OPINION OF ADVOCATE GENERAL LENZ
delivered on 17 November 1987 *

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Mr President,
Members of the Court,

A — Facts

1. The subject of the legal proceedings on which I shall give my Opinion today is an internal competition (COM/A/8/84) held by the Commmission between the summer of 1984 and the summer of 1986. The competition was designed to provide a reserve list (initially valid until 31 December 1986) from which to fill posts in Grades A 7 and A 6; it was confined to applicants from Grades B 1, B 2 or B 3.

2. The notice of competition stated *inter alia* that the Selection Board would select the best of the applicants admitted, on the basis of their personal files and applications together with the results of a written paper, and that it would then admit them to a further training course. It had to be ensured that the number of applicants admitted did not exceed the number of posts expected to be available (estimated at 40) by a margin of more than 50%. It was further provided that interviews would then be held and that applicants obtaining at least 30 points out of 50 would be entered on the list of successful candidates.

3. Some 300 candidates (including the applicants in the cases now in point) put their names forward for the competition. Of these, 270 were admitted to the written test, and 252 actually took part in June 1985. On concluding the general assessment which followed (none of the elements mentioned being eliminatory in themselves) the Selection Board decided that 87 of the applicants could be admitted to the further training course to which the competition notice referred. (At this point it should be noted that at that time it was expected that there would be 48 posts to be filled and that the Selection Board considered that it had

to ignore the upper limit set by the competition notice, on the basis of Article 5 of Annex III to the Staff Regulations, according to which the list of suitable candidates must wherever possible contain at least twice as many names as the number of posts to be filled).

4. The applicants in Cases 64, 71 to 73, 78 and 149/86 (making up the *first group of cases)* were not admitted to the training course. They were informed of this decision by a letter from the Head of the Recruitment Division dated 12 December 1985. In response both to complaints submitted through official channels by some of the applicants (Cases 64, 78 and 149/86) and to simple requests for a more precise statement of reasons and in particular for disclosure of the criteria used in assessing the applications, certain explanations were given in a letter of 14 February 1986; actions in those cases were thereupon brought before the Court of Justice in March and June 1986.

5. All the applicants seek the annulment of the Selection Board's decision not to admit them to the training course. The applicant in Case 64/86 also requests the Court to annul the preselection stage of the internal competition and to order the defendant to admit him to the course commencing on 17 March 1986. The same is true of the application in Case 78/86, which also seeks the annulment of the whole internal competition. The applicants in Cases 71 to 73/86 claim that the Court should annul, as far as is necessary, the Selection Board's choice of candidates for admission to the training course, together with all measures and steps taken or to be taken as a result, including appointments made on the basis of the competition results.

6. The applicants in Case 228/86 belong to a *second group of cases.* They were admitted to the training course mentioned in the competition notice, which was held during March and April 1986 in Brussels and Luxembourg. 84 participants were subsequently interviewed. Since the applicants in Case 228/86 failed to obtain the minimum number of marks laid down by the competition notice, they were informed by a letter dated 17 June 1986 from the Head of the Recruitment Division that they had not been placed on the reserve list (which ultimately comprised only 38 applicants).

7. They therefore commenced legal proceedings in August 1986, requesting the Court to annul both the rejection of their applications and, to the extent necessary, the appointments made as a result of the competition.

B — Observations

8. The following observations on the present cases are, in my view, appropriate:

I — *The first group of cases* (Cases 64, 71 to 73, 78 and 149/86)

1. *Admissibility of the application in Case 149/86*

9. The Commission casts doubt on the admissibility of this application on the grounds that the applicant has no interest in pursuing the claims set out therein. In making this contention the Commission refers to the fact that proceedings to establish the applicant's invalidity have been held and that, after the Invalidity Committee reached a finding of total permanent invalidity in January 1987, he was awarded an invalidity pension under the third paragraph of Article 78 of the Staff Regulations, pursuant to a decision of 24 February 1987 which took effect on 1 March 1987.

