JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
9 January 1996 *

In Case T-368/94,

Pierre Blanchard, an official of the Commission of the European Communities, represented by Marc-Albert Lucas, of the Liège Bar, with an address for service in Luxembourg at the Chambers of Evelyne Korn, 21 Rue de Nassau,

applicant,

supported by

Union Syndicale-Bruxelles, (European Public Service Union), whose headquarters are in Brussels, represented by Luc Misson and, at the hearing, by Béatrice Rixhon, both of the Liège Bar, with an address for service in Luxembourg at the Chambers of Evelyne Korn, 21 Rue de Nassau,

intervener,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for annulment of the decisions of the electoral office contained in the notes of 3 and 8 November 1994 from its president, addressed to the applicant in his capacity as political secretary of the European Public Service Union, and in the president's oral decision of 8 November 1994 refusing acceptance for the elections to the local section of the Staff Committee of a list in which 27 pairs of candidates from the 'Research/European Public Service Union' list had been re-submitted under a name in which the designation 'European Public Service Union' did not appear,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: D. P. M. Barrington, President, K. Lenaerts and P. Lindh, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 25 October 1995,

gives the following

Judgment

Legislative background

1 This action concerns the rules governing elections to the Brussels local section of the Staff Committee of the Commission.

2 Article 9(1)(a) of the Staff Regulations applicable to officials of the European Communities ('the Staff Regulations') provides for a Staff Committee to be set up within each institution, which may be organized in sections for the different places of employment. Under Article 9(3) of those regulations, the Staff Committee is to represent the interests of the staff *vis-à-vis* their institution, maintain continuous contact between the institution and the staff and contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff.

3 The composition and operation of the Staff Committee are determined by each institution in accordance with Annex II to the Staff Regulations. The second paragraph of Article 1 thereof provides that the conditions for election to the Staff Committee are to be laid down by the general meeting of officials of the institution concerned.

4 On 27 April 1988 the Commission adopted 'Rules laying down the Composition and Operation of the Staff Committee' under Article 9(2) of the Staff Regulations. Article 6 of those rules provides that the procedure for elections to local sections laid down by a general meeting of Commission officials must be such as to ensure that officials of all categories and services and the other servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants of the Communities are represented, as far as possible, in each local section.

5 On 15 September 1992, under the power thus delegated to it, the general meeting of the officials and other servants of the Commission represented in the Brussels local section adopted a set of electoral rules which were renewed without any amendment by the general meeting of 20 September 1994. Article 2 of those rules establishes an electoral office whose responsibilities include publishing election notices (Article 5), checking the nominations put forward and rejecting those which fail to satisfy the conditions laid down in the second paragraph of Article 5 and in Article 6 of those rules (Article 7), deciding by majority decision on any disputes which may arise while the election is in progress (Article 18), publishing the result of the elections (Article 19), taking delivery of and forwarding to the Commission

all objections concerning the validity of elections (Article 20), drawing up minutes recording the electoral procedure used and the result of the elections (Article 21) and applying the electoral rules (Article 22).

6 Article 6 of the electoral rules specifies the conditions governing the validity of the lists of nominations which may be submitted for elections to the Staff Committee:

'There are 27 seats to be filled.

Nominations shall be submitted in the form of lists, each list to contain no more than 27 full members and alternates arranged in pairs.

No candidate may be nominated more than once.

Each nomination must carry the signature of both the candidate for full membership and the candidate for alternate membership. Where only one signature appears a declaration by the other candidate that he has accepted candidature must be attached to the nomination.

Where lists of candidates are submitted, the signature of the candidate whose name appears first on the list shall be sufficient.

Lists of candidates may be submitted by trade unions and staff associations. In such cases these organizations must establish, to the satisfaction of the electoral office, and no later than the time for checking the nominations, that the parties concerned have accepted nomination. The unacceptability of a particular nomination shall not invalidate the remaining nominations appearing in the same list.

Each list shall be submitted in the order selected by the trade union or staff association concerned.

Nominations of servants other than officials shall be accepted only in the case of those whose contracts are for a period exceeding one year or are of indefinite duration, and of those whose contracts are for less than a year provided they have been employed by the Commission for at least six months.'

7 Article 9 of the electoral rules also concerns the submission of lists of candidates:

'The list of approved candidates must be published at least three working days before the election.

The order in which the names appear in each list must be the same as that on the list submitted by each trade union or staff association.

The lists of candidates shall indicate the category or service of each candidate, or the category in the case of other servants.'

8 Article 10 specifies the voting procedures which may be used in elections to the Staff Committee:

'Voting procedure: the elector must cast his vote as follows; failure to comply will result in the vote being declared void:

(a) Either he must vote for a list, in which case he must place a cross in the square beneath the number and the abbreviation of the list he has chosen (a block-list vote);

(b) Or he must vote for a maximum of 27 candidates for full membership and alternate membership, chosen from one or several lists, in which case he must place a cross in the square opposite the name of each candidate he has chosen, but must restrict to 27 the number of candidates so chosen (preference vote).

N. B. Any ballot paper showing both a cross against a list and further crosses against the names of candidates on the same list will be treated as a preference vote.

Electors who place on their ballot paper any other writing, signature, erasure or mark whatsoever shall have their vote declared void.'

Facts giving rise to the dispute

9 On 11 October 1994 the electoral office published notice of the election of a new Brussels local section of the Staff Committee of the Commission, scheduled to take place on 22, 23 and 24 November 1994.

10 On 18 October 1994 two lists of 27 pairs of candidates were submitted under the auspices of the European Public Service Union ('EPSU'), a trade union for European officials for the purposes of Article 24a of the Staff Regulations. One of those lists, under the designation 'European Public Service Union' and headed by the Union's vice-president, L. Schubert, was lodged by E. Halskov (for L. Schubert); the other, under the designation 'Research/European Public Service Union' and headed by P. Blanchard, the EPSU's president, was lodged by P. Blanchard. The latter partially comprised officials and other servants in the scientific or technical services of the Communities, within the meaning of Articles 92 to 101 of the Staff Regulations.

11 As appears from a report of 20 October 1994, at its meeting on 19 October 1994 the electoral office accepted the seven lists submitted to it, including the two lists presented in the name of the EPSU.

12 On 20 and 24 October, L. Rijnoudt and L. Di Marzio, candidates respectively heading the lists of the Fédération de la Fonction Publique Européenne (FFPE) and the Association of Independent Officials for the Defence of the European Civil Service/Association des Fonctionnaires Indépendants pour la Défense de la Fonction Publique Européenne (TAO-AFI), each lodged a complaint with the electoral office against its acceptance of the two lists submitted by the EPSU.

13 On 3 November 1994 the president of the electoral office informed the political secretary of the EPSU that the office had taken the view that the complaints were admissible, that, on the strength of an opinion from the Commission's Legal Service, he considered the submission of two lists by the same trade union or staff association (hereinafter 'union') to be contrary to the electoral rules, and that he was therefore requesting the EPSU to withdraw one of the two lists and to submit only one.

14 On 7 November 1994 the EPSU agreed to withdraw its 'Research/European Public Service Union' list and to re-submit it under a new designation, on condition that the electoral office unconditionally guaranteed that both lists would be definitively accepted.

