JUDGMENT OF THE COURT (THIRD CHAMBER)
16 OCTOBER 1984 [1]

Calvin E. Williams
v Court of Auditors of the European Communities

(Public service — Competition — Claim for the annulment of the decision appointing the successful candidate — Admission to the competition)

Case 257/83

1. *Officials — Applications to the Court — Measure adversely affecting an official — Decision to appoint the successful candidate in a competition — Not a measure merely confirming the selection board's decision — Period for commencing proceedings — Point from which time runs*
   (Staff Regulations, Arts 90 (2) and 91 (3))

2. *Officials — Applications to the Court — Interest in bringing proceedings — Candidate in a competition — Application for annulment of another candidate's appointment — Admissibility*
   (Staff Regulations, Arts 90 and 91)

1. The decision appointing the candidate placed first on the list of suitable candidates concludes the competition procedure, produces legal consequences and cannot be regarded as a measure which merely confirms the selection board's decision establishing the list of suitable candidates. Therefore the period for lodging an application runs from the date of the decision to appoint the candidate.

2. A candidate admitted to a competition may bring an action contesting a decision appointing another candidate to the post to be filled.

In Case 257/83

CALVIN E. WILLIAMS, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at 18 A Rue des Glacis,

applicant,

1 — Language of the Case: French.

COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, assisted by Lucette Defalque, of the Brussels Bar, with an address for service in Luxembourg at its seat, 29 Rue Aldringen,

defendant,

APPLICATION for:

The annulment of the proceedings of Competition No CC/A/17/82, in so far as they resulted in the selection of Mr Schwiering as the successful candidate;

The annulment of the decision appointing Mr Schwiering;

The annulment of the decision rejecting the applicant's complaint;

An order that the Court of Auditors take the necessary measures to comply with the judgment of the Court of Justice;

An order that the Court of Auditors pay the applicant the sum of LFR 500 000 as compensation for the damage sustained by him, such sum not to be payable in the event of the applicant's appointment to the post in question; and

An order for costs,

THE COURT (Third Chamber)

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

Advocate General: M. Darmon
Registrar: J. A. Pompe, Deputy Registrar

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 and written procedure

1. On 1 October 1982, the Court of Auditors decided to organize an internal competition (Competition No CC/A/17/82) to fill a post for a principal administrator in Career Bracket A 5/A 4 responsible for carrying out advisory duties relating to internal administration and budgetary matters.

2. The *notice of competition* provides in paragraph III:

"In order to be admitted to the competition, candidates must

1. (a) Have received a university education attested by a recognized degree or diploma in one or more of the following subjects: law, political science, finance, economics, accountancy, business studies, administration;

or

(b) Have proven equivalent professional experience. Equivalent professional experience shall be defined as experience acquired in a full-time occupation normally requiring a university degree and of a duration at least equal to that necessary for the completion of the full period of studies required to obtain a recognized university-level diploma in one of the subjects referred to in paragraph (a);

2. Have professional experience of a minimum duration of six years at a responsible level in duties relevant to the nature of the post. Credit shall be given for professional experience gained after the award of a university degree. In the case of a candidate without a university degree, the six years' experience must be additional to the professional experience required to compensate for the absence of a degree . . .".

3. *Summary of the events following the publication of the notice of competition:*

On 16 November 1982, the day before the written tests in the contested competition and five others were due to take place, Mr Williams lodged with a Luxembourg notary a document containing a list of six candidates whom he considered certain to be selected as the successful candidates in the six competitions. It is common ground that Mr Williams' predictions all proved correct.

On 8 December 1982, the President of the Court of Auditors notified staff of the list of suitable candidates drawn up by the selection board. Mr Schwiering's

name appeared in first place, as the applicant, who was placed second, had predicted.

On 17 December 1982, the Court of Auditors decided to appoint the successful candidate, Mr Schwiering.