10. It should, however, be noted that the applicant in Case 149/86 has also brought an action against the Commission's decision of October 1986 to refer the applicant's case to the Invalidity Committee, and also against the sequel to that decision, namely the decision of 24 February 1987 (Case 78/87). These proceedings are still at a stage at which the Commission has raised an objection of inadmissibility, on which the applicant has stated his views. No decision has been delivered yet, and as matters stand it therefore cannot be maintained that the decision removing the applicant from active service has become definitive. By the same token, however, it is not permissible to deny an interest on his part in bringing an action against the organization and conduct of Competition COM/A/8/84 with the aim of still benefiting himself from the results of the competition.

11. There are thus no grounds for declaring the application in Case 149/86 inadmissible. The most that might be envisaged is a suspension of those proceedings pending judgment in Case 78/87. Whether the Chamber wishes to adopt that course I leave to its discretion. In any event, I propose to examine the substantive issues raised in Case 149/86.

2. *Merits of the applications*

12. *As regards the arguments adduced by the various applicants in support of their claims,* I do not propose to discuss them in the order adopted by the applicants but shall turn first to the aspects I consider most important.

(a) The written test

(aa) 'General knowledge'

13. The main criticism made is that, in the written test, the indication contained in the competition notice to the effect that candidates' 'general knowledge' was to be tested was disregarded since the subjects set called for specialized knowledge in specific areas (Cases 71 to 73/86; in Cases 64 and 78/86 this criticism was first put forward in the statement of reply and was also mentioned in the oral procedure).

14. The Court has been told that the Selection Board prepared four subjects in each of three subject areas ('affaires institutionelles et affaires administratives', 'affaires économiques, budgétaires, financières', 'politiques communautaires et thèmes d'actualité de politique générale'). From each subject area two subjects were drawn at random. Each candidate had to choose a subject area and deal with one of the two subjects so selected (see the minutes of the meeting of the Selection Board on January 1985). To judge from the uncontested explanations given on page 6 of the applications in Cases 71 to 73/86 and on pages 15 *et seq.* of the statements of reply, the candidate was not informed of the exact nature of the subject or the corresponding case file until after he had made his choice on the basis of a general description of the subjects.

15. The Court further learnt (from the minutes of the Selection Board's meetings in June/July 1985) that the subjects set in the first subject area concerned elections to the European Parliament and 'direction participative par objectifs', the second subject area concerned problems of agriculture and the

Community budget, and the third subject area concerned problems of development aid and of the European Regional Development Fund (the exact, and fairly extensive, wording may be ascertained from the file laid before the Court by the Selection Board). After half an hour's study of the accompanying file, the subject papers had to be completed within two hours (see the minutes of the Selection Board for January 1985) and the papers were then marked out of 60.

16. Three of the applicants (those in Cases 71, 73 and 78/86) chose the subject 'Development Aid'; another two (in Cases 72 and 149/86) tackled the 'Regional Development Fund', whilst the applicant in Case 64/86 dealt with the subject of the elections to the European Parliament. In the marking, in which candidates' names were not disclosed, they scored between 10 and 27 points. Since the results of the tests carried greater weight in the overall assessment than the candidates' personal file and application documents (see the minutes of the Selection Board for June/July 1985) and since the applicants could not compensate for the mark received for their written papers by obtaining high scores for their qualifications (for which they would have needed to be classified in the first or second of five categories, namely 7, 18 −, 18, 18 + and 28), the Selection Board decided that they could not be admitted to the training course.

17. The notice of competition provides quite unequivocally for a written test 'designed to test general knowledge and judgment . . . '. Although one may agree that 'judgment' can also be ascertained by means of a very specific exercise, it can hardly be accepted that 'general knowledge' can be tested by means of the subjects offered, and especially not on the basis of the subject actually chosen; 'general knowledge' suggests, rather, a fundamental grasp of the constitution and aims of the Communities and the functioning of the Community institutions. In my opinion the applicants are right when they assert that proper treatment of the subjects selected presupposed very precise and specific knowledge in certain areas.