15 On 8 November 1994 the president of the electoral office addressed a note to the political secretary of the EPSU, informing him that the office had not accepted the EPSU's conditions for altering the designation of one of its lists and had therefore rejected the 'Research/European Public Service Union' list.

16 On 8 November 1994 the applicant appeared before the electoral office to request that the 'Research/European Public Service Union' list be accepted under a different designation making no reference to the EPSU, but the president of the electoral office denied the request.

17 On 10 November 1994 the applicant therefore submitted a complaint in accordance with Article 90(2) of the Staff Regulations against those decisions collectively and against the Commission's failure to prevent or to disapprove those decisions and, in the alternative, against the adoption of the electoral rules.

Procedure and forms of order sought by the parties

18 By applications lodged at the Court Registry on 11 November 1994, the applicant brought, pursuant to Article 91(4) of the Staff Regulations, an action for annulment of those acts and a claim for compensation for the damage which he alleged they had caused, and sought postponement or suspension of the elections by way of interim measures.

19 On 21 November 1994 the President of the Court made an order suspending the elections to the Brussels local section of the Staff Committee of the Commission, directing a new period to be opened for the submission of new lists of candidates — whose names were not to be liable to be confused with those of the lists already accepted or those of the unions who had submitted them — and permitting the applicant to be nominated under the same conditions as any other candidate (see Case T-368/94 R *Blanchard* v *Commission* [1994] ECR II-1099).

20 On 7 December 1994 the electoral office accordingly published a new notice of elections scheduled to take place on 31 January, 1 and 2 February 1995. The new nominations had to be lodged between 8 and 15 December 1994.

21 The applicant lodged a list designated 'Together for Research', headed by himself. By means of 'split votes', that list obtained two seats, one of which was allotted to the applicant.

22 On 24 February 1995 the Commission rejected the applicant's complaint and he was notified to that effect on 1 March 1995.

23 On 24 March 1995 the EPSU (Brussels) requested leave to intervene in the present proceedings, under Article 115 of the Rules of Procedure of the Court of First Instance, in support of the forms of order sought by the applicant.

24 On 10 May 1995 the President of the Fourth Chamber of the Court granted that request.

25 The intervener failed to lodge a statement in intervention in due time.

26 Upon hearing the Report of the Judge-Rapporteur, the Court (Fourth Chanber) decided to open the oral procedure without any preparatory inquiry. The hearing took place on 25 October 1995. Counsel for the parties presented legal argument and answered questions put to them by the Court.

27 The applicant claims that the Court should:

annul

— the decision or decisions of the electoral office (established under Article 2 of the rules of procedure for election of the Staff Committee of the Commission, adopted by the general meeting of officials and other servants of the Commission of the European Communities represented on the local section in Brussels on 15 September 1992 and renewed without amendment on 20 September 1994)

contained in a note of 3 November 1994 from the president of the electoral office to the political secretary of the EPSU;

— the decision or decisions of the electoral office contained in a note of 8 November 1994 from the president of the electoral office to the political secretary of the EPSU;

— in so far as may be necessary, the oral decision of the president of the electoral office, or of the electoral office, of 8 November 1994 at 1 p. m. refusing acceptance of a list in which 27 pairs of candidates from the 'Research/European Public Service Union' list were submitted under a name in which the designation 'European Public Service Union' no longer appeared;

— the corresponding failure of the Commission, acting in its capacity as the appointing authority, to prevent or to disapprove the decision of the electoral office, specified above, or the first of its decisions specified above;

— the appointing authority's failure to prevent or to disapprove the decision, or the second decision, of the electoral office;

— the appointing authority's failure to prevent or to disapprove the third contested decision;

alternatively:

— the electoral rules of 15 September 1992, renewed without amendment on 20 September 1994, in the event that they must be interpreted as precluding a union from submitting several lists of 27 pairs of candidates (full members and alternates) for election to the Staff Committee, and the appointing authority's failure to prevent or to disapprove the adoption of those rules if they must be so interpreted.

order the Commission:

— to pay the applicant damages by way of compensation for the non-material damage suffered on account of the defective nature of the contested decisions;

— to pay the costs.

28 The Commission claims that the Court should:

— dismiss the action for annulment;

— reject the claim for compensation for material and non-material damage purportedly suffered by the applicant;

— make an appropriate ruling as to costs.

Admissibility

Arguments of the parties

29 Although the Commission has not raised a formal objection of inadmissibility, it questions whether the applicant retains an interest in bringing proceedings in respect of the action for annulment and the claim for compensation, in view of the order of the President of the Court of First Instance of 21 November 1994 permitting the applicant to be nominated for election and to be elected as a member of

the new local section of the Staff Committee of the Commission. In the Commission's view, the contested acts no longer afford the applicant any ground for complaint and therefore he no longer has any vested and current interest in bringing proceedings.

30 The Commission defers to the wisdom of the Court as regards the admissibility of the action, while pointing out that, where a claim for compensation is made in conjunction with an action for annulment, its admissibility is closely linked to the admissibility of the latter.

31 In response, the applicant maintains, first, that the contested decisions have infringed not only his right to be elected but also his freedom of association and his right as a voter to use that vote under conditions which fully comply with legal requirements.

32 The applicant also submits that he participated in the elections to the Staff Committee by virtue of the adoption of interim measures by order of the President of the Court of First Instance of 21 November 1994. If his interest in bringing proceedings could be affected by the adoption of interim measures, it would mean that orders granting interim measures entail definitive effects, which is contrary to the case-law of the Community judicature, according to which provisional measures do not pre-judge the decision on the substance of the case (see the order of the President of the Third Chamber of the Court of Justice of 11 June 1985 in Case 146/85 R *Diezler and Others* v *ESC* [1985] ECR 1805, paragraph 9). He adds that, although the order permitted him to stand for election with the other candidates on his list, he was unable to do so on the terms he had originally wished and which he believes to be lawful.

33 The applicant further asserts that every person entitled to vote has a legitimate interest in seeing his vote take effect in conformity with the provisions of the Staff Regulations and in seeing those representing his union elected in conditions and according to voting arrangements which comply with the provisions of the Staff Regulations. He adds that every candidate for election also retains a legitimate interest in seeing the procedure upon his nomination conducted in conformity with

the Staff Regulations and the various bodies of electoral rules. Consequently, the contested decisions continue to affect him adversely through the election results, both as a person entitled to vote and as an elected candidate and a member, and past president, of the EPSU.

34 According to the applicant, it is also established case-law that that interest persists whether the elections in question have already taken place or are forthcoming (see Joined Cases 146/85 and 431/85 *Diezler and Others* v *ESC* [1987] ECR 4283, paragraph 9, Case T-28/89 *Maindiaux and Others* v *ESC* [1990] ECR II-59, paragraph 28, and Case T-534/93 *Grynberg and Hall* v *Commission* [1994] ECR-SC II-595, paragraphs 29 and 30). The applicant submits that he retains, in any event, an interest in bringing proceedings in respect of the forthcoming elections.

Findings of the Court

35 The Court notes, first, that the Court of Justice has held that 'every person entitled to vote has an interest in ensuring that the representatives of his organization are elected in conditions and according to voting arrangements which comply with the provisions of the Staff Regulations governing voting procedure in this context' and that an official, 'merely by virtue of being entitled to vote, ... has a sufficient interest to make his application admissible' (see *Diezler*, cited above, paragraph 9). In the present case, the applicant is acting *inter alia* in his capacity as a person entitled to vote and as a member of a union.