The decision was blocked, however, by the Financial Controller's refusal of approval dated 5 January 1983. The reason given for the refusal was that Mr Schwiering did not meet the requirements of the notice of competition, regarding diplomas and professional experience, for admission to the tests.

Nevertheless, the decision to appoint Mr Schwiering was confirmed by the Court of Auditors on 1 February 1983.

The Financial Controller again withheld his approval on 28 February 1983.

Finally, on 24 March 1983, the Court of Auditors decided to overrule the Financial Controller's refusal of approval and confirmed Mr Schwiering's appointment as a probationary official in Grade A 5.

On 5 May 1983, the applicant lodged a complaint pursuant to Article 90 (2) of the Staff Regulations asking for the annulment of Mr Schwiering's appointment on two grounds, namely that Mr Schwiering did not meet the requirements laid down by the notice of competition, and that the questions set by the selection board had given Mr Schwiering an unfair advantage. Mr Williams drew the conclusion that he was the first eligible candidate on the list of suitable candidates and that the post for which the competition was organized should have been assigned to him.

On 5 September 1983, the appointing authority dismissed that complaint on the ground that, as the appointing authority, it was not competent either to inquire into the merits of the selection board's decision to admit Mr Schwiering to the competition or to assess the results of a selection board's deliberations.

Mr Williams thereupon brought this action, which was filed at the Court Registry on 18 November 1983, against the Court of Auditors.

II — Written procedure and conclusions of the parties

A — The *applicant* claims that the Court should:

"1. Order the Court of Auditors to lay before the Court of Justice the selection board's report or reports and the record of the Court of Auditors' deliberations on the overruling of the Financial Controller's refusal of approval;

2. Declare the application admissible;

3. Declare it well founded, and consequently declare that Mr Schwiering was wrongly admitted to the competition;

Declare in addition that the unequal treatment of and discrimination between the candidates made the competition itself unlawful as regards Mr Schwiering;

4. In consequence, annul the proceedings of the competition as regards the selection of Mr Schwiering as the successful candidate; declare that his appointment must be annulled;

5. Annul the decision rejecting the applicant's complaint;

6. Refer the case to the appointing authority of the Court of Auditors to implement the judgment to be given on this application;

7. Order the defendant to pay the costs in their entirety;

8. Award the applicant *ex aequo et bono* compensation for non-material damage and the sum of LFR 500 000 for material damage, such sum not to be payable in the event of the applicant's appointment to the post in question."

B — The *Court of Auditors* contends that the Court should:

"1. Declare the application inadmissible and unfounded;

2. In the alternative, if the Court should declare it admissible, declare it unfounded;

3. Declare the part of the application relating to the award of damages unfounded;

4. Order the applicant to pay the costs."

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it requested the Court of Auditors to reply to a number of questions and to produce certain documents before the hearing (see below at IV).

III — Submissions and arguments of the parties

A — Admissibility of the application

1. The Court of Auditors objects that the application is inadmissible on two grounds

(a) The application is out of time

The Court of Auditors takes the view that it is clear from the very wording of the part of the application setting out its purpose that it is directed, not against a decision of the appointing authority, but in fact against the selection board's decision. Consequently, the period for lodging the application began to run from the date of publication of the list of suitable candidates, that is, from 8 December 1982; the application is therefore out of time.

(The application is out of time whether it is based on the second paragraph of Article 173 of the EEC Treaty, since the action was brought eleven months and ten days after that date and the time-limit of two months was clearly exceeded; or on Articles 90 and 91 of the Staff Regulations, since the applicant's prior complaint was submitted to the appointing authority nearly five months after the date of publication of the list of suitable candidates, that is, after the expiry of the period of three months prescribed by Article 90 (2).)

The Court of Auditors maintains that Mr Schwiering's appointment was merely the automatic consequence of the pub-

lication of the list of suitable candidates on 8 December 1982. As such, it was purely a confirmatory measure devoid of independent legal consequences and incapable of adversely affecting any official. That measure did not entitle the applicant "to renew without justification the time-limit for instituting proceedings."

