and classification in step on recruitment are concerned, constitutes an internal directive, even though the decision at issue may not be regarded as a general implementing provision within the meaning of Article 110 of the Staff Regulations. As such it must be regarded as a rule of conduct, indicating the practice to be followed, which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equality of treatment would be infringed.

Such an internal directive may not, in any circumstances, legally establish rules which derogate from the Staff Regulations.

3. The appointing authority may not give an official credit for previous experience by granting him, on recruitment, additional seniority in the grade in which he is appointed except in cases where such experience may be recognized to be of an appropriate level and of a nature specifically relevant to the post in question. In view of the great diversity of experience offered by candidates for employment with the European institutions, the competent authority must be allowed a discretionary power covering all aspects of potential importance for the recognition of previous experience, both as regards the nature and duration of such experience and as regards the extent to which it matches the requirements of the post to be filled.

In Case 190/82

ADAM P. H. BLOMEFIELD, an official of the Commission of the European Communities, residing at Incourt (Belgium), represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

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

defendant,

APPLICATION for annulment of the Commission's decision refusing to classify the applicant in a higher step within his grade,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: S. Rozès
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 — Summary of the facts

Mr Adam P. H. Blomefield, a British national, was entered on the list of suitable candidates drawn up following tests in Competition No COM/LA/141 for the creation of a reserve for the recruitment of assistant translators, and was notified by a letter of 22 April 1977 that the Commission had decided to employ him as a probationary official in Grade L/A 8, Step 2.

Following representations from Mr Blomefield pointing out his experience in the field of translation, the Commission, by a decision of 23 August 1977, appointed him to Grade L/A 7, Step 1, with effect from his taking up the post on 1 August 1977.

Mr Blomefield was established in that grade and step as from 1 May 1978, by a decision of 26 April 1978.

In March 1981 Mr Blomefield learnt of a decision of the Commission of 6 June 1973, entitled "Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment". On examining that document, Mr Blomefield came to the conclusion that, on taking up the post, he should have been awarded an

additional seniority of two steps by reason of his professional experience, and should therefore have been classified in Step 3 of Grade L/A 7.

By a memorandum dated 6 June 1981, registered on 11 June, Mr Blomefield requested the Commission, pursuant to Article 90 (1) of the Staff Regulations, to place him in Step 3 of Grade L/A 7 with retroactive effect from his commencement of duty on 1 August 1977.

By a letter of 7 January 1982, the Commission, after reconsideration of the question of his original classification by the Grading Committee, rejected Mr Blomefield's request.

On 8 January 1982 Mr Blomefield submitted a complaint under Article 90 (2) of the Staff Regulations, against the rejection of his request of 6 June 1981.

No express reply to that complaint was forthcoming from the Commission.

II — Written procedure

Mr Blomefield, on 28 July 1982, brought the present proceedings against the implied rejection of his complaint which was deemed to arise from the Commission's silence.

The written procedure followed its normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry.

The parties were requested to give special attention at the sitting to three questions which were notified to them on 27 April 1983.

III — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare the application admissible and well founded;

2. Consequently:

   (a) Annul the decision notified on 7 January 1982 rejecting his request made on 11 June 1981 and the implied decision rejecting his complaint made on 8 January 1982;

   (b) Annul the decision classifying him, at the time of his appointment as an official, in Step 1 of Grade L/A 7 and declare that he should be classified in Step 3 of Grade L/A 7, or, in the alternative, order the defendant to grant him, as from a date to be fixed by the judgment, additional seniority of two steps; and

3. Order the defendant to pay the costs.

The *Commission* contends that the Court should:

1. Dismiss the action as unfounded; and

2. Order the applicant to pay the costs.

IV — Submissions and arguments of the parties during the written procedure

A — Admissibility of the action

The *Commission* points out that the applicant had successfully challenged his classification even before taking up the post; on that occasion he had shown that

he had a sound knowledge of the criteria governing grading. The applicant had therefore accepted his new classification in the full knowledge of the circumstances.

That being so, the admissibility of the action, commenced five years after the applicant's recruitment and following a request which itself was submitted nearly three years after his recruitment, is clearly dubious at the very least.

The *applicant* argues that at the time of his recruitment he had been unaware of the Commission's decision of 6 June 1973, on the criteria applicable to grade and step classification, of which he was not informed until its publication by the Commission in March 1981. A new event was in evidence, capable of re-starting the period for bringing an action; that decision, which contained provisions on the award of additional seniority, conferred rights on staff already recruited.

