JUDGMENT OF THE COURT (THIRD CHAMBER)
29 MARCH 1984 [1]

Adam Buick
v Commission of the European Communities

(Official — Reclassification)

Case 25/83

Officials — Recruitment — Assignment of grade and classification in step — "Decision" of an institution concerning applicable criteria — Legal nature — Internal directive — Effects

A "decision" of an institution on the criteria applicable to grade and step classification upon recruitment of officials, communicated to all the institution's staff by means of a notice comprising the above-mentioned decision (Annex I), a statement of the practice relating to its application (Annex II) and a list describing the membership of the Grading Committee (Annex III), constitutes an internal directive which should be regarded as a rule of conduct indicating the practice to be followed, which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equality of treatment would be infringed. The same considerations must apply with regard to the legal nature of Annex II to the notice, entitled "Practical Application — General Survey", which briefly describes the "established practice" of the administration in applying the provisions laid down in the "decision" in question, by setting forth more specific rules which the administration considers itself bound to observe.

In Case 25/83

ADAM BUICK, an official of the Commission of the European Communities, represented and assisted by Victor Biel, of the Luxembourg Bar, with an address for service at the latter's Chambers, 18 A Rue des Glacis,

applicant,

v

1 — Language of the Case: French.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Hendrik van Lier, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the said Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the applicant's reclassification pursuant to the Commission's decision on the criteria applicable to grade and step classification upon recruitment,

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and C. Kakouris, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

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

I — Facts

1. Adam Buick started work for the Commission in January 1974. He was classified in Grade A 7, Step 3, on recruitment. On 1 January 1978 he was promoted to Grade A 6.

2. In March 1981, staff were informed by a Notice to Commission Staff of the Commission's decision of 6 June 1973 "On the Criteria Applicable to Grade and Step Classification upon Recruitment". Enclosed with the notice were the decision itself (Annex I), a document entitled "Practical Application — General Survey" (Annex II) and a statement on the membership of the Grading Committee (Annex III). The provisions which are relevant to this case are the following:

Annex I — Decision

"Article 1

Appointment to the starting grade of the starting career bracket of a category

The appointing authority shall generally appoint the selected candidate as a probationer in the starting grade of the starting career bracket of his category or service.

Article 2

Appointment to career brackets other than the starting career bracket

...

Professional experience with regard to the post to be filled shall be assessed on the basis of all the activities in which the candidate has engaged before recruitment.

Professional experience shall be calculated from the time when the candidate was awarded the qualification giving access pursuant to Article 5 of the Staff Regulations to the category in which the post falls.

Article 3

Appointment to a higher grade of a career bracket

By way of derogation from Article 1, the appointing authority may, exceptionally and in order to meet recruitment requirements, appoint a candidate to the upper grade in the starting or intermediate career bracket, if the candidate gives evidence of professional experience, within the meaning of Article 2, of at least:

...

8 years for Grade A 6;

...

Annex II, entitled "Practical Application — General Survey"

1. Under the first heading — "General" — is to be found a definition of the relevant practical experience and a statement of credit to be given for the length of compulsory military service; the second heading provides:

"2. Career Bracket A 7/6

(a) On a recommendation from the Grading Committee based on the fact that the duration of university studies varies in the Member States between three and eight years, which can lead to distortions in grading, measures have been taken to reduce the gap in practice from five years to two years.

Where university studies are short practical experience is taken into account only with effect from the fourth year following the completion of advanced secondary studies.

Where university studies are long, practical experience is taken into account from the seventh such year.

(b) At least eight years' relevant practical experience are required for an A 6 grading (see 1(a) above).

3. On being informed of that decision, the applicant on 29 April 1981 submitted to the Commission a request for a reclassification in Grade A 6 with effect from the date of his recruitment.

4. It appears from the file on the case that the applicant had completed his secondary education in December 1961, when he took the Oxford University entrance examination. However, he did not begin his university studies until October 1962. It seems that the gap of ten months was due to the fact that the Oxford Scholarship Examination taken

by the applicant is held only in December of each year. He obtained his university degree in June 1965.

5. On 11 May 1982, the Grading Committee (a body set up under Article 6 of the Commission's decision and competent to give an opinion on the matters governed by that decision) sent him a memorandum to the effect that it was unable to propose an amendment to his original classification.

6. On 18 June 1982 the applicant submitted a complaint to the Commission under Article 90 (2) of the Staff Regulations, which was rejected by letter of 23 November 1982.