(b) The applicant has no interest in bringing the proceedings

The Court of Auditors submits that if the purpose of the application is to have the proceedings of the competition annulled, the applicant has no interest in bringing the proceedings, since the only possible consequence of success in his application would be the annulment of the competition procedure in its entirety, in view of the fact that such a procedure forms an indivisible whole.

It also argues that in so far as the application contests the legality of the proceedings of the competition at issue, it can only bring about the annulment of the whole of the proceedings of the competition, which are indivisible. In consequence, the applicant has no interest in bringing the proceedings.

Further, it takes the view that if the purpose of the application is to have Mr Schwiering's appointment annulled, and having regard to the fact that the Court of Auditors has no jurisdiction either to make appointments, which fall within the sole competence of the appointing authority, or to give the latter instructions to that effect, the applicant has no interest in bringing the proceedings because in any event "he will not be appointed in Mr Schwiering's place".

The Court of Auditors adds that the purpose of the application "is not to ensure compliance with the law but to pursue a personal interest, namely to achieve promotion by means of a court action."

2. Mr Williams contends that on the contrary his application is wholly admissible

(a) It is not out of time, because the date from which the time for bringing this action begins to run is not 8 December 1982, the date on which the list of suitable candidates, which does not constitute a decision, was published, but 24 March 1983. Until that date, when Mr Schwiering's appointment was finally confirmed by the Court of Auditors, the applicant had suffered no adverse effect and could legitimately expect to be appointed to the post to be filled himself, and did not have the evidence required to prove that Mr Schwiering did not meet the conditions for admission to the disputed competition.

(b) The applicant also submits that his application calls essentially for the annulment of Mr Schwiering's appointment, and he refers to the case-law of the Court of Justice to the effect that the various acts which make up the recruitment procedure form a whole, and that in the case of an action contesting the final stages in such a procedure the applicant may rely upon the illegality of previous acts with which they have a close connection.

(c) Finally, his interest in bringing the proceedings is clear, for if the terms of the notice of competition had been observed he would have been the successful candidate in the competition.

B — The claims for annulment

Mr Williams presented three submissions in support of his claims.

1. As to the submission alleging failure to observe the terms of the notice of competition: Mr Schwiering did not meet the conditions for admission to the tests in the competition

(a) According to the *applicant:*

It is common ground that Mr Schwiering was unable to show that he held a university degree at the date of the tests in the competition but had merely been eligible to take the first State examination after attending university courses in the Federal Republic of Germany for five terms.

Consequently, by virtue of the aforementioned provisions of paragraph III (1) (b) and (2) of the notice of competition, he was required to establish that he had, on the one hand, equivalent professional experience (of a duration of at least four years, the same period as that necessary to obtain the first State examination), and, on the other hand, professional experience of a minimum duration of six years at a responsible level in an occupation relevant to the nature of the post. Thus 10 years' experience was required in all.

However, the sum total of the experience that Mr Schwiering could show he had came only to eight years and eleven months: three years and eleven months as a personal assistant to a Member of the Federal German Parliament (which the Financial Controller of the Court of Auditors refused in any event to accept as Category A service) and five years of employment at the Court of Auditors as the Chef de Cabinet of a Member of the Court of Auditors, who was in fact none other than the German MP with whom he had worked previously.

The interpretation adopted by the Court of Auditors to the effect that years of uncompleted studies may be treated as equivalent to years of appropriate professional experience is both novel and inconsistent and would encourage all kinds of favouritism.

(b) The *Court of Auditors,* in its principal submission, takes the view that it was not competent to assess the propriety of the selection board's deliberations. It therefore submits that point to the discretion of the Court. However, "as an additional information", it states that it endorses the selection board's decision as regards Mr Schwiering's submission to the competition, on the following grounds:

Initially, the Court of Auditors took the view that Mr Schwiering was eligible to take the "first State examination", having received a four-year university education, and was thus able to establish that he had high-level professional experience of more than 10 years by taking into account, in addition to the aforementioned eight years and eleven months of professional experience, which must be regarded as Category A service, the years spent in university studies, even though no degree was awarded for them. Thus, in its decision of 24 March 1983 overruling the Financial Controller's refusal of approval, the Court of Auditors relied on the reasoning that "in

the notice of competition (paragraph III (1), (b), line 5), the words 'for the completion of the full period of studies required to obtain a recognized ... diploma' must be interpreted as allowing a candidate's partially-completed university studies to be taken into account."

