in Category B whilst not preventing the laying down of conditions relating to both educational training and practical experience if the nature of the posts to be filled so requires.

3. It is permissible for the appointing authority to require, for entry to a competition organized for the purpose of filling a Category B post, not only completion of a course of secondary education but also possession of a certificate giving access to university. Such a requirement must however be apparent from the actual wording of the notice of competition since there are a great many different types of secondary education in the various Member States, some of which are not preparatory to education at university level and do not give automatic access to such education.

In Case 117/78,

WILLY ORLANDI, an official of the Commission of the European Communities, residing at 95 Rue de Mamer, Bertrange (Grand Duchy of Luxembourg), represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Biel, 18A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alain Van Solinge, a member of its Legal Department, assisted by Daniel Jacob, of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Selection Board for Competition No COM/B/155 refusing to admit the applicant to the written tests relating to that competition, notice of which was published in Official Journal No C 128 of 1 June 1977, p.10,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, M. Sørensen and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

The applicant entered the service of the Commission of the European Communities in 1974. He was established in 1975 in Category C, Grade 3.

On two occasions he applied to enter open competitions based on tests in order to constitute a reserve of administrative assistants in Category B, Grades 4 and 5. On the first occasion he selected the fields "Accounting, public finance" and "Simple calculations applicable in the domain of statistics" and on the second occasion he selected only the first of those fields.

When he applied to enter the first competition (No COM/B/139, notice of which was published in Official Journal No C 223 of 30 September 1975, p. 7) he was not admitted to the oral test, since he did not obtain the minimum marks required in the written tests. When he applied to enter the second competition (No COM/B/155, Official Journal No C 128 of 1 June 1977, p. 10), which forms the basis of the present action, he was not admitted to the written tests.

As special conditions for admission to the competition Notice of Competition No COM/B/155 laid down that candidates were required:

To have completed a course of secondary education and received a final certificate (they were informed that the selection board, in assessing the certificate, would take into account the differing educational systems in the Member States);

...

On the closing date for receipt of applications, to have at least one year's practical experience in the field chosen after obtaining their educational qualifications.

The selection board for Competition No COM/B/155 considered the applications from the 2 773 candidates who satisfied the general conditions laid down in Article 28 (a), (b) and (c) of the Staff Regulations of Officials. 1 287 of them were admitted to the written tests.

The applicant was informed by letter of 20 September 1977 that it was not possible to accept his application, since his qualifications and certificates had not been judged to be in accordance with the qualifications required. Following the submission of a complaint by the applicant the chairman of the selection board on 30 September 1977 upheld the decision which had been adopted.

The applicant possesses a Belgian Certificat d'Etudes Moyennes Commerciales [intermediate commercial studies certificate] and a "Diplome d'Aide-Comptable" [assistant accountant's certificate], both of which are issued by the Ecole de Commerce de Degré Moyen [commercial college] at Tournai, and a "Diplôme des Cours Techniques Secondaires Supérieurs, Section Comptabilité" [certificate of advanced secondary technical education, accounts] from the Institut d'Enseignement Technique de l'Etat [national institute for technical education] at Tournai.

On 14 December 1977 the applicant submitted to the Commission a complaint through official channels, which was however rejected by a letter of 20 March 1978.

The application lodged with the Court on 17 May 1978 seeks the annulment of the decision by which the selection board refused to allow the applicant to take part in the competition.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Conclusions of the parties

In his application the *applicant* claims that the Court should:

Declare that he was wrongly and unlawfully excluded from Competition No COM/B/155;

Declare that the appointing authority has been guilty of a misuse of powers;

Consequently:

Annul the rejection of the applicant's candidature for the competition in question;

Annul the express decision rejecting the complaint lodged by the applicant;

Declare that any appointment made as a result of that competition, which must be annulled in its entirety, is illegal and accordingly annul it;

Order the Commission to pay the costs.

In his reply he also claims that the Court should declare that the decision of the selection board is unlawful, in that it conflicts with:

Article 25 of the Staff Regulations and Article 5 of Annex III thereto;

The facts, inasmuch as the selection board wrongly interpreted the value of the applicant's certificate;

The principle of the progression of careers; and

The rule that the conditions governing admission to the competition must be communicated in an appropriate form to all those concerned;

Alternatively:

Apply Article 69 (3) of the Rules of Procedure of the Court as regards the costs.

The *Commission* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

A. Admissibility

The *Commission* has raised, first, a question of admissibility, whilst leaving the matter to the Court. It accepts that the application was lodged within the period laid down by the Staff Regulations following the reply to the complaint through official channels but recalls that in its judgment of 16 March 1978 in Case 7/77 *von Wüllerstorff und Urbair* v *Commission* ([1978] ECR 769), the Court held that an application directed against the decision of a selection board need not necessarily be preceded by a complaint through official channels within the meaning of Article 90 of the Staff Regulations. It therefore considers that the period for lodging the application must be calculated from the date of notification of the decision of the selection board.

The *applicant* recalls that the Commission replied to his complaint in due time and considers that he is obliged to observe the procedure laid down in Article 91 of the Staff Regulations so long as that provision has not been amended.

