JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 4 DECEMBER 1980 [1]

Maurice Geeraerd
v Commission of the European Communities

"Staff Regulations of Officials — Promotion of language staff"

Case 782/79

Officials — Promotion — Procedure — Promotion within a career bracket — General implementing provisions adopted by an institution — Legal nature — Failure to observe — Infringement of essential procedural requirement — None
(EEC Treaty, Art. 173)

A decision by an institution making general implementing provisions relating to the procedure for promotion within a career bracket does not constitute an implementing provision prescribed by the Staff Regulations but an internal measure, introduced by the institution of its own accord, which cannot therefore be regarded as having the character of strict law. The fact that the institution has departed from the procedure provided for by that decision in order to take account of an exceptional situation cannot therefore be regarded as "an infringement of an essential procedural requirement" of such a nature as to justify the annulment of promotion decisions made in those circumstances.

In Case 782/79

MAURICE GEERAERD, an official on the language staff of the Commission of the European Communities, residing in Brussels, 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

1 — Language of the Case: French.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jörn Pipkorn, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions promoting officials from Grade L/A 6 to Grade L/A 5 for the 1978 financial year and of the decision rejecting the complaint lodged against those decisions,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, A. Touffait and O. Due, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Summary of the facts

On 5 July 1967 and with effect from 1 October 1967 Maurice Geeraerd was appointed as a probationary officer in Grade L/A 7, Step 1, to a post of assistant translator with the Directorate-General for Personnel and Administration at the Commission. He was established in that post on 16 May 1968 with effect from 1 April 1968.

On 7 November 1972 and with effect from 1 October 1972 Mr Geeraerd was promoted to Grade L/A 6, Step 1, with

seniority in that step from 1 December 1971. His duties are those of a translator in the Translation, Documentation, Reproduction and Library Directorate of the Directorate-General for Personnel and Administration.

On 10 March 1978 there was published in Administrative Notices No 191 the list of officials, in particular in Category L/A, including Mr Geeraerd, who were paid from operational appropriations, who were eligible for promotion in 1978. On 31 December 1978 those officials had the seniority required to be considered for promotion, in particular within Career Bracket L/A 6 - L/A 5, to Grade L/A 5.

On 2 May 1978 the Council adopted Regulation No 912/78 amending the Staff Regulations of Officials (Official Journal L 119, p. 1); Article 13 thereof changed the way in which basic posts were arranged in career brackets as regards language staff. Provision was made by Article 35 of the regulation for the amendments to the Staff Regulations to enter into force on 4 May 1978.

Article 13 of Regulation No 912/78 replaced the heading "Language Service" in Part A of Annex I to the Staff Regulations and brought career brackets for language staff into line with those of other Community officials in Category A. In particular, owing to a change in the correspondence between basic posts and career brackets at the level of Grades L/A 8 to L/A 4, promotion from Grade L/A 6 to L/A 5 which, prior to 4 May 1978, used to be promotion with Career Bracket L/A 6 - L/A 5 (hereinafter referred to as "the former career bracket"), became, after 4 May 1978, promotion from Career Bracket L/A 7 - L/A 6 to Career Bracket L/A 5 - L/A 4 (hereinafter referred to as "the new career bracket").

Certain difficulties relating to the implementation and the consequences of those amendments to the Staff Regulations, notably regarding promotion procedures, were examined on 30 October 1978 at the 116th meeting of the Heads of Administration. On the basis of the work of the preparatory committee the following measures were put forward and approved on 21 December 1978 at the 118th meeting of the Heads of Administration:

As regards promotion procedures affecting language staff a distinction must be made between two kinds of promotion.

In the first place, where promotion within a career bracket is concerned, two different situations should be distinguished depending on the period: first, the former career brackets within which promotion may still be given under the rules in force on 3 May 1978 with effect on 1 January 1978 in the case of officials having the required seniority on that date, then the new career brackets in which promotion may be given with effect from 4 May 1978 in the case of official having the required seniority on that date.

Secondly, where promotion from career bracket to career bracket is concerned, the procedure contemplated by the provisions of the Staff Regulations to fill a vacant post should be applied after consideration of the comparative merits of candidates for promotion.

The Heads of Administration recommend that these rules be applied in the same way in all the institutions.