36 Bearing that point in mind, the second question which must be addressed is whether, since the applicant was elected to the Staff Committee after elections organized in compliance with the order of the President of the Court of First Instance of 21 November 1994, in requiring that the elections be organized in accordance with the provisions governing the electoral procedure, he is not acting in the interest of the law or of the institutions, relying on future and putative interests and unable to establish any personal ground for complaint whatsoever.

37 In that connection, the fact that the applicant is a person entitled to vote — whether or not he has been elected to the Staff Committee — is sufficient to establish that he is not acting merely in the interests of the law or of the institution. Secondly, the applicant is not relying on future and putative interests in support of his application, since he alleges that, if the contested decisions had been adopted in compliance with the conditions laid down by the rules governing the electoral procedure, the conditions of his election and the results of the list which he headed might have been different. Thirdly, the applicant is able to assert a personal ground for complaint, both in his capacity as a person entitled to vote, who is concerned to exercise his right to vote in conformity with the rules governing the electoral procedure, and in his capacity as a member of a union whose electoral results might have been different if the contested decisions had been amended in accordance with the interpretation of the applicable rules which he puts forward in support of his application.

38 It follows from all those considerations that the action for annulment must be declared admissible. Since, in the present case, the outcome of the claim for compensation is closely linked to that of the action for annulment, the former must also be declared admissible.

Substance

Action for annulment

39 The applicant puts forward five pleas in law in support of his application: (1) infringement of Articles 7 and 18 of the electoral rules on the ground that, since the electoral office accepted the two lists submitted by the EPSU at its meeting on 19 October 1994, it could not reverse that decision; (2) infringement of the electoral rules, since they do not preclude a union from submitting several lists for the same elections; (3) breach of the principle of freedom and democracy or the principle of equal treatment; (4) breach of the principle of representativity and/or of the principle that a channel must be available for the expression of opinion by the staff; (5) infringement of the right of association and breach of the principle that all officials have the right to stand for election.

The first plea: infringement of Articles 7 and 18 of the electoral rules

— Arguments of the parties

40 The applicant submits that the decision of the electoral office of 3 November 1994 requesting the EPSU to withdraw one of the two lists which it had submitted is unlawful, in that it asks the union to infringe the second paragraph of Article 7 of the electoral rules, which provides that 'once accepted by the electoral office, nominations may not be withdrawn'.

41 Secondly, the applicant alleges that the electoral office was not competent to amend, at the prompting of a complainant, a decision which it had adopted under Article 7 of the electoral rules. The electoral office acted on the basis of Article 18 of the electoral rules, under which it is empowered merely to decide on disputes arising while the election is in progress. Article 18 does not therefore constitute a means of redress in respect of decisions taken by the electoral office itself, or a procedure enabling a request to be addressed to the electoral office to withdraw one of its decisions. To substantiate his argument, the applicant relies on the fact that Articles 4 and 20 of the electoral rules expressly provide that objections against decisions of the electoral office must be sent, either directly or through that office, to the administration.

42 The applicant further submits that, if the contested decisions constitute a partial withdrawal of the electoral office's decision of 19 October 1994, the lawfulness of that decision must be examined. Although legal systems commonly recognize that, where an administrative act conferring subjective rights is unlawful, it may be revoked (see Joined Cases 7/56 and 3/57 to 7/57 *Algera* v *Common Assembly* [1957 and 1958] ECR 39), that right cannot operate in the present case on account of the special procedural characteristics of proceedings for judicial determination of electoral disputes and the fact that the act at issue was not an administrative act.

43 The applicant submits, moreover, that not only are the Community institutions entitled to intervene on their own initiative where they have doubts as to the legality of elections to the Staff Committee, but they are also under a duty to settle complaints which may be submitted to them in that connection under the procedure laid down by Articles 90 and 91 of the Staff Regulations (see the judgments in *Maindiaux*, *Diezler* and *Grynberg and Hall*, cited above, and in Case 54/75 *De Dapper* v *Parliament* [1976] ECR 1381, paragraphs 19 to 25). It is also clear from the judgment in *De Dapper* that the review procedure thus provided for constitutes the sole means of resolving electoral disputes.

44 The applicant maintains that the electoral office should therefore have declared the two complaints lodged on 20 and 24 October 1994 inadmissible. Also, the electoral office could conceivably have withdrawn, unilaterally and not on the basis of the complaints, its decision accepting the lists of the EPSU, pursuant to Article 22 of the electoral rules, which confers upon it competence to apply those rules.

45 The Commission contends, first, that under Article 7 of the electoral rules candidates may not withdraw nominations which have been accepted by the electoral office, but the latter remains at liberty to reverse a decision regarding the acceptability of nominations which have been lodged and initially appraised from the point of view of the candidates' right to stand for election.

46 The Commission further submits that, where an administrative act is unlawful, the possibility of setting it aside cannot be precluded, *a fortiori* where that is effected within a reasonable period of time, in accordance with the principles set out in *Algera*, cited above.

47 The Commission also emphasizes that it gave the EPSU the option of withdrawing one of the two lists, thereby acting in a conciliatory manner, displaying concern for the interests of those involved.

48 Lastly, the Commission contends that Article 18 of the electoral rules confers upon the electoral office the right — but, above all, places it under a duty — to ensure the lawfulness of the electoral procedure. In the Commission's view, Article 18 is not solely concerned with the voting procedure, as the applicant maintains: the applicant's interpretation is not consistent with the scheme of the electoral rules or the role conferred on the electoral office, which is responsible *inter alia* for deciding at first instance on disputes liable to arise while the elections are in progress. The Commission further contends that the electoral rules expressly provide, in Articles 4 and 20 for instance, for situations where the electoral office is not competent to take decisions.

49 The Commission does not see therefore why the procedures for judicial review referred to in the case-law cited by the applicant preclude the electoral office from reversing a decision, where it finds that it has made a mistake. The decision to withdraw acceptance could still be contested, as the very existence of the present proceedings demonstrates, and therefore in no way restricts the possibility of seeking redress by other means, such as the procedures laid down by Articles 90 and 91 of the Staff Regulations. That view is confirmed, moreover, in *De Dapper*, cited above (see, in particular, paragraphs 23, 28 and 29) and in the Opinion of Advocate General Mayras preceding that judgment (see [1976] ECR 1381, at p. 1391).

— Findings of the Court

50 The Court considers, first, that the decision of the electoral office of 3 November 1994 asking the EPSU to present only 'one of the two lists submitted by P. Blanchard and E. Halskov (for L. Schubert)' under its name, cannot be classed as an inducement to infringe the second paragraph of Article 7 of the electoral rules. That provision prevents a candidate from withdrawing his nomination, on his own initiative or at the behest of the union on whose list he appears, after the list of candidates to which he belongs has been lodged with the electoral office. In the present case, however, the withdrawal of one of the two lists at issue was brought about by a decision of the electoral office. Consequently, the withdrawal in question is in no way covered by the prohibition contained in the second paragraph of Article 7 of the electoral rules, even though the electoral office's decision allowed the EPSU to choose which list to withdraw.