18. In this connection it is also impossible to accept the Commission's argument that the choosing of a general topic might have been open to criticism because candidates having a university education would thereby have been placed at an advantage, and that the candidates had, in any case, been able to choose from a set of subjects relating to the whole range of the Commission's activities. The second point is undoubtedly wrong, because the subjects in question clearly covered only a small sector of the activities of the Community institutions. It is similarly inconceivable that the selection of one or more *general* subjects could have given rise to special difficulties, and the Commission's contentions about the risk of thereby placing candidates with a university education at an advantage met with the justified retort that the competition for posts in Category A did, after all, generally presuppose university level knowledge on the part of all of the candidates.

19. Thus it can only be concluded that the details of the written test did not really correspond to the notice, whose clear wording unequivocally limited the margin of discretion which the Selection Board undoubtedly enjoyed. It follows that, since individual candidates may conceivably have acquired the requisite special knowledge in their previous activities, there was a breach of the principle that tests must be *entirely*

identical[1] laid down by the Court. This is consistent with the claim made by the applicants at the hearing — a claim which cannot be investigated here but which was not contested by the Commission — that the nine best candidates were those able to write a paper on their particular field of activities.

20. My initial conclusion is, therefore, that the applications for the annulment of the measures of 12 December 1985 are well founded, at least as regards Cases 71 to 73/86, in which the submission discussed above was expressly put forward. However, I also think it appropriate to go still further since the gravity of the procedural defect that has been exposed calls for consideration *ex officio*, and accordingly I would not disallow the objection raised in Cases 64 and 78/86 on the ground that it was not put forward until the reply stage (to be repeated later at the hearing). In those cases, too, the measures of 12 December 1985 should therefore be annulled for the reasons set out above.

21. On the other hand, there is in my opinion no cause for such an annulment in Case 149/86. At no time did the applicant in that case express criticism, of the kind discussed above, of the details of the written test. It may therefore be assumed that the applicant was not particularly affected by the procedure adopted (and this indeed is understandable in view of his university education, to which he draws attention).

(bb) 'Summary of a case study'

22. I cannot really agree with the applicants when, in criticizing the failure to adhere to the conditions laid down in the notice, they also argue that although they were required to produce a summary of a 'dossier' no real 'dossier' can be said to have been given to them.

23. Admittedly, for the subjects numbered 9 and 10 only a few pages were handed out (whereas the material for subject No 1 was fairly extensive). However, I would say that 'dossier' does not necessarily mean a large bundle of documents, and it is clearly not impossible — a crucial point in considering this aspect of the competition notice — to prepare a 'summary of a case study' on the basis of no more than a few pages (of statistics, regulations, etc).

24. On the other hand, no further consideration need be given to another question which presents itself in this context, namely whether, in view of the great disparity in size between the various 'dossiers' and the limited time for reading them (half an hour), there might be doubts about whether the candidates were treated equally. This fact was not especially criticized by the applicants, so that it may be assumed that they were not put at a disadvantage by their choice of subject.

(cc) Maximum number of candidates admissible

25. The further objection is raised that the upper limit laid down in paragraph III 1 for the admission of candidates to the training

1 — See the judgment of 14 July 1983 in Case 144/82 *Detti* v *Court of Justice* [1983] ECR 2421, at p. 2436.

stage was corrected too late by the Selection Board, with the result that it had no effect on the assessment of the test papers.

26. That argument is not wholly convincing. The Court received plausible assurances that the correction (carried out by a number of persons) of the written test papers was solely concerned to achieve the greatest possible objectivity in the marking and that candidates were selected for training only later, after a comprehensive appraisal which also took account of candidates' personal files.

(dd) Further arguments

27. There is really no further need to examine the other arguments regarding the test papers. However, in reply to the criticism expressed in Case 149/86 that the Selection Board attached greater weight to the written test papers than to the content of candidates' personal files, so that (contrary to what was envisaged in the competition notice) they were sufficient in themselves to exclude candidates from the training course, I merely wish to say that this claim appears quite unfounded.

28. Indeed, the table submitted to the Court, on the basis of which candidates were selected, shows that a relatively poor result in the written test (even producing a mark of less than 30 points) could be compensated by a higher mark for the personal files and application forms. As a result, five further candidates were admitted to the training course even though they had obtained only 20 points or less in the written test.