On 14 November 1978 the Director-General for Personnel and Administration made the following proposal to

the competent member of the Commission, who signified his agreement on 15 November:

— Meeting of the Promotion Committee which from now on is to examine the situation of officials classified in the basic grade of the new career brackets (if possible at the beginning of December) so that the Commission may, on your proposal:

1. Proceed to draw up the list of the more meritorious officials;

2. Adopt decisions to promote officials with retroactive effect to 1 June 1978 save in the case of the former career brackets for revisers: retroactive effect to 1 January 1978 — in any event end of January 1979 (the validity of the list being extended to that date).

— Discussion by an *ad hoc* committee, during the same period, of the situation in regard to promotions from both L/A 8 and L/A 6, "former career brackets", in order to decide on retroactive promotions from 1 January 1978.

It should be noted that in both cases there will be no need to publish the posts since those receiving promotion will be promoted from their posts.

Consequently Administrative Notices No 218 of 6 December 1978 informed the persons concerned that the Promotion Committee would meet in the near future to examine the files of the officials eligible for promotion within the new career brackets for language staff (L/A 7 - L/A 6; L/A 5 - L/A 4) the list of whom had been published in Administrative Notices No 204 of 4 July 1978. Promotion of officials to Grades L/A 7 and L/A 5 (former career brackets) was to be considered at the same time.

Consideration of the situation of officials eligible for promotion and classified in the basic grade of the new career brackets (L/A 7 and L/A 5) took place on 11 and 20 December 1978. The Commission published in Administrative Notices No 223 of 26 January 1979 the list of officials of the language staff (new career brackets - up to L/A 6 and L/A 4) considered to be the most deserving of promotion for the 1978 financial year, the appointing authority having to choose from those lists the officials who would receive promotion, taking into account the possibilities offered by the list of posts.

Administrative Notices No 225 of 15 February 1979 published the names of the officials promoted with retroactive effect to 1 June 1978 at the earliest.

In the case of officials classified in the basic grades of the former career brackets (L/A 8 and L/A 6), eligible for promotion by virtue of the provisions of the Staff Regulations applicable before 4 May 1978, among whom was Mr Geeraerd, reasoned proposals to promote officials were submitted in a memorandum of 4 December 1978 from the Director of Directorate IX/D, Translation, Documentation, Reproduction and Library, to an *ad hoc* committee which had exactly the same composition as the Promotion Committee for language staff. Mr Geeraerd's name was not one of those proposed.

The *Ad hoc* Committee met on 20 December 1978 and drew up a draft list,

which was not published, of 21 officials considered to be the most deserving of promotion to Grade L/A 5 for the 1978 financial year.

The appointing authority decided to promote all the officials selected by the *Ad hoc* Committee with retroactive effect to 1 January 1978. The names of those officials were published in Administrative Notices No 225 of 15 February 1979.

On 26 March 1979 Mr Geeraerd lodged a complaint under Article 90 (2) of the Staff Regulations against the decisions to promote officials to Grade L/A 5 published on 15 February 1979.

More than four months after that complaint had been lodged, and therefor at a time when there was already an implied decision to reject the complaint, on 27 August 1980 the Commission sent to Mr Geeraerd an express, reasoned decision rejecting his complaint.

II — Written procedure

On 22 October 1979 Mr Geeraerd lodged this application.

The written procedure followed the normal course.

On 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.

III — Conclusions of the parties

The *applicant* claims that the Court should:

— Declare the application admissible and well founded;

— Annul the decisions promoting officials from Grade L/A 6 to Grade L/A 5 for the 1978 financial year, which were published in Administrative Notices No 225 of 15 February 1979;

— Annul the implied decision and the express decision notified by letter of 27 August 1979 rejecting the applicant's complaint registered on 26 March 1979;

— Order the defendant to pay the costs.

The *Commission* contends that the Court should:

— Declare the first submission in the application inadmissible and in any event unfounded;

— Declare the second submission in the application unfounded;

— Reject the application as a whole;

— Order the applicant to pay the costs.

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

The first submission

The *applicant* challenges the legality of the promotion procedure on the ground of the breach of the Staff Regulations, more particularly under heading "Language Service" in Part A of Annex I thereto as amended by Article 13 of Council Regulation No 912/78 of 2 May 1978, of Articles 4 and 5 (2) and (4) and on the grounds of the infringement of the first paragraph of Article 35 of that regulation and abuse of power.

(a) The Commission applied the Staff Regulations as they stood before amendment by Regulation No 912/78 to officials eligible for promotion having the seniority required before the entry into force on 4 May 1978 of that regu-

lation. It therefore took promotion from Grade L/A 6 to Grade L/A 5 as promotion within the career bracket (former career brackets) not requiring publication of vacant posts to be filled through those promotions.