51 Secondly, the Court notes that the applicant accepts that the electoral office may withdraw, on its own initiative, a decision regarding the submission of a list of candidates, by virtue of the competence conferred on it by Article 22 of the electoral rules, according to which it is responsible for the application of those rules. In view of that fact, it should be considered whether, where the electoral office amends or withdraws a decision regarding the submission of a list of candidates following outside intervention, as in the present case, it infringes Article 18 of the electoral rules.

52 As regards that point, the procedure laid down by Articles 90 and 91 of the Staff Regulations in no way prevents any interested party from submitting to the body responsible for taking a decision observations which it wishes to make regarding, for instance, the legality of that decision. It must be possible, in fact, for any interested party to seek, amicably and before initiating the procedures provided for in those articles, to negotiate with the body responsible for the decision or to influence its position, in such a way that, if the decision at issue is amended, or even withdrawn, legal certainty is not thereby impaired. Accordingly, any amendment or withdrawal of a decision following such intercession must, in particular, be undertaken within a reasonable period of time. In the present case, the decision of 3 November 1994 withdrawing acceptance was taken only 15 days after the first decision was adopted on 19 October 1994, a period which, in the circumstances of the case, cannot be described as unreasonable.

53 Furthermore, any new decision adopted following such intercession is itself open to amendment, or even withdrawal, in the same circumstances and may be challenged in accordance with the procedure laid down by Articles 90 and 91 of the Staff Regulations. Consequently, the procedural rights of all interested parties remain intact, particularly as regards the time-limits within which an action must be brought, and are not impaired by the amendment or withdrawal of a decision.

54 In that connection, the Court observes that the applicant accepts that an administrative act conferring subjective rights may be withdrawn if unlawful and that the applicant has not shown in what respect that right, which is common to legal systems, is not operable under the electoral procedure, or why, as he submitted at the

hearing, the electoral office's decision of 19 October 1994 did not constitute in the circumstances of the case an administrative act.

55 Lastly, it should be noted that the intervention of the two unions, which gave rise to the contested decisions, cannot be regarded as a complaint for the purposes of Articles 90 and 91 of the Staff Regulations. They made representations to the body responsible for a decision, but they did not thereby lose the right to avail themselves of the means of recourse provided for by Articles 90 and 91 of the Staff Regulations, subject to the relevant conditions and time-limits.

56 In the light of those factors, the Court finds that, in the present case, the electoral office's decision to withdraw its decision of 19 October 1994 does not constitute an infringement of Article 18 of the electoral rules which, in the context of the electoral procedure at issue, allows — save where expressly otherwise provided — the option open to all bodies responsible for the adoption of an administrative decision of withdrawing that decision.

57 Furthermore, the scope of Article 18 of the electoral rules cannot be confined, as the applicant submits, merely to the voting procedure, with the exception of procedures for counting the votes, since it entails a faculty common to legal systems and, like Article 22, is one of the provisions of the electoral rules which is of general application.

58 Consequently, by withdrawing its decision of 19 October 1994, the electoral office did not infringe either the second paragraph of Article 7 or Article 18 of the electoral rules. The first plea must therefore be rejected.

Second plea: the electoral rules do not preclude, either expressly or implicitly, a union from submitting several lists

— Arguments of the parties

59 The applicant submits, first, that no decisive argument based on textual interpretation can be deduced from the electoral rules, Articles 6 and 9 of which cannot be interpreted as precluding the EPSU from submitting several lists of candidates for election to the Staff Committee.

60 Furthermore, officials and other servants of the European Communities who are not members of a union are entitled to submit as many lists as they wish without it being possible for any party to claim that the electoral system is thereby adversely affected or that it is contrary to the higher principles governing that system.

61 The applicant submits therefore that the electoral rules must be interpreted systematically and in accordance with the higher rules of law applicable in this context, as is required by the case-law of the Court of First Instance (see *Grynberg and Hall*, cited above, paragraphs 39 and 48).

62 The electoral system is based above all on individual freedoms and on officials' freedom of association in electoral matters. According to the applicant, submission of several lists of candidates by the same union does not infringe individual electoral freedoms.

63 Secondly, just as the electoral system allows single nominations, preference votes and vote-splitting, it also encourages to a limited extent lists of candidates and block-list voting. The applicant maintains that the submission of several lists by the same union is not contrary to the list system, since the two voting procedures

(block-list and preference voting) remain on an equal footing. Furthermore, the applicant submits that the limit of 27 candidates per list does not preclude the submission of several lists by the same union, since it is only a technical rule designed to ensure that the number of votes which each voter may cast is equal to the number of vacant seats. That limit therefore applies only to any one list.

64 Thirdly, whilst the electoral system respects freedom of association and the freedom of trade unions, it is not based on a system of union nominations, since the only specific measure concerning unions is the sixth paragraph of Article 6 of the electoral rules, which provides that, where a list of candidates is submitted by a union, it need not be signed by all the candidates. According to the applicant, since membership of a union is irrelevant for the purposes of the electoral rules, those rules do not confer on the Commission the right to dictate the behaviour of unions during electoral procedures, but merely the right to monitor the validity of the lists which the unions submit. The officials remain free to determine the criteria on the basis of which they wish to form an association, in the context of the general meeting of officials, but those need not be the same criteria as determine membership of a particular union. Consequently, several different electoral programmes may be drawn up within the same union and give rise to several electoral lists.

65 Lastly, the applicant submits that the electoral system seeks to achieve, and in some measure ensures, the representation of all services, categories and types of employment, in accordance with the requirement laid down in the fourth paragraph of Article 1 of Annex II to the Staff Regulations. The submission of the list headed 'Research/European Public Service Union' would specifically meet the concern to ensure representation of all services, categories and types of employment. In that connection, the applicant refers to the system of social elections in force in Belgium.

66 In conclusion, the applicant maintains that the submission of several lists by the same union is consistent with the electoral system laid down by the electoral rules and cannot therefore infringe one of those provisions.

67 The Commission contends, first, that several provisions in the electoral rules, such as the sixth paragraph of Article 6 and the second paragraph of Article 9, are based on the premiss that each political affiliation is deemed able to submit a list of a maximum of 27 candidates. Were it otherwise, the terms on which the unions compete would be altered, since the number of candidates nominated by a single union would be greater than the number of vacant seats, which would constitute an abuse of the rule fixing the maximum number of candidates at 27. The Commission considers that its interpretation is consistent with the spirit of an electoral system in which each union must be placed on an equal footing with its rivals with respect to the number of vacant seats. The Commission also submits that the argument put forward by the applicant reveals — in asserting that the system advocated by the EPSU complies with the principle that the two voting procedures (block-list and preference votes) must have equal weight — that his true intention is to circumvent the rules of the system currently in force.

68 The Commission submits, secondly, that reliance on the principles according to which the general meeting of officials retains legislative competence in electoral matters, freedom of association for officials is recognized by Article 24a of the Staff Regulations and the unions and those independently nominated are free to determine their electoral programme, is pointless in the present case, since the Commission never denied any of those principles. Nor is the example of the system of social elections in Belgium any more apposite, since under that system mandates are allocated by category of worker, which is why the representative organizations submit several lists, each of which corresponds to one such category.