II — Conclusions of the parties

1. By application dated 14 February 1983 and lodged at the Court Registry on 16 February 1983, the *applicant* claims that the Court should:

1. Declare that the applicant's experience should be calculated from December 1965;

2. Consequently, declare that on taking up his duties in January 1974, the applicant was eligible to be classified in Grade A 6;

3. Declare that the appointing authority's decision of 23 November 1982 is illegal and accordingly annul it;

4. Remit the case to the Commission to be decided in accordance with the judgment of the Court;

5. Order the Commission to pay the costs in their entirety.

2. The *Commission* contends that the Court should;

Dismiss the application as unfounded;

Order the applicant to pay the costs;

Subject to all necessary reservations.

III — Written procedure

The written procedure followed the normal course. Upon hearing the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

IV — Relevant provisions of the Staff Regulations

The second subparagraph of Article 5 (1) of the Staff Regulations:

"Category A shall comprise eight grades ... for staff engaged in ... duties which require university education or equivalent professional experience."

Article 31 of the Staff Regulations:

"(1) Candidates ... shall be appointed ... to the starting grade of their category or service;

...

(2) However, the appointing authority may make exceptions to the foregoing provisions ..." within certain limits as to posts to be filled by way of derogation.

V — Summary of the submissions and arguments of the parties

The arguments of the parties turn in essence upon the following points:

The *applicant* argues that on the basis of the provisions relating to short university studies under paragraph 2 of Annex II above (cited in the application and pleadings as Article 2 of Annex I to the decision), his practical experience should have been taken into account with effect from the fourth year following December 1961, when he received his secondary qualification, in other words from December 1965. According to that calculation, he had completed eight years' practical experience at the time at which he started work for the Commission in January 1974 and was therefore entitled to be classified in Grade A 6.

The *Commission* maintains that that calculation is based on a mistaken interpretation of that provision. According to the Commission, on a true interpretation consistent with the spirit of the decision the relevant four years would be calculated from June 1962 in the applicant's case, and not from December 1961, because until that date the applicant had not yet begun his university studies.

VI — Submissions and arguments of the parties in full

1. The sole submission advanced by the *applicant* alleges the illegality of the memorandum rejecting his complaint, which is due to a misinterpretation of the decision. He observes that the dispute which has arisen between himself and the defendant is due to the divergent interpretations which the parties have attributed to certain provisions of that decision. According to him, its wording in the three languages (English, French and German) is clear and does not give rise to any ambiguities. Thus, in the case of short university studies (of three years), paragraph 2 of Annex II to the staff notice provides that "practical experience is taken into account only with effect from the fourth year following the completion of advanced secondary studies". Since he completed his secondary education in December 1961, the applicant takes the view that this provision entitles him to claim that his practical experience should be calculated from December 1965. Consequently, when he took up his duties in January 1974, he had had at least the eight years' experience required in order to be classified in Grade A 6.

The interpretation relied on by the Grading Committe and adopted by the appointing authority is contrary to the express provisions of that decision. According to the interpretation which is challenged by the applicant, practical experience should only be taken into account from the first year after a university degree was obtained, in other words from the first year of practical experience after that degree was obtained. The applicant is therefore deprived of the credit of a year's practical experience, since he was classified in Grade A 7 when he started work as having only seven and a half years of practical experience. However, the appointing authority cannot be exempted from the effect of its own decisions in defiance of the principle *legem patere quam ipse fecisti.*

2. The *Commission* begins by observing that the 1973 decision does not confer on candidates as regards appointment in the upper grade in a career bracket any right infringement of which will give rise to a cause of action. The wording of Article 3 of the decision is particularly explicit on this point: it provides that: "By way of derogation from Article 1, the appointing authority may, exceptionally and in order to meet recruitment requirements", appoint to the upper grade candidates satisfying the requirements laid down (cf. the French text of paragraph 2 (b) of Annex II to the staff notice: "le classement au grade A 6 *pourrait* être envisagé au vu d'une expérience professionnelle ... d'une durée d'au moins huit ans").

For this reason, if for no other, the Commission was under no obligation to appoint the applicant to Grade A 7 and,

conversely, he did not have a right to be appointed to the upper grade in his career bracket.

Furthermore, the Commission argues that it did not in any way contravene the general guide-lines which it had laid down for itself in the matter of appointments to the upper grade in career brackets. It correctly interpreted the provision at issue, bearing in mind the context in which it occurs and the general scheme of Annex II to the staff notice regarding the 1973 decision, factors of which the applicant did not take account in his interpretation. As the first subparagraph of paragraph 2 (a) indicates, that provision is justified by a concern to offset some of the variations found to exist between the Member States in respect of the length of university studies, and by so doing to avoid distortions in grading. The approach which has been adopted in the provision is as follows: where university studies are *long,* the years of study after the sixth year of such study are considered equivalent to "professional" experience for the purposes of Article 2 of the 1973 decision; and where university studies are *short,* the first year of practical experience is treated as if it were an extra year of study.