The Commission's doubts on the admissibility of the action are unfounded.

B — Substance

In support of his action, the *applicant* pleads breach of: (i) the Staff Regulations, especially Article 5 (3) and the second paragraph of Article 32 thereof; (ii) the Commission's decision of 6 June 1973, especially Article 5 (1) thereof; and (iii) general rules and principles of law, especially the principles of equality, objectivity and distributive justice.

At the time of his appointment he should not have been classified in the first step of Grade L/A 7 but should have been awarded, on the strength of those provisions and principles, and in view of his professional experience, an additional seniority of two steps.

(a) The first paragraph of Article 5 (1) of the Commission's decision of 6 June 1973 provides as follows:

"In consideration of a candidate's professional experience which exceeds the length of that taken into account for determining his grade of appointment, the appointing authority shall, in accordance with the annexed table, allow additional seniority."

It appears from the table that professional experience of at least five years confers an entitlement, in Grade L/A 7, to 48 months' additional seniority, the equivalent of two steps.

Furthermore, Annex II to the Decision of 6 June 1973 stipulates, under the heading "Career bracket L/A 7/6":

"(c) 100% credit is given for relevant experience at a level equivalent to Category A work (as translator, economist, lawyer, etc.)."

For determining the step, it is only experience in excess of that used for determining the grade which may be taken into account; moreover, the experience in question must be specific and relevant, and hence connected with the post to be filled.

(b) At the time of his recruitment, the applicant had furnished proof of nine years' experience as a lawyer and a

translator since the award of his law degree at Oxford University.

(c) The applicant had been recruited to a post which essentially involved translating legal texts in the field of agriculture; his department had therefore had the benefit not only of his experience as a lawyer and translator but also of his experience in the wine-growing sector, as is testified by his staff report for the period from 1 July 1979 to 30 June 1981. The applicant can therefore undeniably point to specific experience.

(d) The fact that the Notice of Open Competition No COM/LA/141 stated that Step 3 of Grade L/A 7 could be awarded only in exceptional cases was not capable of adversely affecting the rights arising under the decision of 6 June 1973, which was of general scope.

Furthermore, some successful candidates from that competition had indeed been classified in Step 3 of Grade L/A 7, apparently because they had the same length of experience as the applicant but had acquired it as translators in the full sense of the word. On that point, it should be borne in mind that, for the purposes of a translator's training, an occupation less centred on translation itself may be compensated to a large extent by practical experience in areas in relation to which he will be required to carry out translations.

(e) One year of specific experience is taken into account for grading in L/A 7; the applicant can provide ample evidence, for the purposes of classification in step, of at least five years' experience, which, by virtue of the first subparagraph of Article 5 (1) of the decision of 6 June 1973, entitles him to two additional steps.

The *Commission* points out that under the second paragraph of Article 32 of the Staff Regulations

"... the appointing authority may, taking account of the training and special experience for the post of the person concerned, allow additional seniority in his grade; this shall not exceed 72 months in Grades A 1 to A 4, L/A 3 and L/A 4 and 48 months in other grades."

(a) Both the above provision and Article 5 (1), and also the "General Survey" in Annex II to the decision of 6 June 1973, show that, in determining the step, consideration may be given only to specific experience which is relevant to the post and goes beyond the experience taken into account when determining the grade.

It might be useful in this connection to recall that the wording of Notice of Open Competition No COM/LA/141 stated that the award of higher steps was dependent on the training and special experience of the candidate, and that Step 3 of Grade L/A 7 could be granted only in exceptional cases.

(b) The applicant's experience could therefore not be taken into consideration except in so far as it was specially related to the post to be filled — in this instance the post of translator.

Although experience as a lawyer is a valuable asset not only for the institution but also for the applicant's future career, it could not be taken into account for the purpose of determining the step, because

the vacancy notice for the post to which the applicant was recruited stated that the tasks to be performed consisted in the translation of texts of every kind for the departments of the Commission.

A precise decision as to an official's tasks is made subsequently to his recruitment; the applicant may not therefore claim to have been recruited with a view to translating (specifically) legal texts in the field of agriculture.

(c) Between 1968 and 1977 the applicant carried out certain translations, on a part-time basis, from July 1972; the translations were ancillary to his duties as a legal adviser and were not equivalent to a year's specific professional experience, which would have enabled him to be recruited to Grade L/A 7.

Since the the applicant was not recruited to do translation work in any particular field on a permanent basis, the experience which he acquired as a lawyer cannot be regarded as specific for the purposes of classification in step.