(b) Evaluation of the personal files and application forms

29. It is also asserted that manifest errors occurred in determining whether the applicants satisfied the conditions for admission to the next stage of the competition, in view of the content of their personal files and the duties performed by them. This assertion is made, with minor variations, by all the applicants.

30. It should also be mentioned that the applicant in Case 73/86, who claims to have performed for five years duties belonging to Category A, argues that there was discrimination in favour of officials having the same duties but classified in Category A, and that the applicant in Case 64/86, drawing attention to his *previous admission* to an 'A' competition, claims that the Selection Board gave no reasons for deciding against admitting him in this competition now in question.

31. The main point to be borne in mind here is that, according to the case-law of the Court,[2] a Selection Board enjoys a broad margin of discretion and its value judgments are not, as a matter of principle, open to judicial review. In Competition COM/A/8/84 there was a large number of factors requiring overall assessment (as is shown by the competition notice itself and in particular by the document prepared by the Selection Board, entitled 'Critère de cotation de titres'). However, the result was that in the assessment of the application forms the applicants were assigned to the intermediate category (18) out of five categories, only the applicant in Case 149/86 obtaining a lower mark (7 points).

2 — See the judgment in Case 144/82, quoted above.

32. The applicants, in relying not only on their personal files and application forms (certain elements of which, such as university diplomas, supposedly justified a higher mark) but also on their education, previous experience of high-level work and on the level of their present official (and indeed unofficial) duties, their admission to other competitions for 'A' posts and not least their periodical reports prepared under Article 43 of the Staff Regulations (further particulars of which may be found in the relevant documents) and maintaining that their assessment must necessarily be better than merely 'good', they forget that the Selection Board had to form an overall judgment in which certain positive factors could undoubtedly be offset or devalued by negative factors revealed by the personal files (and this possibility was indeed expressly envisaged in the document 'Critères de cotation de titres'). Since the Court has no reliable overall view of the matter, it is not legitimate to assume a manifest error in the evaluation of the application forms solely on the strength of the positive elements set forth (in their different ways) by the applicants.

(c) Objections to the notice of competition

33. Criticism is also made of the notice of the competition, in particular on the grounds that an overall assessment was called for that no provision was made for the marking of the written tests (Cases 64, 71 to 73, and 78/86).

34. Here I would not go so far as to agree with the Commission that, once the period allowed for challenging the notice has expired, it is no longer possible to make such a complaint. In this context I shall do no more than refer to my Opinion in Case 307/85,[3] in which I stressed that the assessment adopted in the judgment in Case 294/84[4] was inappropriate and in which I called on the Court to follow the dominant trend of its case-law, according to which previous acts may, as preparatory acts, also be challenged in an action against an appointment (and this view was indeed endorsed later by the Fourth Chamber when it declared that it was not inadmissible to raise the question whether the decision to hold the competition in question was properly taken).

35. Similarly, I was not particularly convinced by the Commission's view that the written exercise was not so much a test as a 'qualification' ('titre') within the meaning of Annex III to the Staff Regulations.

36. It must, however, be conceded that the competition notice was of a quite unusual nature (in so far as it called for an overall assessment of both qualifications and a written test), and in particular it must be conceded that the fact complained of (namely that the notice provides for no scale of the marks even for the written test) had no adverse effect on the conduct of the competition, precisely because failure to obtain a minimum number of marks in the written test did not automatically eliminate the candidate from the competition. In those circumstances, I do not consider the non-observance of the provisions of Annex III to the Staff Regulations an infringement of an essential procedural requirement and I would consider it inappropriate to declare the competition to be irregular on this ground.

3 — Opinion of 21 January 1987 in Case 307/85, *Gavanas* v *CES* [1987] ECR 2435 at 2444.

4 — Judgment of 11 March 1986 in Case 294/84 *Adams and Others* v *Commission* [1986] ECR 977.

(d) Composition and procedure of the Selection Board

(aa) The fact that the Chairman was not an official

37. A further argument adduced in Case 64/86 is that, since the *chairman of the Selection Board* was no longer a Community official, the composition of the Selection Board did not meet the requirements of Article 3 of Annex III to the Staff Regulations. That argument is unfounded, as the Commission has rightly explained. [5]

(bb) Interviewing of the candidate's superior

38. A further criticism made in Case 64/86 is that no use was made of the possibility of interviewing a candidate's superior (for the purpose of verifying the candidate's linguistic abilities or his qualifications, for example) provided for in the notice of competition.