In other words, in the case of a short period of study, practical experience is regarded as reduced by a year. The experience which is taken into account for the purposes of paragraph 2 (a) is therefore less than the experience actually gained. In such cases, therefore, the intended result is that the first year of experience following the award of a degree after short university studies is disregarded.

The defendant accordingly argues that, in the light of its spirit and its context, the rule laid down in paragraph 2 (a) of Annex II to the staff notice regarding the 1973 decision necessarily requires that four years must actually have run before the years of practical experience can begin to be taken into account.

The fact that the wording of the provision takes the "fourth year following the completion of advanced secondary studies" as the starting point for the calculation is explained by the fact that when the 1973 decision was drafted it was assumed that the candidate would generally have begun his university studies without a gap between school and university and immediately after the completion of his secondary studies and that he would have obtained his degree in the three years following.

Consequently, since the applicant completed his university education in June 1965 and since he was not credited with his first year of practical experience, he had seven-and-a-half years of relevant experience at the time of his recruitment (that is to say, from June 1966 to January 1974). He was therefore quite properly appointed to the starting grade of Career Bracket A 7/A 6.

The Commission adds that a literal interpretation of paragraph 2 (a) would not only defeat the purpose which the administration had set itself, namely of compensate for disparities in the length of university studies in the Member States, but would also lead to absurd consequences. If a candidate completed his secondary studies but began his university studies only five years later he would find that those five years would be credited in the determination of his grade, even though he did not acquire in that period any practical experience or at least any relevant experience.

The interpretation which is suggested by the applicant therefore contradicts the very content of Article 2 of the 1973 decision in so far as a provision governing the detailed rules for the calculation of practical experience would allow periods of no activity or of irrelevant activity to be treated as relevant practical experience, and, consequently, would modify the basic rule contained in Article 2.

3. In his *reply,* the applicant takes the view, without entering into detailed discussion, that the defendant's argument on the discretionary character of the appointing authority's power to make an appointment to the upper grade of a career bracket is contrary to the notice to staff distributed in March 1981, which states that "the relevant authority has constantly approved the practice" briefly described in Annex II to the staff notice regarding the decision. At all events, he remarks that it is enough for him to prove that at the time of his appointment he had had eight years' experience within the meaning of the relevant provisions.

Turning to the question of the interpretation of the disputed provisions of paragraph 2 (a) of Annex II, the applicant wonders whether he should not refer to the context and general scheme of Annex II in order to clarify this provision beyond all possible doubt and claim its strict and complete application. If the Commission really wished to give the provision in question the meaning which it claims it has, it had only to draft it without any ambiguity by providing simply that "practical experience is taken into account only with effect from the fourth year following the start of university studies.

In a different connection, he observes that instead of confining itself to the supposed philosophical principles underlying the scheme adopted, which lead to the astonishing possibility that a candidate might be credited with practical experience which he lacks, the Commission should have taken the following into account:

(a) The purpose of paragraph 2 (a) of Annex II is to reduce the actual practical experience of a candidate and not to credit him with experience which he lacks. In this case, the question to be determined is thus from what time experience actually gained should be taken into account.

(b) Any experience after December 1965 should be taken into account, provided that it was gained four years after the completion of advanced secondary studies.

(c) Furthermore, the spirit and the context of that provision in no way require the construction which the Commission has sought to put upon it. Its purpose is to determine a natural starting point from which relevant experience may be calculated, which has not been disputed in this case.

(d) The Commission has not put forward any valid arguments for rejecting the literal interpretation of a positive provision. Moreover, it is not clear why such an interpretation should render nugatory the spirit and substance of the article.

Finally, the applicant requests that the Commission should be ordered to pay the costs of the case in their entirety even if the Court should not accept the substance of his submission.

4. The defendant, in its *rejoinder,* recognizes that the dispute between the parties turns upon the question of what should be the starting point for calculating the practical experience of a candidate who has completed short university studies.

It maintains that the definition of the starting point for practical experience, as referred to in paragraph 2 of Annex II ("... is taken into account only with effect from the fourth year following the completion of advanced secondary studies"), is to be explained by the fact that the draftsmen of the provision essentially had in mind the most general case *(quod plerumque fit)* of a student beginning his university studies immediately after he has gained his secondary qualification.