(d) The applicant cannot therefore furnish evidence of at least five year's specific experience, and his claim to additional seniority of two steps is not well-founded.

V — Oral procedure

At the sitting on 7 July 1983 oral argument was presented by E. Lebrun, for the applicant, and by D. Jacob, for the Commission; they mainly confined their submissions to the three questions which had been submitted to them by the Court.

(a) Counsel for the *applicant* argued that an official may, *ex post facto*, challenge the conditions of employment which he accepted at the time of recruitment, as soon as a new event occurs; such was the case when he had been unaware, at the time of recruitment, of binding provisions — in this instance the Commission's decision of 6 June 1973 — governing those conditions of employment. Revision, he claimed, may be sought retrospectively if the new event precedes, as in this case, the fixing of the conditions of employment.

Counsel for the *Commission* recalled that the legal relationship between an official and his employer is statutory by nature, not contractual; once recruited, the official is subject to all the provisions of the Staff Regulations and the implementing decisions adopted by the institution. The consent of the official is required neither to his classification nor in respect of the other conditions of employment. The official has the possibility, under Article 25 of the Staff Regulations, of submitting a request concerning the decision on his classification and, should that request be rejected, may lodge a complaint; if he does not obtain satisfaction he must, within three months of the rejection of his complaint, bring an action before the Court, failing which it will be debarred. It is not possible for him subsequently to submit a second request to the same effect and then a second complaint after expiry of the original period permitted for bringing legal proceedings. A decision which is identical in substance to a previous

decision is purely confirmatory and cannot be the subject of litigation, even if it was given following a re-examination of the case.

On this point, the *applicant* denied that he had made any earlier request or complaint, following recruitment, regarding his classification in step.

(b) Counsel for the *applicant* submitted that the first paragraph of Article 5 (1) of the Commission's decision of 6 June 1973 creates an obligation on the part of the appointing authority. The second paragraph of Article 32 of the Staff Regulations confers on the authority a discretionary power to grant additional seniority; however, by virtue of its decision of 6 June 1973, the Commission had itself curtailed its power in this respect and made it into a fettered discretion.

Counsel for the *Commission* conceded that the appointing authority limited its discretionary power by adopting the decision of 6 June 1973; nevertheless, it had reserved to itself the right to determine what professional experience justified the granting of additional seniority.

(c) *Both parties* observed that Career Bracket L/A 8-L/A 7 was abolished by Council Regulation No 912/78 of 2 May 1978 amending the Staff Regulations of Officials (Official Journal 1978, L 119, p. 1).

The Advocate General delivered her opinion at the sitting on 20 October 1983.

Decision

1 By an application lodged at the Court Registry on 28 July 1983, Mr Adam P. H. Blomefield, an official of the Commission in Grade L/A 7, brought an action seeking the annulment of the Commission's decision of 7 January 1982 refusing to review the decision to classify him in Step 1 of Grade L/A 7 as from his appointment on 1 August 1977.

2 After passing Competition No COM/LA/141 (Official Journal 1976, C 127, p. 6), the applicant was appointed in 1977 to an assistant translator's post which had been advertised in Vacancy Notice No 54/77. In that notice the nature of the duties involved was defined as the translation of all types of text for the departments of the Commission; the qualifications required by the notice included some experienee of translation.

3 Originally, as a letter of 22 April 1977 shows, the Commission had envisaged classifying the applicant in Grade L/A 8, Step 2. In a letter of 6 May 1977 Mr Blomefield argued that in view of his age — at that time 31 years — and his previous experience in the service of a private company, which had entailed contact with Community matters and translation work connected with Community legislation, he should be classified in Grade L/A 7.

4 The Commission acceded to that request, and the applicant was appointed a probationary official in Grade L/A 7, Step 1, with effect from 1 August 1977. He was subsequently established in the same grade and step by a decision of 26 April 1978.

5 In March 1981 the Director-General for Personnel and Administration distributed to all members of staff a circular containing the text of a "Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment", originally adopted on 6 June 1973. Appended to that decision were two further texts forming Annexes II and III to the circular and dealing with the practical application of the decision and with the membership of the "Grading Committee" set up under Article 6 thereof.

6 After receiving the circular, the applicant submitted to the Commission, in a memorandum of 6 June 1981, a request under Article 90 (1) of the Staff Regulations, seeking classification in Step 3 of Grade L/A 7 as from his commencement of employment. He explained that he was unaware of the decision of 6 June 1973 at the time of recruitment and pointed out that on taking up the post he could show evidence of almost seven years' experience in the service of a private company in the United Kingdom. He argued that in view of that experience additional seniority of 48 months should have been granted to him pursuant to Article 5 of the decision and Annex II to the circular.