— Findings of the Court

69 It is necessary, first, to examine the wording of Articles 6 and 9 of the electoral rules. The second paragraph of Article 9 provides that 'the order in which the names appear in each list must be the same as that on the list submitted by each trade union or staff association'. The wording alone makes it plain that each union is permitted to lodge only one list of candidates, as the Commission correctly

submits. Furthermore, since there is nothing in the text of Article 6 of the electoral rules to call into question the rule expressly laid down by the second paragraph of Article 9, it must also be construed as entailing the premiss that each union lodges only one list of candidates for election to the Staff Committee.

70 However, it is clear from the arguments adduced by the parties in the course of the written procedure and at the hearing, and particularly from the Commission's replies to the oral questions put by the Court, that they both accept that, under the current version of the electoral rules, every official or other servant who has the right to stand for election may do so on an independent list, even if the person in question is a member of a union, possibly even an executive member or the president. The Commission also acknowledges that an independent candidate may openly declare his affiliation to a union and describe his union duties, and that the independent list and its candidates may advertise the fact that they share a union's views or show their support, orally or in writing, for the ideas and policies defended by a union, without prejudice to that list's independence for the purposes of the electoral rules.

71 In response to an oral question put by the Court, the Commission nevertheless stated that it refused to accept that the designation of an independent list, even where that list had the characteristics described above, could contain any reference to the name of a union which had submitted a list of its own, or that the electoral campaign of the independent list could involve publication of the same advertising material as the union. According to the Commission, such practices would mislead the voter as to the respective identities of the list submitted by the union and the independent list, and must on that account be prohibited.

72 It is also common ground that all the lists, whatever their provenance and whatever affinity their candidates may openly share with other lists, are in competition with one another in the context of elections to the Staff Committee. Moreover, several provisions of the electoral rules refer to the list of candidates: the number

of full members and alternates per list exactly matches the number of vacant seats, and a block-list voting procedure has been established.

73 The Commission's refusal to accept that a union's name may feature in the designation of an independent list is therefore based — as the Commission emphasized at the hearing — on its desire to ensure that there was no mistake or confusion on the part of the voter.

74 On that point, it should be noted that there are two different ways in which voters may be misled with regard to the identity of an independent list which has the characteristics described above at paragraph 70. The first possibility is that the designation of the independent list contains no reference to the name of a union, as the Commission requires, and, although its candidates are members of that union, openly declare their affiliation, advertise the fact that they share its views, and support, orally and in writing, the ideas and policies defended by that union, that independent list is not lodged or submitted by the union in question. In such circumstances, the mistake that voters are likely to make is to believe that the candidate or candidates whom they wish to support are entirely unconnected with unions which have also lodged lists for election to the Staff Committee. The best means of preventing that is to have the name of the union in question to be expressly mentioned in the designation of the independent list, which immediately makes the electoral interrelationship between the various lists of candidates more transparent.

75 The second possibility is that the designation of the independent list expressly mentions the name of a union and the list features several of that union's members, who openly declare their affiliation with the union, advertise the fact that they share its views, and support, orally or in writing, its ideas and policies, but the list is not lodged or submitted by the union in question. In such circumstances, the way in which voters are liable to be misled or confused is that they may believe that, by supporting one or more candidates on that list, they are giving votes to the union whose name appears in its designation. On that point, it should first be recalled that, at the time of voting, voters have before them ballot papers on which all the

lists and candidates in the elections are set out, so that they can read the designations of all the competing lists and identify the one which has been lodged by the union as such. Consequently, the risk that voters may be misled in the manner described is already significantly diminished. Furthermore, it should be observed that the mistake which may occur in the second case is only liable to damage the union whose name is used in the designation of an independent list. If the union in question does not object to the use of its name by candidates on an independent list, it is not unreasonable to conclude that the likelihood of such a mistake being made is virtually non-existent.

76 Thus it appears from all those considerations that, in the first case, the absence of any reference to the name of a union in the designation of the independent list considerably reduces the transparency of the electoral interrelationship between the various lists of candidates and increases the likelihood that the voter may be misled, whereas in the second case, if the union concerned does not object, the use of its name in the designation of an independent list enhances the transparency of the electoral interrelationship and consequently reduces the likelihood of mistake or confusion on the part of the voter.

77 In view of those factors, the Court considers that, since the electoral rules contain no provision to the contrary, one or more independent lists may mention in their designations the name of a union which is also standing for election, where that union does not object, where appropriate by notifying the electoral office under Article 18 of the electoral rules. However, it should be made clear that the reference to the name of a union in the designation of an independent list which has the characteristics described in paragraph 70 cannot simply consist in reproducing the name under which the union at issue is itself participating in the elections, even with the addition of a numeral so that it can be distinguished from the union's 'official list': that would be an infringement of the electoral rules which preclude unions from submitting more than one list of candidates for election to the Staff Committee.

78 The Court further observes that the existence of several independent lists whose designation refers to the name of a union subject to the proviso set out in the preceding paragraph does not interfere with the equal treatment of lists of candidates and of candidates themselves. Those are the only relationships in which it may be assumed that the electoral rules, and particularly Articles 6 and 9 thereof, must ensure that an equal balance is preserved. In that connection, it must also be concluded that, even if the increase in the number of lists, whatever their provenance, inevitably affects their respective election prospects, that does not alter the fact that the lists of candidates are treated on an equal basis and has no bearing on the competition between the unions, since as such they cannot lodge more than one list of candidates. Neither does it appear from the electoral rules that they are predicated on equal treatment of those unions which have lodged a list of candidates for election to the Staff Committee in order to ensure healthy competition between them.

79 Lastly, it should be noted that the reference to the name of a union in the designation of an independent list cannot be regarded as a manoeuvre on the part of that union to circumvent the rule permitting a maximum of 27 pairs of candidates (full members and alternates) on each list, where that list is not lodged by the union and the reference to its name complies with the proviso set out in paragraph 77, above.

80 In the present case, the Court notes, first, that the list named 'Research/European Public Service Union', lodged with the electoral office by the applicant on 18 October 1994, was submitted on paper displaying the letterhead of the EPSU, which was also used to submit the list named 'European Public Service Union', lodged on the same day by Mr Halskov in the name of Mr Schubert. The Court also observes that, in his correspondence addressed on 7 November 1994 to the electoral office in response to its decision of 3 November 1994, the political secretary of the EPSU does not deny that the two lists in question were submitted by the EPSU. Lastly, the Court finds that it was common ground, both during the written procedure and at the hearing, that the 'Research/European Public Service Union' list and the 'European Public Service Union' list were both submitted by the same union. In view of those factors, the Court considers that the decision of the electoral office of 3 November 1994, requesting that the EPSU 'submit in its name only one of the two lists lodged respectively by Mr Blanchard and Mr Halskov (for Mr Schubert)', did not infringe the electoral rules; on the contrary, they were thereby correctly

applied. Consequently, the second plea must be rejected, in so far as it seeks annulment of the decision of the electoral office of 3 November 1994 and the corresponding failure of the appointing authority to prevent or to disapprove that decision.

81 On the other hand, it should be pointed out that, in the correspondence addressed to the electoral office on 7 November 1994 in response to its decision of 3 November 1994, the political secretary of the EPSU proposed that the union's acronym should be removed from the list named 'Research/European Public Service Union' and that the applicant should be asked, following consultation with the candidates on the list which he headed, to advise the electoral office of the list's new designation, provided, however, that the electoral office unconditionally undertook to accept the nominations on the two lists to which the decision of 3 November 1994 referred. In its decision of 8 November 1994, the electoral office took formal note of the terms of that proposal, but concluded that they could not be reconciled with its concern not to accept 108 candidates acting for the same union, and decided to reject List No 1, designated 'Research/European Public Service Union'.

