In Case 16/64

GERTRUD RAUCH, an official of the Commission of the European Economic Community, residing at 152 Avenue Gribaumont, Woluwe-Saint-Lambert, (Belgium), represented by Marcel Slusny, Advocate at the Cour d'Appel, Brussels, lecturer at the Free University of Brussels, with an address for service in Luxembourg at the Chambers of Bernard Schmitz, 6 rue J.-B. Esch,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, Brussels, represented by its Legal Adviser, Louis de la Fontaine, acting as Agent, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for the annulment of certain measures adopted in relation to the procedure for a competition,

THE COURT (Second Chamber)

composed of: A. M. Donner, President of Chamber, W. Strauß (Rapporteur) and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

1. The applicant was appointed on 28 September 1962 as an official in Grade C1 in the defendant's Directorate-General of Administration.

2. By Vacancy Notice No 166 published in the Staff Information Bulletin of the Commission of the EEC No 10 of 30 August 1962 the defendant announced

the vacancy of a post in Grade B8 (the future B3) in the Press and Information Department of the European Communities' London office.

The applicant applied for the post. However the defendant took the view that the applications received did not meet the required conditions and could not therefore be considered at the stage of the recruitment procedure laid down in Article 29 (1) (a) of the Staff Regulations.

3. By Notice of Competition No EEC/143/B published in the said Bulletin, No 48 dated 16 August 1963, it was brought to the attention of the staff that a competition internal to the institution was being held in order to fill the post concerned. It was stated that the Competition was open both to officials and to auxiliary staff. The applicant and four other persons, including Miss Kurz, who had been engaged as an auxiliary as from 15 February 1963, applied for the post.

4. By letter dated 4 December 1963 each of these two candidates was informed that her name had been placed on the list of suitable candidates.

5. Miss Kurz was placed first on the list and the applicant second and on 20 February 1964 the Committee of Chairmen decided to appoint Miss Kurz to the post. By letter dated 11 March 1964 the administration informed the applicant that she had not been chosen.

6. On 29 April 1964 the defendant started the present proceedings.

II — Conclusions of the parties

In her application the applicant claims that the Court should:

'1. Annul the decision of the Selection Board for the competition to admit Miss Gertrud Kurz to Competition No 143/B, and to place her name on the list of suitable candidates:

2. Annul so far as necessary the decision of the appointing authority to accept this list of suitable candidates as it stood, without checking the right of Miss Gertrud Kurz to take part in the competition;

3. Annul the decision of the appointing authority to choose Miss Gertrud Kurz and to appoint her to the post advertised in Vacancy Notice No 166 and in the Notice of Competition No 143/B;

4. Order the defendant to bear the whole costs of the present proceedings;

5. Place it on record that the applicant reserves the right, after production by the defendant of its documents and after the presentation of its submissions, to raise any submissions contesting in particular the validity of the competition procedure, both as regards the composition of the Selection Board and the conduct of the competition having regard to the provisions of the Staff Regulations, particularly Annex III, and to provisions laid down by the Commission itself relating to the composition of Selection Boards.'

In her reply the applicant further claims that the Court should:

'Alternatively:

Annul Competition 143/B;

as additional minor points:

Order the defendant to produce:

(a) the documents relating to the consultation with the Joint Committee and the head of the department concerned, as provided in Article 1 (1) of Annex III to the Staff Regulations;

(b) the document S/01965/, dated 21 June 1963, of the executive secretariat containing the provisions relating to competitions;

(c) the detailed rules for the application of Article 11 of the Commission's Internal Regulations.'

In its statement of defence and rejoinder the defendant contends that the Court should:
'Dismiss the appeal as inadmissible and unfounded on all points, and make an order as to costs in accordance with the relevant provisions.'

III — Submissions and arguments of the Parties

The main submissions and arguments of the parties may be summarized as follows:
(Only the first three submissions set out below appeared in the application. The other submissions were put forward only in the reply as the applicant stated that their necessity only became apparent in the light of the documents annexed to the statement of defence and of a letter sent by the defendant's Agent to the applicant's legal adviser.)