Those promotions from Grade L/A 6 to Grade L/A 5, coming after the date on which the new table of basic posts and corresponding career brackets for language staff laid down by Article 35 of Regulation No 912/78 came into force, must be regarded as promotion from one career bracket to another; consequently there should have been prior publication of the vacant posts to be filled. That omission constitutes a breach of the legal provisions in point; any other interpretation would disregard the principle of the immediate application of the regulation. In the case of promotions due to take effect on 1 January 1978 without question there should have been an examination as to whether the necessary requirements were met on that date; on the other hand the promotion procedures taking place after 4 May 1978 should have taken into account the amendments made by Regulation No 912/78 to the table of posts and corresponding career brackets and therefore, in the case of promotion from L/A 6 to L/A 5, should have taken the form of promotion procedures from one career bracket to another.

(b) The application of the procedure laid down by the regulation was in no sense detrimental to the interests of officials who, on 1 January 1978, had the seniority required for such promotion: Regulation No 912/78 does not lay down any new basic conditions.

(c) The applicant leaves it to the Court to decide on the objection of inadmissibility raised by the Commission on grounds of his lack of interest in taking proceedings.

The *Commission* regards this first submission as inadmissible and ill founded.

(a) The applicant has not proved either that the alleged irregularities in the promotion decisions were injurious to him or impaired his legitimate interests or that the procedure normally followed in the past to promote officials from one career bracket to another might have been more to his advantage.

The lack of publication of a vacancy notice for the vacant posts in Grade L/A 5 could not have been injurious to his legitimate interests. The purpose of a vacancy notice is to allow the appointing authority to examine as a first step whether the vacant post cannot be filled by means of transfer or promotion and to enable officials eligible for promotion or transfer to apply for the posts. As the applicant was one among 184 officials eligible for promotion from Grade L/A 6 to Grade L/A 5 the publication of a vacancy notice could not have given him any additional advantage.

The procedures laid down by the Commission for promotion within career brackets afforded wider safeguards to officials eligible for promotion, as regards consideration of the comparative merits of each candidate eligible, than do the procedures applying in the case of promotion from one career bracket to another.

The applicant therefore has no interest in seeking the application of a promotion procedure from one career bracket to

another; his action is on that issue inadmissible for lack of interest.

(b) In any event the submission has no foundation.

The appointing authority was entitled to take the promotion decisions in issue for the financial year 1978 and to take account of the fact that the officials concerned were eligible for promotion within the career bracket under that financial year before the amendments to the Staff Regulations came into force. Officials who on 1 January 1978 had the seniority required for promotion could have legitimately expected to compete in the procedures for promotion within a career bracket, especially as the list of officials eligible for such promotion had been published. Promotions within a career bracket are moreover generally announced by the appointing authority with retroactive effect to 1 January.

The sole purpose of the amendments to the Staff Regulations was to give officials on the language staff, from the time when they came into force, new opportunities for promotion in line with those available to officials in Category A.

The second submission

The *applicant* also complains that the contested promotion decisions infringe Articles 5 (3) and 45 (1) of the Staff Regulations and Articles 2, 4, 5 and 7 of the Commission decision of 21 December 1970, as amended by the decision of 14 July 1971, laying down general implementing provisions for the procedure to promote officials within their career brackets, that they ignore principles and rules of law, in particular the principles of equal treatment, of distributive justice and of equity, and that they are vitiated by abuse of power.

(a) By not first publishing either the list of officials regarded as the most deserving of promotion to Grade L/A 5 for the financial year 1978 or the list of officials put forward for such promotion by its branches, the Commission ignored the legal provisions and practices requiring immediate communication of those lists.

It is not possible to concur with the arguments of the Commission which, whilst admitting that there is a duty to publish the lists and that such publication did not in fact take place, contends that publication does not constitute an essential requirement providing sufficient ground for the annulment of the decisions in issue if not effected. The requirements of form and procedure which are in fact regarded as essential ones and which therefore entail the annulment of any contested measure disregarding them are those adopted in the interest of the persons concerned or in the general interest. The publication of the lists of the most meritorious officials and of the officials proposed for promotion is unquestionably an essential formality since it is clearly imposed in the interest of officials who are eligible for promotion. The single fact, which has been established during the proceedings, that those lists have not been published makes the promotion decisions in issue null and void.