B. Substance

1 (a) The *applicant* maintains that in order to judge whether a certificate satisfies the conditions laid down in the notice of competition the selection board was required in accordance with the wording of the notice to take into account the educational systems in the Member States. The applicant therefore considers that the selection board ought to have accepted the certificate of secondary technical education, which is a qualification accepted by the Secrétariat Permanent au Recrutement Belge [Belgian permanent office for recruitment] for the purpose of examinations for posts in Level II, which, the applicant adds, correspond to the posts in Category B with the Communities.

(b) The *Commission* replies that even if the latter statement were correct the fact that the applicant's certificate constitutes a sufficient qualification in Belgium by no means obliges the selection board to adopt that criterion for the purposes of admission to the competition at issue but that having regard to the obligations imposed upon it by Article 27 of the Staff Regulations the Commission may reasonably fix more rigorous criteria. The Commission maintains that in accordance with the terms of the notice of competition the selection board was required to check that the level of the course taken corresponds to that required by the conditions for admission to the competition and to Article 5 (1) of the Staff Regulations. It considers that the statement that "Candidates must have completed a course of secondary education and received a final certificate" must be understood to mean a course covering the complete cycle of secondary education and giving access to university education. That interpretation is in accordance with the scheme of Article 5 (1) of the Staff Regulations. The Commission considers that the certificate of "advanced secondary technical education" amounts to evidence of attendance at "evening classes" or "courses organized for social purposes" which, in its opinion, do not constitute such a cycle.

2 (a) Secondly the *applicant* points out that his certificates were held to be adequate for the purposes of Competition No COM/B/139.

(b) The *Commission* observes in that connexion that although the selection board makes its appraisal on the basis of the file of each candidate the severity of that appraisal inevitably varies according to the quantity and quality of the applications, both of which are increasing year by year. As each competition constitutes a separate procedure a favourable appraisal made in 1975 cannot constitute a precedent for the selection board in 1977.

3 (a) The *applicant* also criticizes the selection board for failing to take account of his practical experience, which is not only contrary to the conditions laid down in the notice of competition but also to the third subparagraph of Article 5 (1) of the Staff Regulations and Article 1 (1) (d) of Annex III thereto.

(b) The *Commission* replies that the condition relating to practical experience was laid down as an addition rather than as an alternative to the requirement relating to educational training, which is perfectly justifiable under the Staff Regulations. In the Commission's opinion the first provision of those regulations referred to by the applicant does not seek to establish rigidly the conditions to be satisfied in order to enter Category B but rather to provide a general definition of the minimum level required of an official in that category. No provision of the Staff Regulations prohibits the Commission from adopting more rigorous criteria for admission to a given competition, provided that such criteria do not require a higher level of attainments than that acquired through secondary education or greater practical experience than corresponds to that level of education.

4 (a) The *applicant* maintains that the fact that the notice of competition did not indicate that only certificates giving access to university would be considered satisfactory is also unlawful. In that context he refers to the judgment of the Court of 22 March 1972 in Case 78/71, *Costacurta* v *Commission of the European Communities* ([1972] 1 ECR 163).

(b) On that point the *Commission* observes that in its judgment of 14 June 1972 in Case 44/71, *Marcato* v *Commission of the European Communities* ([1972] 1 ECR 427), the Court confirmed the lawful nature of the power left to the selection board, on the basis of a general formula, to assess in each case whether the certificate produced corresponds to the level required by the Staff Regulations and by the notice of competition.

5 (a) The *applicant* then claims that an insufficient statement of reasons was given for the decision of the selection board. In that connexion he refers to the aforementioned judgment of 14 June 1972.

(b) The *Commission* refers in that regard to the judgment of the Court in Case 7/77, *von Wüllerstorff*, from which it is clear that the selection board has given sufficient reasons for its decisions when it has indicated the conditions for admission which is not fulfilled by the candidate.

6 (a) The *applicant* observes, finally, that in the light of the fact that he has performed duties falling within Category B the selection board's decision conflicts with the principle of the progression of

service careers laid down by Article 5 (3) of the Staff Regulations.

(b) In its defence the *Commission* points out that the performance of duties attaching to a higher career bracket does not confer the right to be classified in that career bracket, since a change of career bracket is dependent upon successful participation in a competition.

IV — Oral procedure

W. Orlandi, represented by V. Biel, and the Commission, represented by D. Jacob, presented oral argument at the hearing on 25 January 1979.

The Advocate General delivered his opinion at the hearing on 15 March 1979.

Decision

1 The application, lodged on 17 May 1978, seeks the annulment of a decision adopted by the selection board for Competition No COM/B/155 and notified to the applicant on 26 September 1977, by which the selection board refused to admit him to the tests relating to the competition, as well as of the appointments made in consequence thereof.

2 The competition was organized by the Commission for the purpose of constituting a reserve of administrative assistants in Grades 5 and 4 of Category B.

3 The duties attaching to the posts to be filled were defined in relation to four different areas, one of which was "Accounting and public finance", from amongst which the candidates had to indicate their choice.