1. *First submission: Infringement of Article 29 and of Annex III to the Staff Regulations*

According to the applicant, auxiliary staff recruited after 1 January 1962 cannot be admitted to competitions internal to the institution for which provision is made in Article 29 (1) (b) of the Staff Regulations.

A — Admissibility

The defendant takes the view that this submission is out of time as the measures in dispute were based on former decisions, in particular Vacancy Notice No 166 and Notice of Competition No 143/B. These two notices expressly invited all auxiliary staff to apply. Therefore it is against these notices that the applicant ought to have drawn up the present complaint.
The applicant takes the view that in an analogous case (Wollast, née Schmitz Rec. 1964, pp. 169 et seq.) the Court had already rejected the argument that a submission such as this one is out of time.
The defendant's view would expose the institutions to interminable cascades of litigation. It is logical to be able to contest an original measure at the same time as the definitive one if the former has not created an irreversible situation, which is not the case here.
The defendant replies that the judgment in the case of Wollast, née Schmitz, settled a different question. In the present case the defendant does not intend to claim acquiescence on the part of the applicant.
Besides, the Court has agreed that the Vacancy Notice and Notice of Competition are measures which are severable from the recruitment procedure.

B — The Substance

The applicant points out that Article 29 (1) (b) of the Staff Regulations comes between two provisions which apply only to officials. Article 1 (1) (a) of Annex III groups the various sorts of competition together. Thus the proposition of the defendant would lead logically to admitting auxiliary staff, even to competitions internal to the three Communities, which is a position that no institution has adopted. Furthermore, the result of this view would be that, in order to be appointed to one and the same post, an official would have to submit himself to two competitions (initial recruitment and promotion), whilst a member of the auxiliary staff would only have to undergo one (promotion).
The argument that the conditions of employment of auxiliary staff are in many respects similar to those of officials is not relevant. It would apply *a fortiori* to temporary staff whom, however, the defendant has never admitted to internal competitions.
The defendant cannot base an argument on the judgment in the case of Wollast, née Schmitz, (loc. cit.). This judgment

admits by implication that 'false' auxiliary staff—those recruited before the Staff Regulations came into force—could be accepted for internal competitions. It follows that the problem of 'genuine' auxiliary staff has remained open.

In any case, even supposing that auxiliary staff may take part in internal competitions, this rule does not, it is asserted, apply to Miss Kurz, who is in fact temporary.

The applicant sets out this argument in detail.

The defendant takes the view that the concept of 'competition internal to the institution' does not allow of the adoption of such a restrictive view.

It is not illogical to admit members of the auxiliary staff to competitions referred to in Article 29 (1) (b) whilst excluding them from competitions referred to in subparagraphs (a) and (c) of that paragraph. Not only are promotion or transfer only conceivable for officials, but the phases of procedure set out in subparagraphs (a) and (c) amount to recruiting operations without a competition, whereas according to subparagraph (d) of Article 28 no-one may be appointed as an official unless he has passed a competition. Moreover the admission of auxiliary staff corresponds to the intention of Article 29, namely to let the institution call upon the existing 'ship's company' and avoid the slow and complicated procedure of an open competition.

It follows from the Conditions of Employment of Other Servants of the Communities (hereinafter referred to as the 'Conditions of Employment') that auxiliary staff must be considered as staff internal to the institution. The relationship between such staff and the institution is one of public law; their position is in many respects governed by Regulations.

The judgment in the case of Wollast, née Schmitz, supports the defendant's view. In that case the Court held that the defendant was required to allow Mrs Wollast to take part in a given competition. Her position was, as from 1 January 1962, governed by a new contract coming under the Conditions of Employment. So there was no difference between that position and the positions of those whom the applicant labels as 'genuine' auxiliary staff.