82 It appears from the proposal put forward by the political secretary of the EPSU in his letter of 7 November 1994 that the EPSU undertook to comply with the electoral rules, even if it was not convinced as to the accuracy of the interpretation of those rules, by submitting only one list of candidates and by inviting the candidates on the list initially designated 'Research/European Public Service Union' to present themselves on a list with a new designation. The Court takes the view that, framed in that manner, the proposal of the political secretary of the EPSU complied with the electoral rules as they have been elucidated in paragraphs 69 to 79 of this judgment, so that, by adopting its decision on 8 November 1994, the electoral office made the admissibility of the lists of candidates for election to the Staff Committee subject to an additional condition which was, moreover, contrary to those laid down by the electoral rules. The argument put forward by the electoral office in its decision of 8 November 1994 effectively leads to the conclusion that candidates on an independent list with the characteristics described above in paragraph 70 could not be allowed to stand for election to the Staff Committee.

83 For the same reasons, the Court considers that the electoral office also imposed an additional condition contrary to those laid down by the electoral rules when, by an oral instruction from its president, it refused to allow the applicant to lodge his list on 8 November 1994, even though the name of the union no longer featured in its designation.

84 Consequently, the two decisions adopted on 8 November 1994 by the electoral office were adopted in infringement of the electoral rules and must therefore be annulled. The Court points out, however, that those annulments do not affect the validity of the electoral procedure initiated following the order for interim measures of the President of the Court of First Instance of 21 November 1994 or the result of the elections held on 31 January, 1 and 2 February 1995, as the applicant and the intervener accepted at the hearing.

85 In view of those factors, the second plea must be accepted and the application must be upheld in so far as it seeks annulment of the decisions of the electoral office of 8 November 1994, without there being any need to take a decision regarding the alleged failure of the appointing authority to take action to prevent or to disapprove those decisions.

86 Consequently, it is necessary to consider the other pleas put forward by the applicant only in so far as they concern the remaining claims for annulment. On that point, the Court notes that, since it considers that the electoral rules preclude a union from lodging more than one list of candidates for election to the Staff Committee, the other pleas put forward by the applicant should be appraised in the context of the alternative objection that the electoral rules are unlawful.

87 In that regard, the Court observes that the applicant bases that objection of illegality on the breach of the principles specified in the second, third, fourth and fifth pleas put forward in support of his action for annulment, whereas the second plea put forward in that connection alleges, precisely, infringement of the electoral rules.

The Court considers that, in order to appraise the objection of illegality, it need therefore only consider the third, fourth and fifth pleas.

Third plea: breach of the principle of freedom and democracy or of equal treatment

— Arguments of the parties

88 The applicant submits that, in electoral matters, the principle of equal treatment is inherent in the principle of democracy, by virtue of which equality between voters, candidates for election and unions submitting lists of candidates must be observed in accordance with the judgment in *De Dapper*, cited above, and with the 'Declaration of Fundamental Rights and Freedoms' adopted by the European Parliament on 12 April 1989 (in particular Article 17(5) thereof).

89 The applicant further alleges that the decision of 3 November 1994 had the effect of restricting several electoral freedoms, by impairing the right of the candidates on the 'Research/European Public Service Union' list to stand for election, the freedom of the EPSU to submit a list and the freedom of the voter to vote for the 'Research/European Public Service Union' list.

90 According to the applicant, such restrictions are only permissible if they comply with the Treaty establishing the European Communities (according to Article 17(5) of the Declaration of Fundamental Rights and Freedoms adopted by the European Parliament on 12 April 1989) or are proportional to a legitimate objective, in accordance with the case-law, and particularly with the remarks of Sir Gordon Slynn in his Opinion in *Diezler* (as cited above, at p. 4298). The alleged necessity of placing all unions on an equal footing which, according to the Commission, justifies precluding unions from submitting more than one list, cannot be inferred

from the principle of democracy or from the principle of equal treatment, which require the equal treatment of European officials with respect to their right to vote and to stand for election, rather than equal treatment of unions with respect to their right to submit lists of candidates. Furthermore, the formal equality advocated by the Commission (one list for one union) is not the sort of equality intended by the case-law of the Community judicature, which promotes substantive equality before the law, in accordance with which equal things must be treated identically and different things treated differently.

91 The applicant also submits that the EPSU's action in no way prevents other unions from submitting several lists. Whether a union can submit several lists depends on how representative it is and on whether candidates who are members of a union are prepared to stand for election. On the other hand, the applicant maintains that the electoral rules are discriminatory in that they allow officials who are not affiliated to a union to submit as many lists as they wish, which constitutes discrimination on the grounds of union membership, and in that they do not take into account the objective differences between the various unions in terms of representativity.

92 In response, the Commission submits that precluding unions from submitting more than one list for election to the Staff Committee has not given rise to any discrimination affecting the candidates on the 'Research/European Public Service Union' list. That rule does not restrict the freedom of officials to designate their representatives or their equal right to vote or to stand for election. Furthermore, its purpose is to place the unions on an equal footing with respect to the same electoral procedure, without however preventing officials from being able to stand independently for election, irrespective of their membership of a union. Consequently, there is no discrimination, since, on the contrary, such rules serve to uphold a perfectly legitimate principle of electoral equality. The Commission adds that there is no discrimination on the grounds of union membership; freedom of association is not at issue in the present case, since each union remains free to draw up the list of its own candidates.

— Findings of the Court

In relation to the third plea, it should be considered whether the electoral rules impair to any degree the rights of officials to stand for election, to vote and to vote for a list of candidates, or the freedom of unions to submit a list of candidates. It must also be ascertained whether or not precluding unions from submitting more than one list of candidates is contrary to the principles of freedom and equal treatment of lists of candidates, whatever their provenance, and of equal treatment of candidates.

94 The Court notes, first, that the decision of 3 November 1994, which was adopted in conformity with the electoral rules, sought solely to prevent the EPSU from submitting two lists under its acronym. It is clear from the electoral office's decision of 3 November 1994 and the arguments adduced subsequently by the Commission in the present proceedings that the electoral office did not wish to prevent the candidates on the 'Research/European Public Service Union' list from standing for election to the Staff Committee, but insisted that they do so in accordance with the detailed rules laid down by the electoral rules.

95 Secondly, the Court considers that the detailed rules described above in paragraphs 69 to 79, governing the exercise of the right to stand for election enjoyed by all officials and other servants, as defined by the electoral rules, do not detract from that right, since they do not restrict its scope. All officials or other servants, whether or not they are members of a union, have the right to stand for election to the Staff Committee, either on the list lodged by a union — with that union's consent — or on an independent list, in which case they retain the right openly to declare their affiliation with a union, to advertise the fact that they share its views or to support, orally or in writing, a union's policies and to mention the union's name in the designation of the independent list on which they appear, subject to the proviso set out in paragraph 77. Consequently, the applicant cannot allege that the electoral office's decision of 3 November 1994, which was adopted in conformity with the electoral rules, was such as to impair one of the rights which he invokes.

96 Thirdly, it should be noted that, since the electoral rules merely preclude the submission of more than one list of candidates by the same union, the EPSU's right to submit a list of candidates was unaffected by the electoral office's decision of 3 November 1994.