39. It is important to note in this regard that the notice of competition envisaged the holding of such an interview only where necessary ('en cas de besoin'), that is to say that the Selection Board enjoyed a discretion in the matter. There is, however, no evidence to suggest that the discretion was improperly exercised when the board came to the conclusion that the documents already available to it were sufficient and that there was no need for an additional examination along the lines proposed (into linguistic abilities or national qualifications, for example).

5 — See the judgment of 16 October 1975 in Case 90/74 *Deboeck* v *Commission* [1975] ECR 1123.

(e) No statement of reasons

40. Lastly, the applicants raise the objection that no adequate statement of reasons was given for the Selection Board's decision not to admit them to the further stage of the competition and that even the subsequent letters of February 1986 contained no indications of the criteria adopted for marking the written tests and for assessing the various qualifications held by the applicants (Cases 64, 71 to 73 and 78/86).

41. In view of the Court's previous judgments on the subject, the immediate impression is that the applicants' criticism seems to be justified. I would refer only to the judgments in Cases 31/75, [6] 4/78, [7] and 89/79, [8] and in particular those in Cases 195/80, [9] 225/82 [10] and 108/84, [11] according to which a Selection Board is obliged to provide every eliminated candidate with an *individual* statement of reasons (which is clearly lacking in this case). However, given the further information which has come to light during the proceedings, a sufficiently clear picture has emerged on all the important aspects of the competition, in particular from the minutes of the meetings of the Selection Board and the annexes thereto laid before the Court. It is therefore clearly inappropriate to annul the contested measures on the additional grounds that no reasons are given for them; instead, the correct approach is to adopt that in Case

6 — Judgment of 4 December 1975 in Case 31/75, *Costacurta* v *Commission* [1975] ECR 1563.

7 — Judgment of 30 November 1978 in Joined Cases 4, 19 and 28/78, *Salerno and Others* v *Commission* [1978] ECR 2403.

8 — Judgment of 28 February 1980 in Case 89/79 *Bonu* v *Council* [1980] ECR 553.

9 — Judgment of 26 November 1981 in Case 195/80 *Michel* v *European Parliament* [1981] ECR 2861.

10 — Judgment of 9 June 1983 in Case 225/82 *Verzyck* v *Commission* [1983] ECR 1991.

11 — Judgment of 21 March 1985 in Case 108/84 *De Santis* v *Court of Auditors* [1985] ECR 947.

12/84 [12] (in which, again, the situation was not properly clarified until after the action had been commenced), and accordingly to declare devoid of purpose the applicants' complaint that no reasons were given.

(f) Conclusion

42. Therefore, as far as Cases 64, 71 to 73 and 78/86 are concerned (the application in Case 149/86 being considered below), I see no additional grounds for annulling the competition (with its far-reaching consequences involving a second competition).

43. Equally groundless are (a) the criticism in Case 78/86 that a candidate (one of the applicants in Case 228/86) was admitted to the final stage of the competition even though he did not have adequate knowledge of one of the Community languages, and (b) the further argument contained in the collective statement of reply in Cases 64, 71 to 73 and 78/86 that knowledge of a second language was not tested — as the notice had required — and that there was evidence of discrimination against candidates of Italian nationality.

44. Without there being need for further discussion, it has thus been established that the refusal to admit the applicants to the training course may only be criticized on the grounds that the written test was not conducted properly.

12 — Judgment of 27 March 1985 in Case 12/84 *Kypreos* v *Council* [1985] ECR 1005.

3. *The submissions in Case 149/86*

As indicated above, I now turn to consider the particular submissions put forward by the applicant in Case 149/86.

(a) Use of periodical reports

45. As the Court is aware, the applicant submitted on one occasion (in a somewhat unclear manner) that it was improper for his periodical reports, prepared pursuant to Article 43 of the Staff Regulations, to have been taken into account because they had for a number of years related to activities to which the applicant was not suited.