4 Under the special conditions for admission the notice of competition provided that the candidates had, first, to have completed a course of secondary education and received a final certificate and, secondly, to have at least one year's practical experience in the field chosen after obtaining their educational qualifications.

5 The applicant, who, in applying for the post, selected the field of accounting and public finance, was refused admission to the competition on the grounds that his qualifications or certificates had not been judged to be in accordance with the qualifications required.

Admissibility

6 The applicant lodged his application with the Court after submitting to the appointing authority on 14 December 1977 a complaint within the meaning

of Article 90 (2) of the Staff Regulations against the decision of the selection board.

7 The Commission informed the applicant by letter of 20 March 1978 that it was unable to deal favourably with his complaint since it was not empowered to annul or amend the decision of a selection board and there was no factor in the case which could justify a reconsideration by the selection of its decision.

8 Before the Court the Commission raised the question whether, for the purposes of Article 91 (3) of the Staff Regulations, the application is inadmissible on the grounds of late submission, since in circumstances such as those of the present case the period of three months laid down by that provision must be calculated from the date of notification of the decision of the selection board rather than from that of the Commission's reply to the complaint through official channels.

9 It is true that in this respect it is the established case-law of the Court that a reference to the appointing authority of a complaint through official channels against the decision of a selection board for a competition lies outside the scope of the provisions of the Staff Regulations in view of the fact that the appointing authority has no power to annul or amend the decisions of a selection board.

10 If, nevertheless, instead of bringing the matter directly before the Court the person concerned relies on the provisions of the Staff Regulations in order to refer the question to the appointing authority by means of a complaint through official channels the effect of such a step, whatever its legal significance, must not be that the period for bringing the matter to the attention of the Court expires whilst he is awaiting a reply.

11 In fact, such an error as to the inapplicability of Article 90 (2) to the present case is excusable having regard to the present wording of the provisions in question and, in the absence of any imperative reasons to the contrary, it cannot result in the applicant's being time-barred and therefore deprive him of his right to resort to legal proceedings.

12 The application is therefore admissible.

Substance

13 The applicant claims that the selection board's decision infringed the notice of competition and the third subparagraph of Article 5 (1) of the Staff Regulations, since it failed to take account of his practical experience.

14 The provision referred to provides that:

"Category B shall comprise five grades, divided into career brackets ordinarily containing two grades each for staff engaged in executive duties which require an advanced level of secondary education or equivalent professional experience".

15 That provision seeks to provide a general definition of the minimum level required for an official of the category in question whilst not preventing the laying down of conditions relating to both educational training and practical experience if the nature of the posts to be filled so requires, as was the case in the competition in question.

16 Since the notice of competition at issue laid down the condition relating to practical experience in addition to that relating to educational training the selection board was unable to take the former into account if it considered, as in the present case, that the latter was not fulfilled.

17 That submission must therefore be dismissed.

18 The applicant claims, in addition, that the selection board wrongly refused to acknowledge that the certificates which he possesses satisfy the condition laid down in the notice of competition relating to the completion of a course of secondary education.

19 The Commission does not deny that the course completed by the applicant in Belgium is at the level of secondary education but claims that the certificates do not meet the requirements of the notice of competition, since they do not give access to university education.

20 The notice of competition defines the condition relating to qualifications or certificates by using the term "course of secondary education" and by adding that "the selection board, in assessing the certificate, will take into account the differing educational systems in the Member States".

21 Although the Commission is entitled to draw up the conditions for entry to a competition in terms which are more rigorous than those used in this instance and, in particular, to require possession of a certificate giving access to university such a requirement must be apparent from the actual wording of the notice of competition since there are a great many different types of secondary education in the various Member States, some of which are not preparatory to education at university level and do not give automatic access to such education.

22 Thus, having regard to the wording of the notice of competition in question the selection board was not empowered to refuse the applicant admission on the ground that his certificates did not give access to university education.

23 That is *a fortiori* true in this instance since the applicant had been considered to fulfil the conditions of an earlier competition (No COM/B/139), which were formulated in identical terms to those used in the notice of competition in question.

24 Since the decision of the selection board must therefore be annulled there is no reason to consider the submission regarding the alleged insufficiency of the statement of reasons on which the decision was based.

25 As this was an open competition to constitute a reserve for future recruitement, the rights of the applicant will be sufficiently protected if the selection board reconsiders its decision, without its being necessary to question the whole of the results of the competition or to annul appointments made in consequence thereof.

Costs

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

27 As the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Annuls the decision notified to Willy Orlandi by letter of 20 September 1977 by which the Selection Board for Competition No COM/B/155 refused to admit him to the tests relating to that competition;**

2. **Orders the Commission to pay the costs.**

Mackenzie Stuart Sørensen Touffait

Delivered in open court in Luxembourg on 5 April 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 15 MARCH 1979 [1]

Mr President,
Members of the Court,

1. The present case concerns a Community official (Mr Orlandi) who applied in 1977 to take part in an open competition (COM/B/155) for the constitution of a reserve for future recruitment in Category B, but was not admitted to the written tests because the selection board considered that his qualifications did not meet the requirements stated in the competition notice.

1 — Translated from the Italian.