97 Fourthly, the Court observes that, as it explained when considering the second plea, the electoral rules ensure equality of treatment between the lists of candidates. The Court also pointed out that precluding unions from lodging more than one such list does not interfere with the equal treatment of lists. Consequently, far from breaching the principle of equal treatment of lists, the electoral rules ensure that it is respected.

98 Fifthly and lastly, the Court considers that, in order to ascertain whether the electoral rules are likely to give rise to a breach of the principle of equal treatment of candidates, in so far as they differentiate on the ground of union membership, suffice it to note that the electoral rules permit all officials or other servants, whether or not they are members of a union, to stand for election on an independent list, and that they may declare their affiliation to a union whether they stand on a union list or on an independent list. Accordingly, in the view of the Court, precluding unions from lodging more than one list of candidates does not entail any discrimination between candidates on the ground of union membership.

99 Consequently, the electoral rules do not breach the principles of freedom and democracy or of equal treatment and cannot be declared unlawful, and therefore the electoral office's decision of 3 November 1994 and the corresponding failure of the appointing authority to prevent or to disapprove that decision cannot be annulled on the basis of the arguments adduced by the applicant in relation to his third plea.

Fourth plea: breach of the principle of representativity and/or the principle that a channel must be available for the expression of opinion by the staff

— Arguments of the parties

100 First, the applicant submits that, by permitting the 'Research/European Public Service Union' list, submitted by the EPSU on 18 October 1994, to be rejected — by the electoral office's decision of 3 November 1994 — the electoral rules restricted the expression of opinion by the staff through their candidates. The increase in the number of candidates, within the limits fixed by the electoral rules for each list, would have provided a channel for the expression of that opinion, in accordance with the requirement expressly laid down by Article 9(3) of the Staff Regulations.

101 The applicant further asserts that, under the fourth paragraph of Article 1 of Annex II to the Staff Regulations and Article 6 of the rules adopted by the Commission on 27 April 1988, the composition of the Staff Committee must be such as to ensure the representation of all categories and services provided for in Article 5 of the Staff Regulations and the other servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants of the Communities. According to settled case-law, the underlying objective of those provisions is to ensure that all categories of interests within the staff are represented. The electoral system must therefore reflect that objective as far as possible (see *De Dapper*, cited above, paragraphs 16 and 17).

102 However, the fourth paragraph of Article 1 of Annex II to the Staff Regulations is insufficient for that purpose, in so far as it refers only to the last subparagraph of Article 5(1) of the Staff Regulations and to Article 7 of the Conditions of Employment of Other Servants of the Communities. Those two provisions mention only the administrative and language services and do not take into account the scientific or technical services with which Articles 92 to 101 of the Staff Regulations are concerned, or staff paid out of credits under the 'Research and Technological Development' section of the budget. Consequently, the electoral rules, and particularly

Articles 8 and 12 thereof, are not such as to ensure that the objective of full representation of the various interests of the staff is attained, since they were adopted under Annex II of the Staff Regulations. In the applicant's opinion the submission of sector-based lists, as advocated by the EPSU, is therefore the way to ensure such representation.

103 According to the Commission, on the other hand, the fact of attaching conditions to the submission of nominations does not constitute a flagrant infringement of democratic rules. The main objective of Article 9(3) of the Staff Regulations is to ensure representation of the interests of the staff and not the interests of the unions as separate bodies (see Case T-65/91 *White* v *Commission* [1994] ECR-SC II-23, paragraph 102).

104 The Commission further submits that Article 5(1) of the Staff Regulations provides the basis for the existence of a scientific and technical service, as distinct from the administrative and language services, a view confirmed by the case-law (see Joined Cases 269/84 and 292/84 *Fabbro and Others* v *Commission* [1986] ECR 2983 and Case T-50/91 *De Persio* v *Commission* [1992] ECR II-2365, paragraph 17). The fourth paragraph of Article 1 of Annex II to the Staff Regulations constitutes accordingly a sufficient basis and the minimum representation of the scientific and technical services is therefore ensured and rightly confirmed by Articles 8 and 12 of the electoral rules. The Commission adds that there is nothing to prevent the submission of a sector-based independent list, designed specifically to represent the interests of the scientific and technical services.

105 In conclusion, the Commission emphasizes that it was possible for the sector-based list headed by the applicant to be submitted for election to the Commission Staff Committee by virtue of the new time-limits set in compliance with the order of the President of the Court of First Instance of 21 November 1994.

— Findings of the Court

106 The Court considers that, in appraising the objection of illegality raised before it, it must consider whether the electoral rules breach the principle of representativity set out in Article 9(3) of the Staff Regulations, in the fourth paragraph of Article 1 of Annex II thereto and in Article 6 of the rules adopted by the Commission on 27 April 1988, in that they preclude a union from submitting more than one list of candidates, and also whether Articles 8 and 12 of the electoral rules extend to the scientific and technical services.

107 As regards the alleged breach of the principle of representativity, the wording of the provisions relied on must be examined. Article 9(3) of the Staff Regulations 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.

...'

The fourth paragraph of Article 1 of Annex II to the Staff Regulations provides:

'Membership of the Staff Committee if it is not organized in local sections, or of the local section if the Staff Committee is organized in local sections, 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 of the Communities. The Central Committee of a Staff Committee organized in local sections shall be validly constituted upon appointment of a majority of its members.'

Lastly, Article 6 of the rules adopted by the Commission on 27 April 1988 provide:

'The procedure for elections to local sections and the Central Committee shall be laid down by a general meeting of Commission officials and shall be such as to ensure that officials of all categories and services and the other servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants of the Communities are represented on the Central Committee and, as far as possible, in each local section.

...'

108 It is apparent from those three provisions that the diversity of candidates from the point of view of their membership of a service or of a category contributes towards the objective of enabling the opinion of the staff to be expressed. However, the Court finds that precluding unions from lodging more than one list of candidates does not undermine that objective. As the Court pointed out in paragraph 95, the decision of 3 November 1994 did not seek to prevent the candidates on the list headed by the applicant from taking part in the elections or, consequently, to prevent the staff of a particular category or service from expressing their opinion and being represented on the Staff Committee.

109 As the Commission rightly submits, it should also be noted that those three provisions do not confer upon each union a right to be represented on the Staff Committee. Under those provisions, the electoral system must enable the opinion of the staff to be passed on, particularly by granting each official or other servant the right to stand for election and to vote, but that objective need not entail guaranteed representation of the various unions on the Staff Committee.

110 In that connection, it should be observed that, even if the submission by the same union of several sector-based lists is in principle consistent with the objective laid

down by the provisions cited, that is by no means the only way of attaining that objective. The internal selection of the candidates on the list submitted by each union, the electoral rules and the freedom of all officials or other servants to be placed on a list of candidates — on an independent list, at least — are other means by which that objective may be attained.

111 Lastly, the Court considers that, even if precluding unions from lodging more than one list of candidates deprives the candidates from a particular service of the most certain means of being elected and thereby makes it more difficult to achieve the objective set out in the provisions cited, that rule — as explained above at paragraph 77 — constitutes an application of the principle of representativity which does not make the electoral rules unlawful, since it was made on the basis of a decision of the general meeting of officials at which all staff categories and services were represented. In any event, the applicant has not shown in the present case that, from the point of view of their membership of a particular category, the candidates on his list had a greater chance of being elected if submitted on a list lodged by a union than on an independent list whose designation makes no reference to the name of a union.