(b) The fact that certain officials, not including the applicant or a number of

others, knew about those lists unofficially and were therefore able to intervene effectively on their own behalf is a breach of the principles of equal treatment, of distributive justice, of equity and of the protection of legitimate expectation. A precise example might be given to illustrate that argument.

(c) If the explanation for the lack of any publication of the list of the officials considered to be the most deserving of promotion to Grade L/A 5 is that no list or procedure to draw up such a list had been commenced, then there is a breach of the other legal provisions referred to in the submission.

(d) The applicant cannot be required to indicate the arguments capable of changing the tenor of the decisions in issue, which he could have advanced if publication had been effected. Such a requirement is tantamount to inviting the Court to involve itself in questions of opinion, which would be contrary to its established case-law. The crucial point is that the applicant was utterly unable to formulate the observations which he considered useful and that such observations had no opportunity to influence the decision to be taken.

(e) The argument that even the application of the procedure advocated by the applicant would have led to the same result cannot be accepted. The case-law referred to by the Commission on this point relates to a specific case and an exceptional situation which are not transposable to this case.

(f) The Court does not reverse appraisals by the administration save in the case of manifest error as to the facts. Such is the situation in this case. In fact it is not at all evident that the applicant could not be promoted and that it was established that a fresh decision would be identical to the previous one, especially as a promotion decision depends essentially upon appraisals based on a consideration of the comparative merits of officials.

(g) Contrary to the provisions of the decision of 21 December 1970 by which the consideration of the comparative merits must be undertaken by the Promotion Committee, that examination was carried out in this case by an *ad hoc* committee. That amounts to an additional procedural irregularity.

The *Commission* believes that the submission of procedural irregularity is unfounded.

(a) The omission to publish the list of officials considered to be the most deserving of promotion or the list of proposals submitted for that purpose by the branches is not sufficient ground to annul the decisions in issue. That publication does not constitute an essential requirement. In no sense does the applicant prove that the decisions complained of might have been different if publication had been effected or that the irregularity involved was detrimental to the interests at stake. In the absence of such consequences, according to the case-law of the Court the irregularity is

not sufficiently substantial to vitiate the procedure in question.

(b) The applicant cannot invoke any legitimate interest in the annulment of the decisions in issue: he does not indicate any factor which might have changed the contested decision; it would be possible to confirm the substance of the decisions by a new procedure. The selections by the Promotion Committee and consequently by the appointing authority are largely determined by objective criteria and the applicant has not alleged that those criteria were judged incorrectly.

(c) None of the procedural irregularities alleged by the applicant is capable of rendering the decisions in issue null and void.

— Non-publication of the list of the officials considered to be the most deserving of promotion cannot be detrimental to the applicant's interests. That list is intended to limit the discretionary power of the appointing authority which can promote only officials on that list; that power has been limited still more by the fact that the list published contains a number of officials equal only to the number of possible promotions. Therefore the list of officials considered to be the most meritorious is identical to the list of officials promoted, which was published.

— Non-publication of the list of officials proposed by their branch for promotion is at variance with the customary administrative practice which is not however applied strictly and systematically; departure from such a practice in an exceptional situation cannot amount to an infringement of essential procedural requirements.

Moreover that departure does not involve any discrimination against the applicant in relation to other officials and is not contrary to the principle of the protection of legitimate expectation.

The applicant has not provided any evidence to prove that his legitimate interests have been injured: the Promotion Committee is not bound by the proposals made by the branches; in this case it arrived at its selection unanimously; the applicant does not make any complaint about that selection; any such complaint should have been made during the complaint procedure and no later.

The consideration of the comparative merits of officials eligible for promotion by an "*ad hoc* committee" and not by the Promotion Committee is certainly an anomaly but is in no sense detrimental to the applicant: the composition of that *ad hoc* committee and its working methods are identical to those of the Promotion Committee.

(d) Even if the application were considered admissible and well founded there would be no ground to annul the decisions complained of. Such annulment would cause damage to the other officials promoted which would be disproportionate to that suffered by the applicant. His rights may be safeguarded by other more appropriate measures which it is not necessary to indicate at this stage.

V — Oral procedure

The applicant, represented by Mr Lebrun, and the Commission, represented by Mr Pipkorn, assisted by Giangaleazzo Cairoli, principal administrator in the Recruitment, Appointments and Promotions Branch of the Directorate-General for Personnel and Administration presented oral argument and replied to questions from the Court at the hearing on 2 October 1980.