46. The use of the applicant's periodical reports is, however, not open to criticism. They belong to the personal file expressly mentioned in the notice of competition and are also necessary for evaluating the experience acquired by each candidate, to which the notice also refers.

(b) Incomplete file

47. The applicant further submits that the Selection Board did not have his complete file. Had it assessed correctly all the information belonging to the file (which, according to him, lacked information about his participation in previous competitions and also his complaint submitted through official channels against the description of his duties), the Selection Board would, he maintains, have awarded him a higher mark.

48. When the applicant expresses doubts (and they amount to no more than that)

regarding his participation in previous competitions, the Commission is entitled to reply by referring to the application form which he submitted and which contained all the necessary information. As for his claim that a complaint that the description of his duties was missing, I fail to see what important, let alone crucial, inferences could have been drawn from it for the purposes of the competition at issue here.

49. Nor may it be concluded from the fact that, in order to demonstrate the mediocrity of the reports, the Commission quoted passages from them in the written pleadings, that the Selection Board did not have the complete reports as the applicant suggests.

50. In view of all the evidence which has emerged it cannot be accepted in this case either that the assessment reached by the Selection Board was manifestly incorrect and that the applicant's personal file in fact deserved to be marked as 'good'.

(c) 'Subjective decision'

51. A further criticism made by the applicant is that a subjective decision was taken in his case.

52. In reply the Commission pointed out that the candidates' identities remained secret both during the marking of the written test and in the evaluation of the personal files (which only the chairman of the Selection Board consulted directly and which, even when read, would, in view of the large number of them, scarcely have made it possible to identify the particular candidate from the various particulars such as seniority and participation in previous competitions).

(d) No facilitation of further training

53. The applicant also asserts that the Commission disregarded Article 24 of the Staff Regulations because its conduct in the competition did not facilitate his further training.

54. In this context it should be sufficient to point out that the Selection Board had to reach a decision on further training within the limits of the competition in question and on the basis of an overall value judgment. There is no evidence to suggest that the applicant was adversely affected by any errors.

(e) Interviewing of the applicant's superior

55. Lastly, the applicant complains that the notice of competition wrongly provided for the interviewing of candidates' superiors.

56. No further examination of this issue is needed, since this possibility was not actually used during the competition.

4. *Miscellaneous claims*

57. The only outstanding question in the context of the first group of cases is whether there are grounds in Cases 64, 71 to 73 and 78/86 to declare the other heads of claim, mentioned initially,[13] to be well founded independently of the annulment of the decision primarily contested (namely the refusal to admit the applicants to the next stage of the competition).

13 — See paragraph 5 above.

(a) Admission to the training course

58. The claim for an order that the applicants (in Cases 64 and 78/86) be *admitted to the training course* should undoubtedly be rejected.

59. Not only is the Court of Justice precluded, as a matter of principle, from issuing specific instructions to the administration (and hence to a Selection Board) but in this case there is the further consideration that a fresh written test would have to be conducted, and marked, before it could be determined whether the applicants had qualified for further training. So long as those steps have not been taken there can be no grounds for making the order requested by the applicants.

(b) Annulment of appointments

60. As regards the claim for the annulment of the appointments made as a result of the competition, the Commission is right to object that the applicants critically failed to challenge directly the decisions making the appointments. It may be added that the applicants have no interest in having the appointments annulled. What matters for them is to pass a properly conducted competition and then to be appointed to 'A' posts themselves. However, provided that the applicants manage to clear all the hurdles, this should be possible, without the need to annul the appointments already made; only 38 of the 48 posts to be filled were assigned to successful candidates, and it may also be supposed that in the meantime further posts have become available in Grades A 7 and A 6, so that these could be awarded to the applicants if they are successful in the present proceedings.

