OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 10 June 1987

My Lords,

Article 9 of the Staff Regulations provides that there shall be set up within each institution a Staff Committee the composition and procedure of which shall be determined by each institution in accordance with the provisions of Annex II to the Staff Regulations. The first subparagraph of Article 9 (3) provides: 'The Staff Committee shall represent the interests of the staff *vis-à-vis* their institution and maintain continuous contact between the institution and the staff. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff'.

Article 1 of Annex II to the Staff Regulations provides *inter alia*:

'The Staff Committee shall comprise the members thereof . . . whose term of office shall be two years. . . .

The conditions for election to the Staff Committee . . . shall be laid down by the general meeting of officials of the institution in service at the relevant place of employment. Election shall be by secret ballot.

. . .

Membership of the Staff Committee . . . shall be such as to ensure the representation of all categories of officials and of all services provided for in Article 5 of the Staff Regulations and also of the servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants . . .

Elections to the Staff Committee . . . shall be valid only if two-thirds of the officials entitled to vote take part. However, if this proportion is not attained, the second vote shall be valid if the majority of those entitled take part.'

Pursuant to the Staff Regulations and in particular Article 9 thereof, the Economic and Social Committee on 28 July 1975 adopted Decision 1896/75A governing the composition and procedure of the Staff Committee. Article 5 of the decision, headed 'Term of office' provides:

'The members of the Staff Committee shall be elected in accordance with the conditions laid down by the general meeting of officials of the Economic and Social Committee, which must be held not later than one month before the expiry of the term of office of the outgoing committee. The general meeting shall be convened by the outgoing chairman.

The term of office of the members of the Staff Committee shall expire two years from the date of their election. The institution may decide to fix a shorter term of office but such a term may not be less than one year. . . .

The outgoing Committee shall continue to function after its term of office has expired, to deal with business in hand, until the new Staff Committee takes office.'

The conditions for election to the Staff Committee were reviewed by the general meeting in 1983 when it adopted a Regulation for Elections to the Staff Committee (Document CP 153/83), which established a system of proportional voting known as 'SUPAR' ('scrutin uninominal préférentiel avec report de voix' or in effect a 'single transferable vote system').

Under that system a Staff Committee was elected with a term of office running from 21 April 1983 to 20 April 1985.

A month before the expiry of that term of office, on 21 March 1985, the Chairman of the Staff Committee convened a general meeting for 25 March 1985 with a view to appointing an Election Board. On the same day, 21 March 1985, the Union syndicale (a staff union) issued a document stating that it would be necessary to obtain an amendment of the electoral regulation at the general meeting, and by a document of the same date distributed a draft amendment thereto. It appears that at the general meeting on 25 March 1985 the Union syndicale sought to propose an amendment to the electoral regulation as 'other business' and that the meeting broke up in confusion.

Two days later, on 27 March 1985, the Chairman of the Staff Committee convened another general meeting for 19 April 1985 with an agenda including the amendment of the electoral regulation and the appointment of an Election Board. It appears that at that meeting on 19 April Mr Laval distributed a proposed amendment to the electoral regulation in the form of the Union syndicale's proposal bearing his own manuscript changes. Apparently the document only existed in French and only a few copies were available for distribution. The position is not absolutely clear since two different versions with manuscript amendments have been produced. It is, however, plain that his proposal was for a first-past-the-post electoral system, and the general meeting accepted it by 76 votes to 42, with 9 abstentions. The general meeting also decided by 59 votes to 44, with 11 abstentions, that the new electoral system should be applied immediately to the forthcoming elections to the Staff Committee. An election board was appointed with Mr Laval as its Chairman. The date for the elections was fixed by the Election Board for 10 June and later postponed to 14 June 1985.

Meanwhile, on 22 April 1985 Helmut Müllers, president of the Economic and Social Committee section of the FFPE trade union, wrote 'in the name of my trade union' to the President of the Economic and Social Committee asking him to intervene on the basis that the decisions taken at the general meeting of 19 April 1985 were unlawful and to inform the Chairman of the Election Board that the elections should therefore be conducted on the basis of the SUPAR system adopted in 1983. By a letter dated 24 April 1985, the President of the Economic and Social Committee replied that he could not accept Mr Müllers' demand as a decision by him to the effect sought might influence the results of the elections and thus exceed the limits which he had to observe in such a matter.