The defendant agrees with the applicant to the extent that the defendant has never denied that it is possible to let auxiliary staff from other institutions take part in competitions internal to the Communities, or that it is possible to let temporary staff do so. Thus, even supposing that Miss Kurz was a member of the temporary staff, which the defendant denies, her admission to the competition would have been in order. The distinction between recruitment competitions and promotion competitions is nowhere found in the Staff Regulations.

2. *Second submission: Infringement of subparagraph (b) of Article 52 of the Conditions of Employment*

The applicant asserts that according to the above provision the period of employment of a member of the auxiliary staff shall not exceed one year. It follows that the appointment of Miss Kurz at a time when she was no longer 'validly employed as an auxiliary servant by the Commission' was illegal.

The defendant replies that the provision in question only applies as regards the relationships between the institution, on the one hand, and the auxiliary servant and the budgetary authority on the other. Therefore the applicant has no *locus standi* to pray it in aid.

This provision has only a relative validity. Its essential purpose is to refuse to members of the auxiliary staff the right to remain in office for longer than one year. On the other hand, it does not include an obligation for the institution to terminate the appointment at the end

of that period. The interests of the service may require that it be continued if, at the end of the period of employment of the auxiliary servant, no official or temporary servant can immediately take over his duties. It would be absurd to compel the institution to employ a new and unknown member of the auxiliary staff when the first may just have proved himself.

Moreover all the moves leading up to the appointment of Miss Kurz took place before 15 February 1964. In particular the written procedure asking for the approval of the Committee of Chairmen was initiated on 13 February 1964. It would not be right to make Miss Kurz suffer the consequences of a minimal delay which was not her fault.

3. *Third submission: Infringement of Article 25 of the Staff Regulations*

The applicant takes the view that since the decision not to appoint her adversely affected her it should have stated the reasons on which it was based. The decision in the Raponi case (Rec. 1964, pp. 249 et. seq.), according to which an explicit statement of reasons where *promotion is concerned* might go against the interests of those not promoted, cannot be cited to the contrary. As regards the case now before the Court it would have been enough to refer to the result of the competition. The argument that the proceedings of the Selection Board are secret does not apply either. It is no breach of a secret to let it be known that one candidate was placed after another on the list of suitable persons.

The defendant is of the opinion that Article 25 of the Staff Regulations 'only requires that reasons be stated for individual decisions adversely affecting the person to whom they are addressed'. The defendant cites the judgment in the Raponi case, whose reasoning remains valid in the case of appointments made following a competition. According to Article 30 of the Staff Regulations an institution enjoys considerable powers of discretion in selecting from the list of suitable candidates those to be appointed to a vacant post. Furthermore, it has to treat the proceedings of the Selection Board as entirely secret.

Moreover, 'the notification of the appointment sent to the applicant referred to the list of suitable candidates for Competition No 143/B'.

4. *Fourth submission: That Miss Kurz's application was out of time*

The applicant states that according to the terms of the Notice of Competition applications had to reach the Recruitment Division before 9 September 1963 at the latest. But Miss Kurz's application is dated 12 September 1963. It is a fact that Miss Kurz was absent at that time and that her head of department put in the application for her at a date which the defendant 'claims is 9 September' (in fact the date which appears on the letter from Mr Pryce produced as Schedule II to the letter addressed to the applicant's legal adviser by the defendant's Agent is illegible). While this letter bears the stamp of the division dated 9 September it should nevertheless be noted that:

— this date is to be treated with caution because, notwithstanding the request made by the applicant's legal adviser, the defendant's Agent has not produced either the acknowledgement of receipt of the application nor the special register in which applications are entered;

— in accordance with the application form drawn up by the defendant and on which application was to be made, the form must be signed by the person applying, which was not what happened here.

The defendant replies that Miss Kurz was on holiday throughout the time between the date of publication of the Notice of Competition and the last date for making applications. In order not to deprive Miss Kurz improperly of her

rights the defendant had to accept the application put forward by her superior and also the application which she personally made, even though it was late.