In its rejoinder, the Court of Auditors argues that although its practice is in fact to take into account only studies attested by a degree or diploma, in this instance, in view of the way in which legal studies are organized in the Federal Republic of Germany and "in the light of the Community principle of equal treatment", it was appropriate to give Mr Schwiering credit for "a university education equivalent to that attested by the award of an entrance certificate or a bachelor's degree in the other Member States of the EEC." Thus Mr Schwiering was in effect able to show that he had a degree and six years' professional experience.

2. The submission alleging that the organization of the tests in the competition disclosed a failure to observe the principle of equal treatment of candidates

(a) The *applicant* maintains that the questions set in the written tests were deliberately chosen so as to favour the successful candidate. Thus certain tests allowed Mr Schwiering to take advantage of his personal experience.

(b) The *Court of Auditors* relies chiefly on the argument that the appointing authority is not entitled to interfere in the administration of the tests in the competition, which falls within the sole competence of the selection board. However, it protests "strongly and indignantly" against the applicant's allegations, and maintains that the questions set were incapacle of giving any of the candidates an advantage or disadvantage.

3. The submission alleging misuse of powers

(a) The *applicant* submits that the disputed competition was no more than a "sham competition", and that the decision appointing Mr Schwiering and the decision rejecting the applicant's complaint are vitiated by misuse of powers; there had been a systematic attempt to deny him success in the competition and to ensure the appointment of Mr Schwiering instead of him. In support of that submission, the applicant adduces the following arguments:

that a candidate who did not meet the conditions laid down by the notice of competition was admitted to the competition;

that the questions set gave a clear advantage to a candidate "selected in advance";

that the competition was "prearranged", as is evidenced by the documents lodged with the notary and included in the Court file;

that the appointing authority maintained its decision in spite of the Financial Controller's two successive refusals of approvals;

that Mr Schwiering was a subject of favouritism and support in high places at the Court of Auditors;

that Mr Williams is *persona non grata* with the appointing authority, particularly after the judgment of the Court of Justice of 6 October 1982.

(b) The *Court of Auditors* contends that that submission is unfounded and states that it "takes strong exception to the applicant's insulting allegations."

C — The claims for damages

1. The *applicant* framed his request for damages solely in the alternative, in the event that he should not be appointed to the post in question as a result of the Court's judgment in the action. In his reply, he adds that he does not press that claim, which he submits to the discretion of the Court.

2. The *Court of Auditors* argues that the applicant cannot point to any real and present adverse effect actually suffered by him and that in any event if he were placed at the head of the list of suitable candidates that fact alone could not give him an automatic right to appointment.

IV — Answers to the questions put to the Court of Auditors by the Court of Justice

1. First question

On what grounds did the Court of Auditors consider that Mr Schwiering was eligible to take part in the competition tests:

Was it that in addition to the eight years and eleven months' professional experience proper, credit was given for a period of university study even though it was not attested by a diploma, so that Mr Schwiering was regarded as having more than 10 years' professional experience (the view stated in the decision of 24 March 1983)?

Was it that Mr Schwiering should be given credit for "a university education equivalent to that attested by the award of an entrance certificate or a bachelor's degree in the other Member States", so that Mr Schwiering was regarded as having both a degree and six years' professional experience?

Or was it on different grounds?

The Court of Auditors answered that question as shown below. For that purpose, in order to respect the independence and objectivity of the selection board, it had instructed the chairman of the board in question to submit in writing the reasons which led to its decision to admit Mr Schwiering to the competition.