By an application lodged at the Court on 17 May 1985, Helmut Müllers, along with four other staff of the Economic and Social Committee who were also members of the FFPE — Claus Diezler, Richard Deasy, Steen Fink-Jensen and Luigi Ricci —

brought an action (Case 146/85) against the Economic and Social Committee claiming that the Court should:

(1) Declare null and void the regulation or text adopted by the general meeting of the staff of the Economic and Social Committee held on 19 April 1985;

(2) Declare null and void all subsequent steps taken by way of implementation of the text, in particular the elections to the Staff Committee due to take place on 10 June 1985, and declare null and void certain appointments made by the Staff Committee to other bodies;

(3) Declare null and void, in so far as is necessary, the rejection by the President in his letter of 24 April 1985 of the complaint made by the fourth applicant;

(4) Order the defendant to pay the costs.

By another application also lodged on 17 May 1985, the same applicants asked for interim measures suspending the elections to the Staff Committee of the Economic and Social Committee. By an Order of 11 June 1985 the President of the Third Chamber of the Court ordered that the elections to the Staff Committee of the Economic and Social Committee which by then had been fixed to take place on 14 June 1985 should be adjourned pending delivery of the judgment in the main proceedings and reserved the costs.

By an application lodged on 20 June 1985 Fabrizio Grillenzoni, Claude Maindiaux, Raymond Muller, Francis Patterson and Charles Potier asked to intervene in the case as officials of the Economic and Social Committee, members of the general meeting of the staff and electors and candidates in the forthcoming elections to the Staff Committee. By an Order of 26 September 1985 the Third Chamber of the Court allowed them to intervene in the case in support of the defendant institution.

On 18 July 1985 the five applicants in Case 146/85 submitted a complaint to the President, Secretary-General and appointing authority of the Economic and Social Committee asking them to find that the electoral regulation adopted on 19 April 1985 was unlawful and to inform the Chairman of the Election Board that it could not be applied to the elections to the Staff Committee. That complaint was based on grounds similar to those advanced in Case 146/85 with some additions. By a note dated 29 October 1985 the President and Secretary-General of the Economic and Social Committee dismissed the complaint on the grounds of duplication with Case 146/85, then pending before the Court. By an application lodged on 23 December 1985 (Case 431/85), the five applicants in Case 146/85 asked that the Court should:

(1) Declare null and void the rules or the text adopted by the general meeting of the staff of the Economic and Social Committee on 19 April 1985;

(2) Declare that all subsequent measures taken pursuant to that text are null and void;

(3) Declare, in so far as it is necessary, that the dismissal by the Economic and Social Committee of the applicants' complaint lodged on 18 July 1985 is null and void;

(4) Declare that the Economic and Social Committee should take every appropriate measure to prevent the rules adopted on 19 April 1985 and all

subsequent measures from having any effect whatsoever;

(5) Order the defendant to pay the costs.

Messrs Grillenzoni, Maindiaux, Muller, Patterson and Potier were again allowed to intervene. Cases 146 and 431/85 were joined by an Order of the Fourth Chamber of the Court of 25 June 1986.

Objection is taken that both actions are inadmissible. Three points fall to be considered. The first is whether the Economic and Social Committee is the proper defendant in proceedings such as these. I consider that it is, in the light of paragraph 20 of the judgment of the Court of 29 September 1976 in Case 54/75 *De Dapper and Others* v *Parliament* [1976] ECR 1381 at p. 1388, which was followed by the Court at paragraph 4 of its interim-measures order in the first of the present cases.

The second point concerns the *locus standi* of the applicants in the present cases. In my opinion it is sufficient in order to be able to challenge the validity of decisions adopted or steps taken in relation to the election of members of the Staff Committee that the applicant should be qualified to vote in those elections. If the voter is also a candidate, as were three of the present applicants, then he has an interest in both capacities.