(c) Annulment of the preselection of candidates

61. With regard to the applicants' request for the annulment of the preselection procedure (that is to say the decision regarding admission to the training course) and the annulment of all the measures taken following preselection or of the whole competition, it is surely misconceived to argue that a finding that the first stage of the competition is illegal necessarily implies that both that stage and the subsequent stages based on it must simply be declared invalid. The correct approach is to follow the judgment in Case 144/82 (which concerned the annulment of a decision refusing to include the applicant on a reserve list after her participation in a competition), that is to say to look for an equitable solution which does not call in question the outcome of the entire competition. Such a solution in the present case would mean that the measure complained of would be reviewed and the applicants would, in appropriate circumstances, have the opportunity of continuing to participate in the competition. On the other hand, the applicants' interests certainly do not warrant any measures more radical than that.

(d) Conclusion

62. It is thus established that the claims which seek more than the annulment of the letters of 12 December 1985 cannot be upheld.

II — *The second group of cases* (Case 228/60)

1. *Further explanation of the facts*

63. The point at issue here is whether the applicants, who had undergone the whole competition but were not entered on the list

of suitable candidates after the interview, were properly eliminated.

64. The first submission is that no adequate statement of *reasons* was provided (inasmuch as no precise statements were forthcoming on the 'niveau de qualification' and the 'aptitude à exercer des fonctions de Catégorie A' mentioned in the notice, nor were the relevant criteria disclosed).

65. The *nature of the interview* is also challenged. The questions to be answered were set at random and without reference to the candidates' experience; they were too specific and too demanding and the candidates were not prepared for them, (for instance, on the basis of the training course or the bibliography distributed at the time).

66. The statement of reply also raises the critical question whether the members of the Selection Board had a command of the languages used by the candidates, and there was speculation whether the members of the Selection Board, who are Assistants to Directors-General, took part in assessing candidates belonging to the Directorates-General in question.

67. The details of how the *interviews* were conducted have been explained to the Court in the course of the procedure.

68. Each candidate first had to deal with a question drawn at random from 76 general questions. Ten minutes were allowed for preparation. He then had to give a short talk about his training and his previous and present activities, and had to answer questions from the Selection Board relating to the 'insertion de son activité présente dans une des politiques communautaires'. In addition, he had to answer one of two questions on the other policies of the Community selected from a list of 75 questions by a member of the Selection Board (each member took his turn in selecting a question), and it was provided that the question should be unrelated to the candidate's current activities. [14]

69. Each member of the Selection Board marked the answers given (which were weighted according to the subject), from which an average was then calculated. The Court has also been told — and I mention this in connection with the critical questions raised in the statement of reply — that if a candidate expressed himself in a language other than French, simultaneous interpretation was available. The Court was also assured that arrangements were made to ensure that whenever it was the turn of candidates from Directorates-General whose Assistants were members of the Selection Board those Assistants did not take part in the marking or abstained from the interview altogether, in order to avoid a conflict of interests.

2. *Opinion*

70. If in the light of the foregoing and especially after a thorough examination of the list of questions one considers whether criticism of the conduct of the interviews is justified, one is bound to give an affirmative answer.

(a) 'Questions générales'

71. This is clear from the 'questions générales' themselves.

14 — See the minutes of the Selection Board's meetings of March/April 1986 and Annex IV thereto, and the answers given to the questions put by the Court.

72. On reading them one must admit that they cannot all be handled with the same degree of ease. Suffice it to mention — and here every person will no doubt choose a different contrasting pair — Question No 8 ('L'influence de la télévision') or No 36 ('Quels sont les progrès technologiques qui ont le plus transformé la société du vingtième siècle et pourquoi?') on the one hand and Question No 23 ('L'influence du port d'uniforme sur le comportement') or No 79 ('La gestion du temps') on the other. Since, however, the questions to be answered were chosen at random and without regard to personal preference it may indeed be said that the uniformity of conditions for the test were not assured.

(b) 'Insertion'

73. The point concerning 'l'insertion d'activité présente dans une des politiques communautaires' also raises doubts: the meaning of the question is not really apparent to candidates from, say, the Publications Office or the Directorate-General for Administration, who have nothing to do with Community policies. It is also conceivable that such candidates may have suffered an unacceptable disadvantage in comparison with those whose present duties bring them into closer contact with the policies of the Community.

(c) 'Questions communautaires'

74. There is no doubt, however, that the criticism regarding the marking of candidates on the 'questions communautaires' is well founded.