The chairman of the selection board states at the outset that the board deliberately chose to adopt a broad interpretation of the provisions of the notice of competition, which would be favourable to the candidates. If it had not done so, none of the three candidates eventually included in the list of suitable candidates would have been admitted.

The selection board decided that Mr Schwiering did not meet the requirement of a university education because he was unable to produce a diploma attesting the successful completion of university studies.

On the other hand, the selection board decided that Mr Schwiering had professional experience equivalent to university studies of at least 48 months, in addition to six years' professional experience at a responsible level.

(i) The selection board took into account the fact that Mr Schwiering had attended courses in law at Bonn University until 1 January 1974, the date from which he was employed by Mr Leicht, for a period of 27 months; it treated those successfully completed studies (evidenced by three certificates) as a part of the professional experience required, on the ground that "if, instead of taking up a course of study, Mr Schwiering had immediately started work, there would have been no difficulty in his being given credit for equivalent experience in accordance with the Court of Auditors' practice in its assessment of all the staff recruited before that date." In the selection board's view, a higher education attested "by good intermediate results constitutes an activity which is at least as equivalent to graduate-level as the exercise of a profession in which high-level work is more difficult to establish."

(ii) The selection board took the view that Mr Schwiering's duties as a personal assistant to Mr Leicht, the chairman of the Federal German Parliamentary Budget Committee, from 1 January 1974 to 30 November 1977 (47 months), constituted high-level service. Out of those 47 months, the selection board accordingly decided to credit the 21 months which Mr Schwiering needed to make up the 48 months professional experience required instead of a university degree. The selection board thus came to the conclusion that those 48 months expired theoretically on 1 October 1975.

(iii) After that, the selection board had no difficulty in finding that Mr Schwiering's subsequent professional experience from 1 October 1975 to 15 October 1982 (that is, the balance of his experience as a personal assistant to Mr Leicht together with the professional experience properly so-called acquired in his employment with the Court of Auditors) was sufficient to meet the requirement of six years' professional experience at a responsible level in duties relevant to the nature of the post, contained in paragraph III (2) of the notice of competition.

However, to allow for the fact that the two other candidates could show that they held university degrees in due and proper form, the selection board decided to give them slightly higher marks for qualifications than Mr Schwiering.

2. Second question

Was it consistent practice for the Court of Auditors to take uncompleted studies into account either as professional experience or as equivalent to a university degree, or did it decide to do so for the first time in this case, and if so for what reasons?

The Court of Auditors' reply was as follows:

The Court of Auditors has long made it a rule to follow a fairly flexible policy as regards the assessment of professional experience in the light of the posts to be filled and candidates' qualifications.

The justification for that practice is twofold: it has been found that there are a number of divergences between the educational systems of different States, and the Court of Auditors has taken into account the fact that national educational systems always permit non-university training to be taken together with the appropriate employment experience to provide a graduate-level qualification which a university education would have provided more quickly.

Against that background, selection boards have found it necessary to take uncompleted studies into account as one factor in the assessment of some candidates' ability to carry out duties in a higher category than that to which their university education alone would have given them access, where those incomplete studies were complemented by professional experience giving further evidence of such candidates' endeavours to obtain qualifications. Even though that practice has been adopted most frequently in the recruitment of auditors, it would have been contrary to the principle of equal treatment not to have followed it when, as in this case, an administrative post was to be filled, particularly as auditors may take part in those competitions, for reasons of staff mobility.

By way of illustration, the Court of Auditors lists five cases in which incomplete studies were taken into account in order to establish the eligibility of candidates precisely where their professional experience was insufficient.

It concludes that this is a long-established practice of selection boards in competitions organized by the Court of Auditors.

3. As requested by the Court of Justice, the Court of Auditors has laid before it:

The file of the competition, complete;

The record of the Court of Auditors' deliberations on the basis of which it adopted its Decision No 2583 of 24 March 1983;

Decision No 81-5 of the Court of Auditors of 3 December 1981, to which the Financial Controller's two refusals of approval refer.