5. *Fifth submission: Failure by the defendant to have adopted the detailed arrangements for giving effect to the provisions concerning the procedure for competitions*

The applicant refers to Article 110 of the Staff Regulations. It cannot be objected that such detailed arrangements need only be made when the provision in question so requires; it is sufficient that the provisions of the Staff Regulations should not be sufficiently clear, as is the case here.

The *defendant* itself settled the composition of the Selection Board (Executive Secretariat document No S/01965/63 dated 21 June 1963). It therefore recognized that the provisions in question do not of themselves suffice.

In accordance with Article 110 of the Staff Regulations the general measures for giving effect to the Regulations must be adopted after consulting the Staff Committee and the Staff Regulations Committee. These formalities were not complied with.

The defendant considers this submission to be inadmissible because it is not based on points which emerged during the written procedure. According to the terms of Article 110 the general provisions for giving effect to the Regulations referred to in that Article must be brought to the attention of the Staff. The applicant knew at the time of lodging her application that such general provisions had not been brought to her attention and therefore did not exist.

In any event the submission has no substance, for the provisions in question do not give rise to difficulties of interpretation such that their applicability would be irregular in the absence of general provisions for giving effect to them.

6. *Sixth submission: Illegalities in the procedure followed by the Selection Board*

The applicant points out that although it was dealing with a competition on the basis of qualifications, the Selection Board proceeded to carry out actual tests which it referred to as 'interviews'. Furthermore the Selection Board 'took no account of qualifications at all, since the marking took place with exclusive reference to the criteria of linguistic ability and vocational experience (aggregated and marked out of ten), and with no reference at all to qualifications or certificates and that it was on the basis of these two criteria alone that the list of suitable candidates was drawn up'.

What is more the interview given to the applicant consisted in a whole series of 'trick questions' which should not have been put to a person competing for a Category B post.

While agreeing that it is not for the Court to replace the Selection Board the applicant thinks that it must review the way in which the Selection Board formed its views. Therefore, in order to be sure that there was no partiality on the part of the Selection Board the Court must be in a position to establish whether both the candidates had equally difficult questions to answer.

Again, in order to decide how much weight the Selection Board gave to linguistic knowledge, the Court must be able to check whether the same strictness was applied to the two candidates. '*Prima facie* this is not the case because Miss Kurz, who has never previously lived in England, was given higher marks than the applicant who had lived there for 14 years.'

Furthermore it seems 'that the interest of the Selection Board was directed only to knowledge of English, whereas the Notice of Competition stated:

'thorough knowledge of one of the languages of the Communities (preferably the French language)'

and the applicant has an excellent knowledge of that language'.

'Finally, it seems that the Selection Board must have taken into consideration the vocational experience which Miss Kurz had acquired on a temporary basis at the Office of the Press and Information Department in London. Yet in order that candidates at a competition may be on an equal footing this is a matter which should not be taken into account.'

The defendant replies that the submission is inadmissible because it is not based on points which became clear during the written procedure.

In any event the submission is unfounded. Having found that the two candidates possessed the qualifications required, the Selection Board put both of them on the list of suitable candidates. 'But the Selection Board was also able to determine that the qualifications of the persons concerned were substantially of equal worth. Even though, in conformity with the Notice of Competition, it was anxious to give the candidates an interview, this was not in the nature of a real test. The intention of the interviews was only to check the truth of statements contained in documents produced by the persons concerned and filed with the application forms and to get an idea of the candidates' qualifications such as knowledge of languages, knowledge of the working and the tasks of the Communities, and knowledge of English affairs—facts which could not be assessed simply on the basis of the application files.'

Furthermore, the choice of the questions put to the candidates was a matter for the Selection Board to decide in its discretion. The same is true as regards the assessment of the comparative merits of the candidates. The Selection Board was entitled to take account of the vocational experience acquired by Miss Kurz in the London office.

7. *Seventh submission: Failure by the Selection Board to state the marks obtained by each of the two candidates as regards knowledge of languages and vocational experience*

The *applicant* states that for want of this information the Court cannot possibly review the manner in which the Selection Board formed its opinions.