7 By a letter of 7 January 1982 the Commissioner responsible for personnel matters replied to the applicant's request in the following terms:

"I am called upon in my capacity as appointing authority to reply to your request for reclassification . . .

The Classification Committee has reexamined your case in the light of the criteria incorporated in the decision of 6 June 1973 and in the light of the jurisprudence concerning the application of the criteria at the time when the successful candidates of Competition COM/LA/141 were recruited.

At their meeting of 1 November 1981 the Classification Committee reaffirmed that the grade L/A 7 step 1 was in conformity with the criteria applicable at the time of your recruitment and with the grades and seniority granted to other *lauréats* of the same competition, and therefore concluded that there were no grounds for your initial grading to be revised.

I regret to inform you that I concur with the Committee's conclusion and must therefore turn down your request for reclassification."

8 In response to that decision the applicant submitted a complaint under Article 90 (2) of the Staff Regulations, which was registered on 8 January 1982. The complaint received no answer within the period laid down by the Staff Regulations and, on 28 July 1982, the applicant brought an action based on the second paragraph of Article 32 of the Staff Regulations and on Article 5 (1) of the decision of 6 June 1973 in conjunction with paragraph 3 (c) of Annex II to the circular of March 1981.

Admissibility

9 The Commission queries the admissibility of the action. It recalls that the applicant had, at the time of his recruitment, challenged his classification by producing specific arguments, thereby demonstrating a sound understanding of the criteria governing classification; that challenge had indeed been successful, since he was finally recruited in Grade L/A 7, Step 1, instead of Grade L/A 8, Step 2, as originally anticipated. In those circumstances the Commission takes the view that the action, having been brought five years after the applicant's recruitment and relating as it does to a question which was discussed and settled as long ago as 1977, must be regarded as out of time.

10 In principle, that observation by the Commission is justified. An official cannot be permitted to challenge the conditions of his initial recruitment once that recruitment has become definitive. *A fortiori,* he may not raise retrospective claims relating to his classification and, consequently, to his past and future remuneration.

11 However, in this particular case such considerations do not necessarily render the action inadmissible. It is clear from the background to the case that the Commission's issuance in 1981 of its decision of 6 June 1973 amounted to a new event of such a nature as to afford grounds for *bona fide* requests from officials to have their careers reviewed. It is, furthermore, worthy of note that when the Commission received a request from the applicant under Article 90 (1) of the Staff Regulations it treated it as admissible and adopted an express decision in the matter.

12 For those reasons, it is appropriate to hold the action admissible and to consider the substance of the claim.

Substance

13 The applicant points out that, under Article 5 (1) of the decision of 6 June 1973, additional seniority is accorded to a candidate having professional experience which exceeds that taken into account for determining his grade on appointment, and that, according to the table annexed to that decision, experience amounting to five years or more confers an entitlement to the maximum award of additional seniority which is permitted pursuant to the second paragraph of Article 32 of the Staff Regulations, namely 48 months. He explains that, at the time of recruitment, he had almost seven years' experience which was "relevant" within the meaning of paragraph 3 (c) of Annex II to the circular of March 1981; on recruitment he should therefore have been placed directly in Step 3 of Grade L/A 7.

14 The Commission opposes that approach, arguing that the provisions relied on by the applicant in no way suggest that all professional experience at a level equivalent to Category A work may be taken into account for the

purpose of determining step. It points out that, according to the second paragraph of Article 32 of the Staff Regulations, the experience in question must be specific and that, under paragraph 3 (c) of Annex II to the circular, consideration may be given only to "relevant experience".

15 The Commission acknowledges that the applicant was able to demonstrate a certain amount of experience at the time of recruitment, but denies that such experience may be regarded as specific and relevant to the post within the meaning of Article 32 of the Staff Regulations, since it was a question of recruiting a translator whose function would, according to the vacancy notice, be to translate all types of text for the departments of the Commission. The Commission does not, however, dispute that the applicant had, in the course of his previous employment with a private company, carried out some translation work on a limited number of Community texts. It emphasizes that it had already taken that experience into account when recognizing that he had one year's professsional experience, thereby enabling him to be recruited in Grade L/A 7 rather than Grade L/A 8. However, in the absende of specific experience in excess of that taken into account for the purpose of dedermining his grade, there could be no question of granting the applicant additional seniority without contravening Article 5 (1) of the decision of 6 June 1973.