V — Oral procedure

At the sitting on 21 June 1984, Calvin E. Williams, represented by Victor Biel, of the Luxembourg Bar, and the Court of Auditors, represented by J.-A. Stoll, acting as Agent, and L. Defalque, *avocat*, presented oral argument.

The Advocate General delivered his opinion at the sitting on 27 September 1984.

Decision

1 By an application lodged at the Court Registry on 18 November 1983, Mr Calvin Williams brought an action against the Court of Auditors of the European Communities seeking primarily the annulment of Mr Schwiering's appointment pursuant to the proceedings of Competition No CC/A/17/82 and the annulment of the proceedings of the competition inasmuch as they led to the selection of Mr Schwiering as the successful candidate, and alter-

natively an award of compensation against the Court of Auditors for the damage suffered by him.

2 The competition at issue was an internal competition organized by the Court of Auditors in October 1982 to fill a post of principal administrator in Career Bracket A 5/A 4 whose task it would be to carry out advisory duties relating to internal administration and budgetary matters.

3 On 8 December 1982, the President of the Court of Auditors notified staff of the list of suitable candidates drawn up by the selection board, in which the names, in order of merit, were those of Mr Schwiering, Mr Williams and Mr Kilb. On 17 December 1982, the Court of Auditors decided to appoint the successful candidate, Mr Schwiering.

4 However, that decision was blocked by the Financial Controller's refusal of approval on 5 January 1983. The reason given for the refusal was that Mr Schwiering did not satisfy the requirements relating to diplomas and professional experience laid down for admission to the tests by the notice of competition.

5 Nevertheless, the decision to appoint Mr Schwiering was confirmed by the Court of Auditors on 1 February 1983. The Financial Controller again withheld his approval on 28 February 1983. On 24 March 1983, the Court of Auditors decided to overrule the Financial Controller's refusal of approval and confirmed the appointment of Mr Schwiering as a probationary official in Grade A 5, on the ground that Mr Schwiering fully satisfied the requirements of the notice of competition in respect of professional experience.

6 On 5 May 1983, the applicant lodged a complaint under Article 90 (2) of the Staff Regulations asking for the annulment of Mr Schwiering's appointment on two grounds, namely that Mr Schwiering did not meet the requirements laid down by the notice of competition, and that he had been given an unfair advantage by the questions set by the selection board. Mr Williams concluded that he was the best-placed eligible candidate on the list and that the post to be filled by means of the competition should have been awarded to him.

7 On 5 September 1983, the appointing authority dismissed his complaint on the ground that it was not competent either to inquire into the merits of the selection board's decision to admit Mr Schwiering to the competition or to assess the results of a selection board's deliberations.

8 Those are the facts which led Mr Williams to bring this action, in which he claims:

That the decision appointing Mr Schwiering and the decision rejecting his own complaint should be annulled;

That the proceedings of the competition should be annulled inasmuch as they led to the selection of Mr Schwiering as the successful candidate;

Finally, that the Court of Auditors should be ordered to pay him compensation of LFR 500 000, "such sum not to be payable in the event of the applicant's appointment to the post in question."

The claims for the annulment of the decision appointing Mr Schwiering and the decision rejecting the applicant's complaint

9 The Court of Auditors maintains in the first place that the application is out of time and therefore inadmissible. It argues in support of that submission that the application is in reality directed against the selection board's decision and that consequently the time for bringing the action began to run from the date of publication of the list of suitable candidates, that is, from 8 December 1982. It adds that Mr Schwiering's appointment was merely the automatic consequence of the publication of the list of suitable candidates on 8 December 1982, and that as such the decision constituted a purely confirmatory measure devoid of independent legal effect and incapable of adversely affecting an official.