75. It must be conceded that, even for someone who has a broad grasp of the Community's activities (which cannot necessarily be expected of officials in Category B), some questions are more difficult than others, and the chances of dealing satisfactorily with the questions selected vary accordingly. It is enough to compare, for example, Question No 46 ('Qu'entend-t-on par la libre circulation des biens?') or No 75 ('Qu'est-ce que l'on entend par l'expression "respect de la voie hiérarchique? "') on the one hand, and, on the other, Question No 34 ('Pourquoi harmoniser les droits des sociétés au niveau de la Communauté?') or No 76 ('La politique commune de la pêche').

76. In addition and most importantly, the list of questions, some of which are very general and some very specialized, also contained a series of subjects which, unlike the others, had already been dealt with in the training courses (the programme for which has been laid before the Court), although the minutes of the Selection Board of April/May/June 1985 recorded that 'l'épreuve orale ne portera pas sur l'acquis de la formation'. I would cite as an example Question No 4 ('Le SME: son rôle et son mécanisme') or No 5 ('Rôle de la Commission en cas d'infraction d'un Etat membre au droit communautaire'), which were thoroughly prepared during the further education course, as compared with other topics (such as Question No 3: 'Importance de la politique régionale dans la Communauté' or No 25: 'La Communauté et la protection de l'environnement'), where there is little or no perceptible connection with the course.

77. Without going so far as to say that the legitimate expectations of certain candidates were frustrated when they were confronted with questions not dealt with in the further training course, it must none the less be inferred from the point just conceded that candidates must have been at an advantage if if the questions they had to deal with

were related to the further training course, with the result that the principle of equal treatment was disregarded, to the detriment of other candidates who had received no comparably intensive preparation for the topic allocated. That breach of principle could have been avoided by a policy of setting all the questions on subjects dealt with on the training course, a policy rightly considered obvious by the applicants.

78. With some justification the applicants also raised the question whether, in view of the wide range of subjects, all the members of the Selection Board were equally competent to assess all the answers correctly, or whether chance affected the total mark which was an average mark. I do not consider it sufficient merely to receive an assurance that the interview was primarily designed to establish the candidate's ability to understand problems, to argue logically and to express himself clearly and convincingly, with a view primarily to ascertaining his educational standard and intellectual curiosity about the activities of the Community. When highly specific questions are asked, it surely follows that the substantive content of the answer carries considerable weight.

(d) Conclusion

79. I believe that, on an objective view of the matter, the foregoing weighs so heavily that there is no alternative but to find that the interviews, the results of which determined whether a candidate was placed on the list of successful candidates, were not conducted properly and hence that the decision to exclude the applicants from the reserve list must, since it may have been affected by the shortcomings pointed out above, be annulled.

(e) Remainder of the applicants' arguments and claims

80. Accordingly, as regards the second group of cases, I need not examine the further arguments of the applicants.

81. In the light of the foregoing observations it is also clear that no more is needed than the annulment of the decisions of 17 June 1986 addressed to the applicants, from which the administration must draw the necessary inferences. There is thus no cause to annul all the appointments made from the reserve list drawn up by the Selection Board. The applicants have no interest in seeking such annulment, since they have not challenged them in particular and since in any case their interests (which lie in the proper conduct of an interview, with the chance of obtaining an 'A' post) can be served without cancelling other appointments.

C — Opinion

III — *Accordingly, I propose that judgment be given in the following terms:*

82. In Joined Cases 64, 71 to 73 and 78/86, the Selection Board's decision not to admit the applicants to the subsequent stage of the competition should be annulled. The applicants' remaining claims should be dismissed.

83. The contested decision of the Selection Board not to place the applicant in Case 228/86 on the list of suitable candidates should also be annulled and the other claims likewise dismissed.

84. In all those cases, the Commission should be ordered to pay the costs. However, that does not apply to the costs incurred in the making of unsuccessful applications for interim measures in Cases 64 and 78/86: those applications should be subject to the basic rule laid down in Article 70 of the Rules of Procedure.

85. Lastly, the application in Case 149/86 should be dismissed as unfounded, and consequently the decision on the costs in this case should also be governed by Article 70 of the Rules of Procedure.