112 The Court also finds that Articles 8 and 12 of the electoral rules concern all staff services including the scientific and technical services to which the candidates on the 'Research/European Public Service Union' list claim to belong. The Community judicature has already had occasion to explain that 'the Staff Regulations provide for certain services (the language service and the scientific and technical services) and envisage the possibility of establishing others, in order to place together officials who carry out particular duties for which specific qualifications are required and make possible a separate career structure taking into account those special features' (see *Fabbro*, cited above, paragraph 21, and *De Persio*, cited above, paragraph 17).

113 It follows from all those observations that the electoral rules do not breach the principle of representativity as set out in the provisions cited and accordingly

cannot be regarded as unlawful; consequently, the electoral office's decision of 3 November 1994 and the corresponding failure of the appointing authority to prevent or to disapprove that decision cannot be declared void on the basis of the arguments adduced by the applicant in relation to his fourth plea.

Fifth plea: infringement of the right of association and breach of the principle that all officials have the right to stand for election

— Arguments of the parties

114 The applicant submits that the rule that no more than 27 pairs of candidates may be submitted compels union members who are potential candidates after the 27th pair to choose between leaving the union and standing on an independent list, and renouncing their candidature. Furthermore, the electoral rules infringe the right of association in that, by requiring one of the two lists submitted to be withdrawn, they deprive the list which is withdrawn of the full freedom to retain, if it so wishes, the applicant's candidature.

115 The Commission denies that precluding unions from submitting several lists constitutes an infringement of Article 24a of the Staff Regulations and of the final section of the first paragraph of Article 1 of Annex II thereto. The applicant's right of association cannot be said to be threatened where his own union chooses not to include him on its first list. As the Court of First Instance has pointed out (see *Maindiaux and Others*, cited above), the conditions for elections are established by the general meeting of officials of the institution in the relevant place of employment. Since the EPSU's decision not to include the applicant in its first list is an internal union decision, Article 24a of the Staff Regulations has not been infringed. The applicant remains free to exercise his right to stand for election by appearing on an independent list.

— Findings of the Court

116 It should first be emphasized that consideration of the arguments adduced by the applicant in relation to his fifth plea must be confined, in the context of the present appraisal of the objection of illegality raised in the alternative, to those concerning the electoral office's decision of 3 November 1994, since the Court has already upheld the action for annulment in respect of the electoral office's decisions of 8 November 1994. Consequently, there is no need for the Court to rule on the parties' arguments concerning those decisions.

117 It is abundantly clear, in the first place, that under the guise of infringement of the right of association the applicant adduces in support of the fifth plea arguments already raised in the context of the fourth plea to substantiate the allegation of discrimination on the grounds of union membership.

118 The Court also notes that the applicant asserts the right of a union to submit the candidature of one of its members, such as that of the applicant in the present case, and submits that, by precluding unions from lodging more than one list of candidates, the electoral rules undermine the right of association, which is also recognized by Article 24a of the Staff Regulations.

119 Article 24a of the Staff Regulations provides that 'officials shall be entitled to exercise the right of association; they may in particular be members of trade unions or staff associations of European officials'. It follows that the freedom of association defined in Article 24a of the Staff Regulations does not mean that, under the electoral system, unions enjoy the same rights as officials. Article 24a of the Staff Regulations recognizes a right of association for officials, particularly in the context of a union. A union therefore appears to be a mode of organizing the freedom of association to which it is accepted that all officials are entitled, whose intervention in the electoral process is governed by the electoral rules. Consequently, the Court

considers that a union cannot rely on Article 24a of the Staff Regulations in order to assert rights which are identical with those attributed to officials themselves where they are candidates for election to the Staff Committee.

120 Lastly, it should be emphasized that the presence of the applicant on one of the two lists submitted by the EPSU on 18 October 1994 is the outcome of an internal union decision. The applicant cannot therefore blame anyone but the EPSU for the consequences of his being withdrawn from the list, since the submission of more than one list by a union is precluded by the electoral rules and that rule does not undermine any of the rights invoked by the applicant, as the Court pointed out in paragraph 96.

121 Furthermore, it must be remembered that an official who is a member of a union is always free to stand for election on an independent list, if he has not been selected to appear on his union's list, and if he so wishes he may advertise his union membership and support for the union's programme. An official who is a member of a union therefore remains free to belong to a union while standing for election on a list other than that lodged by his union.

122 It follows from all those observations, therefore, that the electoral rules do not infringe the freedom of association defined in Article 24a of the Staff Regulations or the principle that all officials have the right to stand for election, and that they cannot, therefore, be declared unlawful in that regard and that the decision of 3 November 1994 and the corresponding failure of the appointing authority to prevent or to disapprove that decision cannot be declared void on the basis of the arguments adduced by the applicant in support of the fifth plea.

123 The alternative objection that the electoral rules are unlawful must therefore be rejected.

The claim for compensation

Arguments of the parties

124 The applicant submits that the contested decisions are not only unlawful but also entail fault, and that they have caused him non-material damage, since they prevented him from standing for election on the terms he had wished and from exercising his right to vote in accordance with the Staff Regulations.

125 The Commission denies not only the unlawful nature of the contested decisions, but also having committed any fault in that regard. It had no reason to intervene, in the exercise of its supervisory duties, in the conduct of the electoral procedure which it considered to be perfectly proper. The Commission also contends that the applicant has adduced nothing to support the allegation of material and non-material damage.

Findings of the Court

126 In accordance with settled case-law, the Court considers that if the electoral office's decisions adopted on 8 November 1994 in breach of the electoral rules were such as to cause the applicant non-material damage, he has not alleged any damage resulting from the adoption of the contested decisions for which the annulment of the two decisions of 8 November 1994 would not constitute appropriate reparation (see in particular Case T-158/89 *Van Hecken* v *ESC* [1991] ECR II-1341, paragraph 37, and Case T-52/90 *Volger* v *Parliament* [1992] ECR II-121, paragraph 46). The claim for compensation must therefore be rejected.

Costs

127 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the action for annulment was partially upheld and the applicant has requested that the Commission be ordered to pay the costs of the present proceedings, in the circumstances of the case his request must be allowed with respect also to the costs incurred in the proceedings for interim relief.

128 According to Article 87(4) of the Rules of Procedure of the Court of First Instance, the Court may order an intervener other than a Member State or an institution to pay its own costs. In the present case, in view of the fact that the intervener failed to lodge its statement in intervention in support of the forms of order sought by the applicant in due time and at the hearing merely referred to the pleadings of counsel for the applicant, that provision must be applied.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Annuls the two decisions of the electoral office of 8 November 1994, without prejudice to the result of the elections to the Staff Committee held on 31 January, 1 and 2 February 1995, and rejects the remainder of the action for annulment;

2. Rejects the claim for compensation;

3. Orders the Commission to pay the costs incurred by the applicant, including those relating to the proceedings for interim relief, as well as its own costs; orders the intervener to pay its own costs.

Barrington Lenaerts Lindh

Delivered in open court in Luxembourg on 9 January 1996.

H. Jung D. P. M. Barrington

Registrar President