However, the applicant's argument amounts to reducing his actual experience by a period of less than a year (from June to December 1965), and thus to taking account in the determination of his grade, albeit indirectly, of the period between the completion of his secondary studies and the start of his university studies which does not relate to any relevant experience actually gained.

Finally, according to the Commission, the interpretation which the applicant seeks to uphold would, in cases such as this, lead to discrimination against candidates whose careers have followed the normal course, who have, in other words, begun their university education on the completion of their secondary studies. For though a candidate in such a case had completed a course of study at university as long as the applicant's, he would find that he was credited with practical experience starting only a year after he had obtained his university degree, whereas the applicant would have his actual experience reduced by six months only.

VII — Oral procedure

At the sitting on 19 January 1984 the applicant, represented by Victor Biel, of the Luxembourg Bar, and the Commission of the European Communities, represented by Hendrik van Lier, a member of its Legal Department, presented oral argument.

The Advocate General deliverd his opinion at the sitting on 23 February 1984.

Decision

1 By application lodged at the Court Registry on 16 February 1983, Adam Buick, an official of the Commission in Grade A 6, brought an action for the annulment of the Commission's decision of 23 November 1982 refusing to reclassify him in Grade A 6 with effect from his taking up duty in January 1974. He had requested this reclassification under the provisions of the "Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment", adopted on 6 June 1973.

2 The applicant started work for the Commission in January 1974 and was appointed to Grade A 7, Step 3. He was promoted to Grade A 6 on 1 January 1978.

3 In March 1982, the Director General for Personnel and Administration issued a notice, which has been brought to the attention of all the staff of the Commission and all successful candidates in competitions since that date,

comprising the above-mentioned "decision" of 6 June 1973 (Annex I), a statement of the practice relating to its application (Annex II) and a list describing the membership of the Grading Committee, a body set up under Article 6 of that "decision" (Annex III).

4 Article 3 of the "decision", which deals with appointments to the upper grade in a career bracket, provides that:

"By way of derogation from Article 1, the appointing authority may, exceptionally and in order to meet recruitment requirements, appoint a candidate to the upper grade in the starting or intermediate career bracket, if the candidate gives evidence of professional experience, within the meaning of Article 2, of at least: . . . eight years for Grade A 6 . . .".

5 Article 2 of the "decision" provides that:

"Professional experience shall be calculated from the time when the candidate was awarded the qualification giving access pursuant to Article 5 of the Staff Regulations to the category in which the post falls . . .".

6 Paragraph 2 (a) of Annex II to the staff notice, which relates to the practice observed in applying that "decision", provides:

"On a recommendation from the Grading Committee based on the fact that the duration of university studies varies in the Member States between three and eight years, which can lead to distortions in grading, measures have been taken to reduce the gap in practice from five years to two years. Where university studies are short, practical experience is taken into account only with effect from the fourth year following the completion of advanced secondary studies. Where university studies are long, practical experience is taken into account from the seventh such year."

7 On reading the above-mentioned notice of staff, the applicant submitted a request to the Commission in a memorandum dated 27 April 1981, asking to be reclassified in Grade A 6 with effect from the date of his recruitment, in accordance with the criteria laid down in Annexes I and II, in view of the fact that, when he entered the service, he could prove eight years practical experience, counting from December 1965, four years after the completion of his secondary studies.

8 It appears from the documents on the file of the case that the applicant completed his secondary studies in December 1961, when he took the entrance examination to Oxford University. However, he did not begin his university studies until October 1962, and obtained his university degree in June 1965.

9 On 11 May 1982, the Grading Committee notified the applicant of its opinion refusing his request for reclassification on the grounds that he could not show practical experience of sufficient length.

10 On 18 June 1982, the applicant lodged a complaint with the Commission under Article 90 of the Staff Regulations, claiming that the Grading Committee had wrongly interpreted the decision of 6 June 1973.

11 That complaint was rejected by letter of 23 November 1982 by the Member of the Commission in charge of Personnel and Administration, who confirmed the interpretation of the Grading Committee.

12 That is the decision against which the applicant brought these proceedings on 16 February 1983.

13 The sole submission put forward by the applicant alleges the illegality of the decision rejecting his complaint, which is due to a misinterpretation and hence an infringement of the "decision" of 6 June 1973. He stresses that according to the clear terms of paragraph 2 of Annex II to the notice mentioned above, practical experience is to be taken into account with effect from the fourth year following the completion of secondary studies. Therefore in his case practical experience should have been taken into account from December 1965, since it is common ground that he completed his secondary studies in December 1961. Eight years' practical experience should have been recognized at the time of his recruitment in January 1974 and the applicant should consequently have been classified in Grade A 6.