Prima facie, all the applicants are thus entitled to challenge what was done. On the other hand, it seems to me that Article 91 (2) of the Staff Regulations requires that before proceedings can be brought before the Court there must have been a complaint pursuant to Article 90 of those Regulations. Prior to the bringing of Case 146/85, it is clear that the applicants other than Mr Müllers did not make such a complaint personally. Mr Müllers wrote as President and 'in the name of' his trade union to complain in effect of the failure of the Economic and Social Committee to review the decision of the general meeting. The trade union as such could not make a complaint under the Staff Regulations, and if his letter is to be read simply as written on behalf of the trade union, then there was no complaint by Mr Müllers to enable him to bring these proceedings. In express terms the letter was only written on behalf of the union, but after some doubt (since I consider that the formalities prescribed by the Staff Regulations should be observed) I think it possible and that it would be right, as the President of the Third Chamber of the Court did on the application for interim measures, to treat the letter as implicitly written also on his own behalf, since, in my view, he plainly had the right to lodge such a complaint. I would accordingly accept that the first action is admissible in so far as brought by Mr Müllers.

As regards Case 431/85, there arises the question as to whether it is inadmissible for duplication with Case 146/85. I consider that this is so as regards Mr Müllers, since even though the arguments are put differently the essential grounds are the same. However, since in my view the first case is inadmissible in so far as brought by the other four applicants, it cannot be said that they are duplicating proceedings (i. e.

valid proceedings) by bringing Case 431/85. Accordingly, I consider that the latter case is not inadmissible for duplication as far as brought by the four applicants other than Mr Müllers.

If Mr Müllers' letter of 22 April 1985 is not to be read as a complaint by him then the first case is wholly inadmissible, the second wholly admissible.

As to the substance of the case, four grounds were pleaded in Cases 146 and 431/85, to which two further grounds were added in Case 431/85.

The first ground relied on by the applicants is that the purported decision to alter the electoral system was taken on 19 April 1985 whereas the term of office of the outgoing Staff Committee was to expire on 20 April 1985. This is said to be a breach of Article 5 of Decision 1896/75A which requires the general meeting to be held not later than one month before the expiry of the term of office of the outgoing committee.

It is to be noted that Article 5 of Decision 1896/75A prescribes a time-limit for the holding of a general meeting of officials to lay down the conditions for such election, that meeting to be convened by the outgoing Chairman of the Staff Committee. The decision does not prescribe the time for the holding of such elections. The Regulation for Elections to the Staff Committee adopted in 1983 by the general meeting, however, require the meeting to be convened by the Staff Committee (Article 2). The meeting is required to choose an Election Board (Article 2) which in turn must draw up a list of voters and publish it 10 days before the date of the elections (Article 3) and, at the same time, give notice of the date, hours and place of the poll (Article 6).

Article 5 of the decision makes it clear that the meeting is to be held not later than one month before the expiry of the term of office of the outgoing committee and the intention must be that the election should be held before the existing committee goes out of office.

What is the position if the general meeting is not called for a date before that time and no Election Board appointed or other conditions determined? It is clear that to call a meeting for a later date is an irregularity; it is not, however, in my view *ultra vires* for the Staff Committee or its Chairman which has allowed the date to go past to call a meeting later and such a meeting is not *ipso facto* invalid. If it were otherwise the whole election procedure would be brought to a halt. The Staff Committee or its chairman can validly, if irregularly, call such a meeting for a date during the last month of its mandate under its ordinary powers or, in my view, after its mandate has expired as part of 'business in hand' within the meaning of the third paragraph of Article 5 of the decision. Thus the meeting called for 25 March and adjourned to 19 April 1985 could, in my view, validly be held.