The Advocate General delivered his opinion at the sitting on 30 October 1980.

Decision

1 By application lodged at the Court Registry on 22 October 1979 the applicant, Mr Geeraerd, an official on the Commission's language staff brought an action for the annulment of the decisions to promote officials from Grade L/A 6 to Grade L/A 5 made in respect of the 1978 financial year and for the annulment of the implied decision rejecting his complaint against those decisions.

2 At the time of the events giving rise to the dispute the applicant was in a post in Grade L/A 6 in the former L/A 6 - L/A 5 Career Bracket. On 2 May 1978 the Council adopted Regulation No 912/78 amending the Staff Regulations of Officials (Official Journal L 119, p. 1) which came into force on 4 May 1978; the effect of Article 13 of the regulation was to rearrange the career brackets for language staff in so far as the L/A 6 - L/A 5 Career Bracket (hereinafter referred to as "the former career bracket") was abolished to form new career brackets which are L/A 7 - L/A 6 and L/A 5 - L/A 4. Promotion from Grade L/A 6 to Grade L/A 5, which previously was promotion within the same career bracket, thus became promotion from one career bracket to another.

3 The problems of adjustment resulting from that rearrangement were considered by the Heads of Administration of the various institutions at their 116th meeting held on 30 October 1978. Where the former career brackets were concerned the Heads of Administration thought that officials could still be promoted, in the then current budget year and with effect from 1 January 1978, under the rules applicable before the new regulation came into force if

on the aforesaid date officials had the seniority required, whilst the promotion of officials to the new career bracket would be carried out in accordance with the provisions of the new rules. The Heads of Administration recommended that those rules be applied in the same way in all the institutions.

4 The Commission immediately took the necessary steps to put that recommendation into effect, before the end of the year in question. In the case of officials on the language staff eligible for promotion from Grade L/A 6 to Grade L/A 5 in the "former career bracket" the Commission formed an *"ad hoc* committee" composed in the same way as the Promotion Committee for the language staff. By a memorandum of 4 December 1978 the Director of the Translation, Documentation, Reproduction and Library Directorate, IX/D, submitted to that group a list together with a proposal to promote 21 officials selected from 184 candidates fulfilling the necessary requirements. The *Ad hoc* Committee unanimously agreed to recommend the promotion of the officials proposed.

5 The appointing authority accepted that proposal and the officials concerned were consequently promoted with effect from 1 January 1978. That decision was published in Administrative Notices No 225 of the Commission of 15 February 1979.

6 On 26 March 1979 the applicant lodged a complaint with the Commission against those decisions pursuant to Article 90 (2) of the Staff Regulations. On 27 August 1979 the Commission informed the applicant that it was unable to give him a favourable reply. It is against both those decisions to reject his complaint, the first implied and the second express, that the applicant has made his application within the prescribed period.

7 In support of that application the applicant makes two submissions. The first, presented as the main argument, is primarily based on the rules concerning the application of Regulation No 912/78; the second, presented in the alternative, is based on the failure by the appointing authority to observe the formalities provided for in the Commission decision of 21 December 1970, as

amended by a decision of 14 July 1971, on general implementing provisions relating to the procedure to promote officials within a career bracket, published in Administrative Notices No 42 of 13 May 1975 (hereinafter referred to as "the decision of 21 December 1970").

The first submission

8 The applicant contends as his main argument that as a result of the re-structuring of career brackets by Regulation No 912/78 promotion from Grade L/A 6 to Grade L/A 5 is now promotion from one career bracket to another and as such requires the publication of a vacancy notice by virtue of Articles 4 and 5 (2) and (4) of the Staff Regulations. By treating the promotions in point as still being promotions within the same career bracket the Commission disregarded the principle that the regulation had immediate application from its entry into force.

9 The Commission views that submission as inadmissible for lack of interest on the part of the applicant who was in any event one of those officials eligible for promotion from Grade L/A 6 to Grade L/A 5 so that publication of a formal vacancy notice could not have improved his situation. Besides, the Commission believes that it was entitled to treat in accordance with the old rules the situation of officials who fulfilled all the necessary requirements to be promoted within their former career bracket at the time Regulation No 912/78 came into force.

10 The applicant's submission must be rejected. There is no need to go into the interest of the applicant, as it suffices to state that in any event the measures adopted by the administration in order to regulate the situation of officials who might expect to be promoted within their former career bracket at the time when the new regulation came into force come under the measures which may be legitimately taken to resolve the transitional problems arising in regard to the officials concerned from the restructuring of career brackets. It follows that the promotions in question could still be treated as being promotions within the same career bracket.

