant admits that he is no longer entitled to contest his initial classification, but considers himself entitled to contest his present classification because there have been new developments, namely the better classification assigned to officials and other staff recruited since February 1980 from outside the Communities. It is indeed that measure, namely the more favourable classification subsequently assigned to other officials, which adversely affects him, although he is not in any way concerned to discuss such classification. Lastly, he claims that the decision rejecting his complaint was not merely a confirmatory measure because it was the only reasoned reply to his complaints.

13 It should be observed that the applicant contests neither his initial classification nor that of the new officials recruited after February 1980 from outside the Communities. Hence the only factors to be considered relate in the first place to the question whether that classification of the new officials amounts to a new development capable of adversely affecting the applicant and in the second place to the nature of the decision rejecting his complaint, that is, to the question whether it is merely a confirmatory measure.

14 As far as the first factor is concerned, it should be recalled that, in its judgment of 12 July 1973 in Case 28/72, *Tontodonati* v *Commission* [1973] ECR 779, the Court acknowledged that it was legitimate for an official to call for review of his administrative status, in the light of any reorganization of the department in which he was employed. Accordingly, the implementation of a general decision based on new criteria for the classification of new staff recruited to the department, which entails inequalities of treatment for officials appointed at an earlier stage, entitles those officials to call for a review of their administrative status with a view to their obtaining an appropriate alteration of their classification on the ground that the emergence of that new development is such as to affect them adversely.

15 As regards the defendant's argument that the applicant contested a measure which merely confirmed previous decisions which themselves had not been contested, that objection of inadmissibility is at variance with the finding in the preceding paragraph that it is the general decision based on new criteria for classification, implemented on 21 February 1980, which in this case constitutes the measure adversely affecting the applicant. In contesting that measure, the latter has complied with all the time-limits prescribed in Articles 90 and 91 of the Staff Regulations.

16 The application is, accordingly, admissible.

Substance

17 All the applicant's arguments essentially concern two problems, relating first to his classification and secondly to his claim for damages.

A — The applicant's classification

18 The applicant bases his claim for a better grade on Article 5 (3) of the Staff Regulations, which provides as follows: "Identical conditions of recruitment and service career shall apply to all officials belonging to the same category or to the same service." He takes the view that that provision should be interpreted as meaning that any discrimination between officials in the same category or service is prohibited. However, he notes — as does the administration itself in its memorandum of 13 June 1980 — that as a result of the recruitment carried out since February 1980, officials with less professional experience and fewer university qualifications than himself are

assigned to higher grades or else to higher steps within the same grade. He claims that the appointing authority ought to rectify that anomaly.

19 The defendant points out that the applicant's present classification, which he accepted, may no longer be contested. It contends that officials assigned to grades higher than that of the applicant obtained them by means of properly organized competitions about which no complaints were made and in some of which the applicant himself took part, although without success.

20 That argument put forward by the Court of Auditors is correct and is not moreover contradicted by the applicant but the question remains whether the qualifications and the experience acquired by the applicant are, in the new circumstances created by the introduction of new classification criteria in February 1980, such as to entitle him to claim a higher step in his grade, namely Grade A 6.

21 In the first place it should be recalled that Article 5 (3) of the Staff Regulations, expressing as it does the principle of equality of treatment as between officials of the same category or in the same department, is of central importance to the legal provisions governing employees of the European Communities.

22 That principle underlies the Staff Regulations, and in particular Article 46, which applies to the award of a higher step upon promotion in cases where the career of the official concerned is organized in a consistent manner from the outset. That is not the case in these proceedings, where the Court of Auditors, having been newly created, was obliged to recruit staff and prescribed for the new officials recruited from outside the Communities independent rules for classification which did not exist in that form in other Community institutions.

23 In the circumstances, the Court of Auditors is not entitled to rely, in the case of officials transferred from other institutions (including the Audit Board), upon Article 46 in order to justify the alleged difference between their status and that of the newly-recruited officials from outside the Communities, especially when the decisive criterion laid down by the decision of February

1980 with regard to assignment to an appropriate step is appropriate experience and when, in the opinion of the Court of Auditors itself, by virtue of that criterion the applicant should be awarded a higher step.

24 Consequently, the defendant's decision refusing to review the applicant's classification should be annulled and the defendant should be ordered to classify the applicant on the appropriate step, taking account of his experience and possibly of his qualifications in conformity with the decision of February 1980, in order to remove the difference in classification between him and officials from outside the Community to whom the classification criteria of the above-mentioned decision have been applied.

B — Claim for damages

25 The applicant bases his claim for damages upon the allegation that the Court of Auditors was guilty of a wrongful act consisting of discrimination against him regarding his classification. If he had been placed in Grade A 6, Step 8, he would have earned an extra sum of BFR 30 000 per month, which, over a period of three years, amounts to BFR 1 080 000, the sum which he now seeks to recover.

26 It should be noted that since the applicant has failed to put forward any relevant arguments concerning any wrongful act on the part of the administration, his claim, that the Court of Auditors has incurred liability in that regard must be dismissed.

27 Furthermore, since the Court of Justice has recognized that the classification of the applicant is discriminatory and has ordered the defendant to rectify that classification in the manner mentioned above, the applicant will receive appropriate compensation, and in any case it is not permissible for the applicant who has claimed re-classification only as regards the future, to obtain, by means of a claim for damages, a benefit equivalent to re-classification dating back to before February 1980.

28 That rectification must be carried out with effect from the date on which the applicant lodged his complaint under Article 90 (1) of the Staff Regulations and interest at the rate of 6% must be paid as from the date on which each payment fell due.

Costs

29 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

30 As the Court of Auditors has substantially failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Orders the Court of Auditors to correct the step assigned to the applicant with effect from 12 May 1980 and to observe the criteria laid down in its decision of February 1980;**

2. **Orders the Court of Auditors to pay the difference in salary resulting from that correction, increased by interest at the rate of 6% as from the date on which each payment fell due;**

3. **Annuls the decision of the President of the Court of Auditors of 25 July 1980;**

4. **Orders the Court of Auditors to pay the whole of the costs.**

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 6 October 1982.

P. Heim
Registrar

A. Touffait
President of the Third Chamber