What is the power of such a meeting held out of time? As I see it, it must be able to appoint the Election Board without which the election cannot proceed. Can it do more in connection with the elections? It is arguable that the intention is that all the conditions for the election should be laid down in good time before the mandate of the existing Committee expires so that no changes to the 'conditions' can be made after that time. Such changes can only be adopted at a later date for the elections, normally two years later, of the subsequent Staff Committee. Not without doubt, I have come to the conclusion that the article is not to be read in this way. The article does not say simply that the Election Board is to be appointed by the general meeting; it provides that 'the conditions' for the election are to be laid down by the general meeting. I do not find it possible to limit 'the conditions' to the choice of the Election Board or, as it argued, to minor changes in the procedure previously adopted. The conditions are to be decided for each election. Normally (it is to be assumed), a voting system once adopted, such as that described in the Regulation, will be readopted formally. The general meeting has, however, full powers in respect of 'the conditions' in accordance with which the election is to be conducted. As I read it, those conditions are to be or may be adopted in respect of each biennial election, such conditions including voting procedures to be followed. Accordingly, although it is very unsatisfactory, indeed irregular and in breach of Article 5, that the meeting was not called in the prescribed period, there was power to hold a meeting later and to adopt conditions as to voting procedures out of time.

The second ground advanced by the applicants is that, even in the absence of a formal text, the amendment of the conditions for the election of the Staff Committee could only have been decided upon if there had been a quorum at the general meeting held on 19 April 1985. No relevant document lays down that there must be a quorum for a general meeting such as that at issue or specifies what such a quorum must consist of. The applicants themselves do not put forward a figure or proportion of staff members which might be considered to constitute a quorum.

At paragraph 25 of its judgment in Case 54/75 *De Dapper*, the Court held that in electoral disputes concerning the appointment of Staff Committees the Court must have regard to the rules relating to freedom and democracy common to all the Member States in matters of electoral law. There is no evidence as to such rules and it seems likely that both rules and practice as to what is a sufficient number to constitute a valid meeting may vary widely according to the nature of the body concerned and to all the circumstances.

The fifth paragraph of Article 1 of Annex II to the Staff Regulations provides that elections to the Staff Committee shall be valid only if two-thirds of the officials entitled to vote take part and that, if that proportion is not attained, the second vote shall be valid if the majority of those entitled take part, but that provision does not apply on its terms to general meetings

such as that at issue. I do not think that such provision applies necessarily to the numbers required for a general meeting, since deciding on the conditions for an election and actually voting are different processes.

I do not think that any specific percentage or proportion of those eligible to attend can be laid down as to what constitutes a valid meeting. Members have the right to be given adequate notice of the date, time and purpose of the meeting. They have the right to attend. They equally have the right to stay away. If they do so, having been given adequate notice of what is to be discussed, they must take the consequences of decisions adopted. Only if it were shown that a meeting were 'packed' or that the number of those attending was so low or so unrepresentative that there was in truth no meeting, might it be said that, 'having regard to the rules relating to freedom and democracy common to all the Member States in matters of electoral law', the Court could intervene and declare a purported meeting to be no valid meeting or to be unlawful.

In my view the present case is far from being such an extreme case. It appears that 127 votes or abstentions were expressed on the question of whether to amend the voting rules, and 114 votes or abstentions were expressed on the question whether the purported new rules should be applied forthwith. It seems to me that in an institution which has something in the order of 400 members of staff, such a number of votes cannot be considered so low or so unrepresentative as to come within a possible ground of review.

Moreover Mr Grillenzoni and the other interveners have asserted, without contradiction, that at the general meeting in 1983 at which the SUPAR proportional representation system was adopted, only 80 votes or abstentions were expressed: 49 for the proportional system, 27 against and 4 abstentions. Thus, it is argued, if the amendment in question is void for lack of a sufficient number of participants at the meeting, this must be *a fortiori* true of the rules amended, which were adopted by a meeting with an even smaller number of staff present. Although there is force in this observation, I do not think it necessary to decide the point because, as I have just said, it cannot in my view be maintained that the purported decision of 19 April 1985 amending the voting rules is void for lack of a quorum at the general meeting.