The alternative submission

11 As an alternative argument the applicant contends that the Commission did not observe the formalities provided for by the decision of 21 December 1970 under which the promotion of any official must be preceded by the publication of the list of officials regarded as the most deserving of promotion, drawn up by the appointing authority on the proposal of Promotion Committees. Furthermore, contrary to practice, the promotion proposals of the branches were not notified to the staff. Those are, it is alleged, essential formalities since the purpose of the publication of those lists is to enable the officials concerned to defend their interests effectively. Finally, the applicant contends that there is a further irregularity in regard to the promotion proposals in so far as they originated not from the Promotion Committee so-called but from an "ad hoc committee" separate from it.

12 The Commission contends in this regard that the drawing up and the publication of the list of officials judged to be the most deserving of promotion as well as the publication of proposals put forward for that purpose by their branches do not constitute essential formalities which, if not carried out, provide sufficient ground for the annulment of the promotion decisions in question. As it was, the promotion proposals were made by the officials' superior officers, with all due care, so that the case of each official eligible for promotion was duly considered and the appointing authority had at its disposal all the information necessary to take an informed decision.

13 The subsidiary submission must also be dismissed. In fact the decision of 21 December 1970 which the applicant claims was not observed does not constitute an implementing provision prescribed by the Staff Regulations but an internal measure, introduced by the Commission of its own accord, which cannot therefore be regarded as having the character of strict law. Under no circumstances can the fact that the Commission departed from the procedure provided for by that decision in order to take account of the exceptional situation which arose as a result of the reorganization of the career brackets for language staff be regarded as "an infringement of an essential procedural requirement" within the meaning of Article 173 of the Treaty. Those considerations apply especially to mere administrative practices which,

according to the applicant, the Commission ordinarily observed when promoting officials.

14 Consideration of the facts has moreover disclosed that no safeguard contained in the Staff Regulations has been disregarded in the procedure applied to the promotions in issue. It is not in fact disputed that the applicant's case received attentive and impartial treatment from the administrative authority as did those of other officials who likewise fulfilled the requirements for being promoted. The applicant has not been able to prove that he incurred any special disadvantage as a result of the appointing authority's following, as it did, a procedure different from that prescribed by the decision of 21 December 1970. Consequently there can be no doubt as to the lawful nature of the promotions made under those circumstances.

15 It follows from all of the foregoing that the application must be rejected as a whole.

Costs

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

17 However, under Article 70 of the Rules of Procedure the costs incurred by the institutions in actions by employees of the Communities shall be borne by those institutions.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Pescatore Touffait Due

Delivered in open court in Luxembourg on 4 December 1980.

J. A. Pompe
Deputy Registrar

P. Pescatore
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 30 OCTOBER 1980 [1]

Mr President,
Members of the Court,

The applicant in the proceedings on which I give my opinion today entered the Commission's service on 1 October 1967 as a probationary official in Category L/A 7. He became established on 1 April 1968 and was employed as an assistant translator in the Translation, Documentation, Reproduction and Library Directorate of the Directorate-General for Personnel and Administration. On 1 October 1972 he was promoted to translator in Grade L/A 6 which at that time under Annex I (A) to the Staff Regulations of Officials was the starting grade in Career Bracket L/A 6 - L/A 5. His name was one of those on the list published on 10 March 1978 of officials who fulfilled the conditions for promotion in the 1978 budget year.

On 2 May 1978 Council Regulation No 912/78 was adopted "amending the Staff Regulations of Officials of the European Communities and the conditions of employment of other servants of the European Communities" (Official Journal, L 119 of 3 May 1978, p. 1) which by virtue of Article 35 entered into force on 4 May 1978. Article 13 rearranged career brackets for language staff listed in Annex I (A) to the Staff Regulations of Officials. For the future Grade L/A 6 and Grade L/A 7 became *one* career bracket so that as from 4 May 1978 promotion from L/A 6 to L/A 5 could no longer occur, as before, *within* one career bracket but was considered as promotion from career bracket (L/A 7 - L/A 6) to career bracket (L/A 5 - L/A 4).

After a meeting on 30 October 1978 the Heads of Administration of the institutions of the Communities recommended that in the promotion of officials of the language staff within the career brackets applying up to 3 May 1978 the rules previously in force should be applied to officials who had the required seniority on that date and

1 — Translated from the German.