10 That argument must be rejected. First, it is clear from the terms of the application that it seeks the annulment of the decision appointing Mr Schwiering. However, the earliest possible date for the decision finally appointing Mr Schwiering was 1 February 1983, so that, in view of the fact that the Court of Auditors neither established nor even alleged that Mr Williams had knowledge of that decision before 5 February 1983, his

complaint against the appointment was lodged within the period prescribed by Article 90 (2) of the Staff Regulations, just as this action was brought within the period laid down by Article 91 (3) of the Staff Regulations. Secondly, the decision appointing Mr Schwiering concluded the competition procedure, produced legal consequences and cannot be regarded as merely confirming the selection board's decision establishing the list of suitable candidates. In the circumstances, the heads of claim contesting the appointment of Mr Schwiering cannot be regarded as being out of time.

11 The Court of Auditors' second argument is that the application is inadmissible on the ground that the applicant has no interest in bringing the proceedings. That objection of inadmissibility must likewise be rejected. As the Court has repeatedly held, a candidate in a competition may bring an action contesting a decision appointing another candidate to the post to be filled (see the judgments in Case 11/65 *Morina* v *European Parliament* [1965] ECR 1017; Case 21/70 *Rittweger* v *Commission* [1971] ECR 7; Case 252/81 *Macevicius* v *European Parliament* [1983] ECR 867).

12 It follows that the claims examined above are admissible.

13 Mr Williams put forward three submissions in suport of his claims for the annulment of the decision appointing Mr Schwiering:

Failure to observe the terms of the notice of competition inasmuch as Mr Schwiering did not satisfy the conditions for admission to the tests in the competition;

Failure to observe the principle of equal treatment of candidates as shown by the manner in which the tests in the competition were organized;

Misuse of powers.

The first submission

14 The applicant maintains that Mr Schwiering did not meet the requirements laid down by the notice of competition relating to the possession of a university degree and proof of professional experience.

15 Paragraph III of the notice of competition provides:

"In order to be admitted to the competition, candidates must

1. (a) Have received a university education attested by a recognized degree or diploma in one or more of the following subjects: law, political science, finance, economics, accountancy, business studies, administration;

   or

   (b) Have proven equivalent professional experience. Equivalent professional experience shall be defined as experience acquired in a full-time occupation normally requiring a university degree and of a duration at least equal to that necessary for the completion of the full period of studies required to obtain a recognized univesity-level diploma in one of the subjects referred to in paragraph (a);

2. Have professional experience of a minimum duration of six years at a responsible level in duties relevant to the nature of the post. Credit shall be given for professional experience gained after the award of a university degree. In the case of a candidate without a university degree, the six years' experience must be additional to the professional experience required to compensate for the absence of a degree . . .".

16 It is established that at the date of the competition Mr Schwiering could only show that he had:

27 months' legal studies at Bonn University, from October 1971 to 1 January 1974, attested only by three certificates and not by the award of a university degree;

Three years and 11 months' professional experience in the Federal Republic of Germany as a personal assistant to the chairman of the Federal German Parliamentary Budget Committee, from 1 January 1974 to 30 November 1977;

Five years' service at the Court of Auditors as Chef de Cabinet to a Member of the Court, from 1 December 1977 to 17 November 1982.

17 The Court of Auditors stated finally that the grounds on which it based the contested measure were those adopted by the chairman of the selection board, as set out in the answers to the questions put by the Court of Justice.

18 Those grounds were that Mr Schwiering was able to establish that he had high-level professional experience of more than 10 years, by taking the eight years and eleven months' professional experience mentioned above together with the 27 months of university studies with no degree.

19 For that purpose the selection board treated the successfully completed stages of Mr Schwiering's law course as part of the professional experience required, on the grounds, first, that "if, instead of taking up a course of study, Mr Schwiering had immediately started work, there would have been no difficulty in his being given credit for equivalent experience in accordance with the Court of Auditors' practice in its assessment of all the staff recruited before that date", and, secondly, that "a higher education attested by good intermediate results constitutes an activity which is at least as equivalent to graduate-level as the exercise of a profession in which high-level work is more difficult to establish."