The third ground advanced in the application in Case 146/85 was that the vote was taken at the general meeting on 19 April 1985 without the voters having been properly informed in writing of the new text. By their reply in that case, the applicants purported to 'rectify the wording of the third ground' so as to assert that the vote at the general meeting of 19 April 1985 took place in conditions which were unlawful and apt to give rise to confusion in the mind of the voters. The defendant institution has submitted that the purported 'rectification' amounted in fact to the

raising of a fresh issue contrary to Article 42 (2) of the Rules of Procedure. That submission in my view is unfounded. The legal ground put forward by the applicants in their reply in Case 146/85 is in substance similar to the ground which they put forward in their application in that case: at most it makes more restricted allegations as to the facts underlying the legal ground. That in my view is not excluded by Article 42 (2) of the Rules of Procedure. The third ground put forward in Case 431/85 is worded identically to the third ground as put forward in the reply in Case 146/85. That ground falls for consideration in both cases.

The relevant facts are subject to some controversy. It appears that the Union syndicale distributed a proposal for an amendment to the voting rules in French on 21 or 22 March 1985 and on 25 March 1985. It appears that it made English, German and Italian translations of its text available at the general meeting on 19 April 1985. That, however was not the text put to the vote at the general meeting on 19 April 1985. It seems that Mr Laval made some manuscript corrections to the Union syndicale text at the meeting on 25 March 1985 and distributed it, if at all, to only a few people. It is said by the applicants that he made further amendments to his own proposal and on 18 April 1985 submitted it to the Chairman of the Staff Committee. It is also said that it was not until the meeting on 19 April 1985 that Mr Laval distributed or had distributed some photocopies of his further amended text, and then only in French and in far fewer copies than there were persons participating in the meeting. These allegations as to the amended proposal are borne out by photocopies submitted to the Court of the Union syndicale text, and of photocopies of the same text bearing two quite different sets of manuscript alterations as well as the name 'Laval', one set dated 18 April 1985. The defendant institution denies the allegations of the applicants but does not put forward an alternative version of the facts and limits itself to asserting that the members of staff were duly informed of the proposals put to the general meeting. Mr Grillenzoni and the other interveners refer to the pleadings of the defendant institution without adding any substantial element of fact on this question.

It is difficult now to be certain of what transpired before and during the meeting of 19 April 1985. The defendant institution contends that the staff were adequately informed but no concrete details are given. I think it likely on the evidence that there must have been a degree of confusion as to what text exactly was being voted on. I think it clear also that whatever text was distributed by or on behalf of Mr Laval was distributed only in French. It is probable that there were not enough copies for all the participants at the meeting, and highly probable that no copies were distributed to persons who were not at the meeting.

It seems to me that the Court cannot lay down detailed rules for the conduct of meetings such as the one at issue but that its powers of review over such meetings have to be exercised, as the Court indicated in Case 54/75 *De Dapper*, so as to ensure the respect of certain principles of fairness and

democracy. In relation to the present issue, those principles in my view require that all staff eligible to vote should be adequately informed in good time of any proposal for major reform, such as the one at issue here concerning the reform of the voting rules. Adequate information to my mind requires such major proposals to be circulated to all staff members eligible to vote a reasonable time before the proposal is to be voted on, in a clearly legible version and in at least the main working languages of the Communities if not all official languages. I think also that the proposals should be accompanied by an explanation of their effect where, as here, the effect of the amendments might not be obvious to many staff members. Such a proposal need not, in my view, necessarily be circulated by the Staff Committee, but could properly be circulated also by the individual or trade union putting it forward. It is possible, in my view, for amendments to be put forward to a proposal for reform of voting procedures at the actual meeting and it cannot be necessary to adjourn to circulate every amendment to everyone eligible to vote. Such amendments, however, must be within the general intendment of the proposal available. If a radical new proposal is introduced, prior notice should be given of it. Where a meeting is held irregularly or out of time, the obligation to give notice of such changes is, if anything, even greater than in the case of a meeting held in accordance with the rules.

Mr Laval's text, or at least one of the two bearing his name which are before the Court, seems to provide that each elector is bound to cast at least one vote in each of the categories to be elected, otherwise his entire voting paper is void. This was in substitution for the Union syndicale's proposal that Article 16 of the Regulation be amended to provide that in order to guarantee representation of all categories, a candidate of a category which would otherwise be unrepresented, because the candidates for that category did not receive sufficient votes, should take the place of the candidate of another category already represented receiving the lowest number of votes. Such proposal to nullify every voting paper where at least one vote (out of the seven available) was not given to a person in each of the six categories to be represented seems to me to be such a radical change to voting procedures of which notice ought to have been given prior to the meeting to those eligible to vote. Because of this failure to give adequate notice of an important change, the purported decision of the general meeting on 19 April 1985 is, in my view, void.