14 Against this the Commission maintains that the interpretation adopted by the applicant does not take account of either the context to which Annex II to the notice belongs, or the general scheme of that annex, and above all does not take account of the fact that paragraph 2 (a) thereof is justified by a

concern to avoid distortions in classification by reducing practical experience by one year in the case of short university studies, that is to say a course of study not lasting longer than three years, and, in the case of long university studies, which last for longer than six years, by regarding them as equivalent to practical experience. According to that approach, the Commission considers that the applicant, on entry into the service, did not have eight years' practical experience.

15 As the Court has already had occasion to declare, the "decision" on the criteria applicable to grade and step classification contained in Annex I of the notice to staff is an internal directive which should be regarded as a rule of conduct indicating the practice to be followed, which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equality of treatment would be infringed (judgments of 1 December 1983 in Case 190/82 *Blomefield* [1983] ECR 3981; Case 343/82 *Michael* [1983] ECR 4023). The same considerations must apply with regard to the legal nature of Annex II to the notice, entitled "Practical Application — General Survey", which briefly describes the "practice" of the administration in applying the provisions laid down in the "decision" in question, by setting forth more specific rules which the administration considers itself bound to observe.

16 The wording of the disputed paragraph 2 (a) shows that the purpose of the Commission, when it adopted the rules therein contained, was to comply with the provisions of Article 5 (3) of the Staff Regulations, which lays down that: "Identical conditions of recruitment and service career shall apply to all officials belonging to the same category or the same service". It follows that the disputed provision should be interpreted in the light of the general scheme of the measure and of the purpose mentioned above.

17 Against that background, it must be stated that the application of the provisions of Article 2 of the "decision" has brought to light considerable disparities which are due to differences in the duration of university studies between Member States, and that it was in order to reduce such disparities that the Commission's Grading Committee proceeded to establish the scheme laid out in paragraph 2 (a) of Annex II to the staff notice. It must therefore be concluded that the purpose of the provisions mentioned above was to define the length of the practical experience to be taken into account for purposes of classification as starting to run from the actual commencement of university studies.

18 In those circumstances, the applicant cannot rely on the wording used in paragraph 2 (a) of Annex II to the staff notice, which is to be explained by the fact that, in general, university studies begin immediately after the completion of secondary studies, as the Commission has rightly observed. As the Commission also correctly emphasizes, the literal interpretation of the provision in question would lead to absurd results by treating as years of practical experience periods of inactivity or experience with no relevance to the duties performed.

19 It follows from the foregoing that the sole submission advanced by the applicant cannot be accepted and, consequently, that the application must be yydismissed.

Costs

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

21 The applicant has failed in his submission.

22 However, in view of the wording of the provision in question, the applicant might well, as the Commission has conceded, have been misled as to the extent of his rights; it is therefore appropriate to apply the second subparagraph of Article 69 (3) of the Rules of Procedure and to order the defendant to bear the costs in their entirety.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Dismisses the application;

2. Orders the defendant to bear the whole of the costs.

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 29 March 1984.

For the Registrar

D. Louterman

Administrator

Y. Galmot

President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 23 FEBRUARY 1984 [1]

Mr President
Members of the Court,

A — Adam Buick, the applicant in this staff case, seeks to obtain an improvement of his classification in the starting grade. He started work for the Commission in January 1974 as a probationary official in Grade A 7, step 3, and was promoted to Grade A 6 in January 1978.

In a memorandum dated 27 April 1981 the applicant asked to be reclassified in Grade A 6, step 1, with retroactive effect, relying on the Commission's "Decision on the Criteria applicable to Grade and Step Classification upon recruitment" (hereinafter referred to as "grading criteria") dated June 1973 and distributed in March 1981 by the Directorate General for Personnel and Administration. He argued that he satisfied the requirement of at least eight years' practical experience laid down for such an appointment in the upper grade. In June 1965, four years after the completion of his advanced secondary studies, he had obtained his university degree. He had been in relevant employment since September 1965. He claims that he therefore had eight years of practical experience behind him when he started work for the Commission.

The Commission's Grading Committee replied in a memorandum dated 11 May 1981 that in the case of a short course of university studies of three years such as the applicant had taken, the first year of employment following the award of the degree is regarded as a *fourth year of study.* Thus only the period from June 1966 to 1 January 1974, amounting to seven and a half years, could be taken into account as practical experience. There were therefore no grounds for recommending a reclassification.

1 — Translated from the German.