20 That argument cannot be accepted. Paragraph III (1) of the notice of competition draws a clear distinction between a university education attested by a recognized degree or diploma, on the one hand, and equivalent professional experience on the other. That being the case, it cannot be said that a period of university study not attested by a recognized diploma may be credited as a period of equivalent professional experience. Furthermore, such an interpretation would be directly contrary to the requirement laid down in paragraph III (1) (b) of the notice of competition, which permits only an "occupation normally requiring a university degree" to be treated as equivalent professional experience, which is not the case in this instance.

21 It follows that at the date of the contested competition, although Mr Schwiering could establish that he had professional experience of eight years and eleven months and therefore satisfied the requirements of

paragraph III (2), he could not claim either to hold a recognized university degree or diploma or to have equivalent professional experience, one of which was required by paragraph III (1).

22 In those circumstances, and in view of the fact that it is clear from the terms of the notice of competition itself that candidates without a university degree were required to have 10 years' professional experience at least, Mr Schwiering was wrongly admitted to the tests in the competition.

23 Consequently, without there being any need to examine the other submissions put forward in support of the applicant's claims for annulment, the decision appointing Mr Schwiering and the decision rejecting the applicant's complaint must be annulled.

The claim for the annulment of the proceedings of the competition in so far as they resulted in the selection of Mr Schwiering as the successful candidate

24 It follows from the aforegoing that the decision appointing Mr Schwiering must, as a consequence of its annulment, be treated as if it had never been taken and that the Court of Auditors may not re-appoint him on the basis of the results of the contested competition.

25 The applicant has thus obtained full satisfaction. Accordingly, the above-mentioned claims are no longer necessary and require no decision on their merits, nor is it necessary for the Court to rule on the objection by the Court of Auditors that those claims are inadmissible.

The claim for compensation

26 The applicant's claim for damages was submitted solely in the alternative, in the event that he should not be appointed to the post in question as a consequence of the Court's judgment. In his reply he states that "he does not press the claim for damages, which he submits to the discretion of the Court".

27 The Court of Auditors takes the view that the applicant cannot point to any real and present adverse effect actually suffered by him, and that in any event he could not gain an automatic right to appointment merely by being placed at the head of the list of suitable candidates.

28 It must be noted that the applicant's claim, even had he persisted in maintaining it, is conditional and dependent on the action to be taken by the Court of Auditors after this judgment has been given. Since the allegation of damage relates to a mere possibility, this head of claim must in any event be rejected.

Costs

29 Under Article 69 (2) of the Rules Procedure the unsuccessful party is required to pay the costs. Since the defendant has failed in its principal submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls the decisions of the Court of Auditors of 24 March 1983, appointing Mr Schwiering pursuant to the proceedings of Competition No CC/A/17/82, and of 5 September 1983, rejecting Mr Williams' complaint;**

2. **Declares that it is unnecessary to give a decision upon the applicant's claim for the partial annulment of the proceedings of the competition;**

3. Dismisses the remainder of the application;

4. Orders the defendant to pay the costs.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 16 October 1984.

For the Registrar

H. A. Rühl

Principal Administrator

C. Kakouris

President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL DARMON DELIVERED ON 27 SEPTEMBER 1984 [1]

Mr President,
Members of the Court,

1. I refer the Court to the Report for the Hearing for a summary of the facts and the written procedure, and propose only to repeat those points that appear to be decisive for the determination of this case.

On 1 October 1982, the Court of Auditors decided to organize an internal competition with a view to filling a post for a principal administrator in Career Bracket A 5/A 4 whose task would be to carry out, under the authority of an immediate superior, advisory duties relating to internal administration and budgetary matters.

In order to take part in the competition, candidates were required to meet two conditions in particular.

For the first there were two alternatives. They were required:

to hold a diploma attesting four years of university studies in one or more specified disciplines; or

to establish that they had equivalent professional experience, which was defined as including any experience gained: in a full-time occupation, normally requiring a university diploma, "of a duration at least equal to that

1 — Translated from the French.