The fourth ground put forward by the applicants is that the electoral system adopted by the general meeting on 19 April 1985 is inconsistent with the first subparagraph of Article 9 (3) of the Staff Regulations inasmuch as it provides for excessive representation of a group which is barely in the majority. That provision refers to the Staff Committee's duty to represent the interests of the staff and to provide a channel for the expression of opinion by the staff. The submission in fact is that a first-past-the-post system is less representative than a proportional representation system.

In the light of the differing practices of Member States, it is not possible to say that either system violates principles of democracy or fairness. Institutions like legislatures are entitled to balance certainty against relevant representativeness. Whatever may be said about the merits of a system reflecting a wide spread of views it is not for this Court to choose between them. Only if it could be said that a particular system violated principles of democracy or fairness could the Court rule it unlawful.

That is not this case.

Two further grounds were raised in Case 431/85. The first is that during the discussions at the meeting on 19 April 1985 Mr Laval misrepresented the effect of his proposed text in relation to possible abstentions in Staff Committee elections. It is alleged that at the meeting of 19 April 1985 he said that he would regard an abstention as a vote for the purpose of deciding whether the obligation to cast a vote for every category had been fulfilled. The applicants allege that without that assurance a majority could not have been found to accept his proposal. Subsequently, however, the applicants allege that he resiled from that position. Mme Denys is said, as a result, to have resigned from the Election Board. The Court has before it a copy of her letter of resignation which gives some colour to these allegations. The defendant institution does not give any alternative version of events but merely states that the applicants' allegation is contested. Mr Grillenzoni and the other interveners do not deal with this point, except to refer to the pleadings of the defendant institution.

Mr Laval's conduct is thus in issue. As he is not a party, it would be wrong to draw adverse inferences readily. The evidence before the Court is not conclusive. The most which in my view can safely be concluded is that there may have been sufficient uncertainty regarding the treatment of abstentions under the proposed amendment to influence certain voters at the meeting on 19 April 1985. That, in my view, is not a sufficient basis on which to annul the decision purportedly taken by the general meeting on 19 April 1985. Such facts, if they are facts, do however underline the need for adequate advance information of voters on major proposals concerning staff elections, which was mentioned under the third submission above.

The second new ground put forward by the applicants in Case 431/85 is that the text put to the vote on 19 April 1985 infringes the first subparagraph of Article 9 (3) of the Staff Regulations, in that electors were compelled to vote for six specific categories and had only one 'free' vote which could be cast in favour of a candidate of any category. According to the text which apparently was voted on at the meeting on 19 April 1985 the Staff Committee consists of 11 members, each elector has seven votes, and the elector is bound to cast at least one vote in each of the categories to be elected, otherwise his entire ballot paper is void. I apprehend that the categories referred to are A, LA, B, C and D of officials and a further category for other servants. The

applicants emphasize that, since a refusal to vote for one of the candidates in each of these six categories makes the entire ballot paper void, the system adopted conflicts with the fundamental requirements of the expression of opinion by the staff in accordance with Article 9 (3) of the Staff Regulations, which can only be satisfied by a system approximating as closely as possible to proportional representation.

The defendant institution refers to the fourth paragraph of Article 1 of Annex II to the Staff Regulations, which provides *inter alia* that membership of the Staff Committee 'shall be such as to ensure the representation of all categories of officials and of all services provided for in Article 5 of the Staff Regulations and also of the servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants', and cites the judgment of the Court of 10 July 1986 in Case 270/84 *Licata* v *Economic and Social Committee* ECR 2305 in support of the proposition that all categories of officials and agents must necessarily be represented in the Staff Committee by category. The defendant institution therefore contends that this submission of the applicants should be rejected.