16 In order to resolve this dispute, it is necessary to consider at the outset the nature and legal status of the decision of 6 June 1973 and of the circular of March 1981, in relation to the Staff Regulations.

17 According to its preamble, the decision was adopted on the basis, in particular, of Articles 5 (3), 29, 30, 31 and 32 of the Staff Regulations, with a view to ensuring that identical conditions of recruitment and career prospects should be enjoyed by all officials in the same category or service as far as grading and classification in step on recruitment were concerned.

18 According to information supplied by the Commission, the decision was first published in 1977 in the "Staff Courier", but apparently in an incomplete form. It was redistributed in the above-mentioned circular from the Director-General for Personnel and Administration in March 1981.

19 As stated above, that circular contains, apart from the text of the decision as such and the table referred to in Article 5, an annex bearing the number II and headed "Practical Application — General Survey". That annex is a descriptive document summarizing the practice followed by the "Grading Committee" when implementing the decision.

20 It follows that, even though the decision at issue may not be regarded as a general implementing provision within the meaning of Article 110 of the Staff Regulations, it constitutes an internal directive. However, as the Court held in its judgment of 30 January 1974 (Case 148/73 *Louwage* v *Commission* [1974] ECR 81), such an internal directive must be regarded as a rule of conduct, indicating the practice to be followed, which the administration imposes on itself and from which it may not depart without specifying the reasons which have led it to do so, since otherwise the principle of equality of treatment would be infringed.

21 It should be noted that in the present case the Commission has pleaded no special circumstance allowing it to depart from the rules of conduct which it set itself. That point must not, however, obscure the fact that internal directives adopted by the Community institutions may not, in any circumstances, legally establish rules which derogate from the Staff Regulations.

22 It is appropriate in this context to recall that, under the second paragraph of Article 32 of the Staff Regulations, the appointing authority may, "taking account of the training and special experience for the post of the person concerned", allow additional seniority in his grade.

23 According to Article 5 (1) of the decision of 6 June 1973, "In consideration of a candidate's professional experience which exceeds the length of that taken into account for determining his grade of appointment, the appointing authority shall, in accordance with the annexed table, allow additional seniority." Such additional seniority may be granted for each full 12-month period of experience, up to a maximum of 48 months, over and above the year's experience already required for appointment in Grade L/A 7.

24 Viewed in the light of Article 32 of the Staff Regulations, those indications given by the decision of 6 June 1973 can apply only to experience which is specifically related to the post to be filled. The Commission is therefore right in stating in Article 2 of the same decision, in respect of a comparable situation, that "professional experience [shall be assessed] with regard to the post to be filled"; similarly, Annex II to the circular of March 1981 states that in practice credit is not given in Career Bracket L/A 7-L/A 6 (Translator) except for "relevant" experience and on the further condition that it is of a level equivalent to Category A work, that is to say university level.

25 On the other hand, Article 32 of the Staff Regulations would be infringed by any practice which consisted in giving credit for previous experience which was not specifically related to the post to be filled, as seems to be implied by the words "[experience] as translator, economist, lawyer, etc." in paragraph 3 (c) of Annex II.

26 Thus the appointing authority may not give credit for previous experience except in cases where such experience may be recognized to be of an appropriate level and of a nature specifically relevant to the post in question. In view of the great diversity of experience offered by candidates for employment with the European institutions, the competent authority must be allowed a discretionary power covering all aspects of potential importance for the recognition of previous experience, both as regards the nature and duration of such experience and as regards the extent to which it matches the requirements of the post to be filled.

27 In the present case it is clear that the Commission, acting on the advice of the Grading Committee, assessed the applicant's previous experience on two occasions, namely when the first complaint concerning the classification in grade was lodged, and when the second request was made following the redistribution of the decision of 6 June 1973. The evidence adduced by the applicant in the course of the present proceedings has disclosed nothing to suggest that the Commission, in refusing to recognize specific experience in excess of the year required for admission to Grade L/A 7, committed a manifest error or was guided by factors inconsistent with the objectivity

which is called for in such circumstances. It is in fact apparent that the previous occupations of the applicant, as described by him at the time of his recruitment, had no more than a partial and remote bearing on the duties which he later took up in the service of the Community, as a translator attached to a general department.

28 Therefore the application must be dismissed.

Costs

29 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs.

30 However, under Article 70 of the Rules of Procedure, the institutions must bear their own costs in proceedings commenced by employees of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 1 December 1983.

J. A. Pompe
Deputy Registrar

K. Bahlmann
President of the Second Chamber