The Court emphasized at paragraph 17 of its judgment in Case 54/75 *De Dapper* that the provisions of Article 1 of Annex II to the Staff Regulations were intended to ensure that the Staff Committee is representative. In its judgment in the *Licata* case (at paragraphs 27 to 29), the Court held that under Article 9 (2) of the Staff Regulations and Article 1 of Annex II thereto, each institution is free to adopt its own rules in respect of the representation of all categories of officials, other employees and servants. It held, therefore, that the Economic and Social Committee was fully entitled to provide for the curtailment of Mrs Licata's term of office in the Staff Committee on her ceasing to be an 'other servant' and becoming an official in Category D. These dicta, in my view, do establish that officials and other members of staff must be represented in the Staff Committee by category, and I would accept the Economic and Social Committee's contention to that effect.

However, it seems to me that the applicants did not intend here to bring into question the principle of representation by category. Their contention, in the reply, as I understand it, is that by requiring one vote to be given for each of six categories on pain of the entire ballot paper being void, the purported new electoral rules unduly restrict the expression of the electors' opinion. That point has not, as I see it, been decided by *Licata.* In my view, the purported new voting rules provide for representation by category in a very rigid manner. It may be justified to provide that of six votes one, if used, must be reserved for each category, though the matter has not been fully argued. It seems to me, however, that whilst accepting that voting systems are essentially for the members of the institution to decide it is neither proportionate nor legitimate to nullify a whole voting paper if a voter chooses not to vote for a person in a particular category. Even accepting that a voter may not use a vote destined for one category for a candidate in another category, it seems to

me contrary to the principles of democracy and fairness that a voter should not be able to abstain from voting for one category without invalidating all the other votes.

Whatever was said at the meeting as to the effect of the proposed amendment, it is the text adopted which counts. That text in this respect, in my view, falls to be annulled because of its effect upon votes otherwise validly placed merely because a vote is not placed for a candidate in a particular category. In view of the connection between this matter and the part of the proposed amendment to Article 16 which was apparently deleted, I consider that it would be right to annul the complete decision so that the matter can be reconsidered as a whole.

Finally, the applicants in their reply in Case 431/85 put forward a new argument alleging further irregularities which they say vitiated the voting at the meeting on 19 April 1985. Such irregularities are said to spring from there being no list of electors, from the fact that the vote was taken on a show of hands, and from the fact that those present were able to vote without their status to vote being checked. In my view this argument is plainly inadmissible under Article 42 (2) of the Rules of Procedure.

For the reasons given above, I conclude that the purported decision of the general meeting on 19 April 1985 to change the voting system should be declared void. The appointment of the Election Board at that meeting remains valid. It is necessary for a further meeting to be called to determine the conditions in accordance with which elections to the Staff Committee are to be held. The relevant decisions of the appointing authority should also be annulled. The other relief sought is redundant, particularly in view of the interim measures ordered by the Court. Since the applicants have thus substantially won their claim, they should in the normal course be awarded costs. However, Mr Müllers needlessly brought before the Court a second action, Case 431/85, and the other four applicants needlessly maintained before the Court an earlier action which was inadmissible, Case 146/85, thus unreasonably causing the defendant institution and the interveners to incur costs. Accordingly, the appropriate order as to costs would in my view be that each party and the interveners should bear their own costs. As regards the proceedings for interim measures, I think it appropriate in the circumstances of this case that costs should follow the event and so that there also the parties should be ordered to bear their own costs.

Accordingly I am of the opinion that in this case:

(1) The decision purportedly adopted by the general meeting of the staff of the Economic and Social Committee on 19 April 1985 to change the voting system for the Staff Committee should be declared void;

(2) The decision of the President of the Economic and Social Committee of 24 April 1985 rejecting Mr Müllers' complaint should be declared void;

(3) The decision of the President and Secretary-General of the Economic and Social Committee of 29 October 1985 rejecting the complaint of all five applicants should be declared void;

(4) For the rest, the applications should be dismissed;

(5) Each party and the interveners should be ordered to bear their own costs of this case, including the costs relating to the proceedings for interim measures.