The *defendant* replies that it appears from the minutes of the selection Board that the Board decided 'to use the following criteria to assess the candidates during the interview: Knowledge of languages and vocational experience (aggregated and marked out of ten)'. There was nothing to require the Selection Board to mark these two criteria seperately.

IV — Procedure

By an order dated 24 June 1964 the Court (Second Chamber) rejected the applicant's request for free legal aid.

Upon hearing the report of the Judge-Rapporteur and the Advocate-General, the Court (Second Chamber) decided that no preparatory inquiry was necessary. However, the Court invited the defendant to produce certain documents and the defendant complied with this invitation.

The public hearing took place on 25 February 1965. On February 16 1965 the Advocate-General delivered his opinion.

Grounds of judgment

I — The first submission

The applicant describes the admission of members of the auxiliary staff to

'competitions internal to the institution' mentioned in Article 29 (1) (b) of the Staff Regulations as illegal.

1. *Admissibility*

The defendant objects that this submission is out of time on the ground that the applicant did not contest at the proper time certain previous decisions admitting auxiliary staff as candidates for the post concerned, namely Vacancy No 166 and Notice of Competition No 143/B.

Since the recruitment procedure consists of several interdependent measures this objection would be tantamount to requiring persons concerned to bring as many actions as the number of acts capable of adversely affecting them contained in the said procedure.

Having regard to the close connexion between the different measures comprising the recruitment procedure, it must be accepted that in an action contesting the later steps in such a procedure, the applicant may contest the legality of earlier steps which are closely linked to them.

Therefore, so as to review the legality of the appointment of Miss Kurz, which is the principal object of the appeal, the Court may take into consideration the complaints raised by the applicant against the measures prior to such appointment, and in particular against the disputed notices.

2. *The substance*

The expression 'competition internal to the institution', taken as it stands, means any person employed by the institution, in whatever capacity.

This interpretation is confirmed by the aim assigned to the recruitment procedure by Article 27 of the Staff Regulations namely 'securing for the institution the services of officials of the highest standard of ability, efficiency and integrity'. This aim involves the necessity of recruiting officials on as broad a basis as possible.

The applicant objects that as the method of competition internal to the institution occurs between two sentences which only deal with officials (Articles 29 (1) (a) and (c)), the structure of the provision in question necessarily gives the impression that that method also applies only to officials. This objection overlooks subparagraph (d) of Article 28 of the Staff Regulations

in accordance with which no-one can be appointed as an official without having passed a competition. The effect of this provision is to limit the moves contemplated in Article 29 (1) (a) and (c) to officials alone since these moves do not involve competitions. However, such a limitation is not imposed where subparagraph (b) is concerned since it expressly involves holding a competition.

It is already clear from the foregoing considerations that this submission is unfounded. There is therefore no need to go into the other arguments put forward by the applicant in support of it.

II — Second submission

This submission deals with the fact that the appointment of Miss Kurz did not take place until after the expiry of the period of one year fixed by subparagraph (b) of Article 52 of the Conditions of Employment of Other Servants of the Communities, as the maximum period of employment of auxiliary staff except in the circumstances referred to in subparagraph (a) of the said Article.

For a person to be appointed to a post as a result of an internal competition it is sufficient that he be genuinely employed by the institution at the time when the competition is initiated. In this case it is not disputed that all the measures prior to the appointment of Miss Kurz, in particular the proceedings of the Selection Board and even the setting in motion of the written procedure inviting the approval of the appointing authority took place before the expiry of the period mentioned above. The applicant's interpretation of the rules would lead to the unacceptable result that a member of the auxiliary staff, though properly admitted to the competition, could not be appointed to the relevant post if the procedure were to be unexpectedly prolonged.

Therefore this plea must be rejected and it is not necessary to consider whether the defendant could validly continue to employ Miss Kurz after the expiration of one year.

III — Third submission

By this submission the applicant asserts that the 'decision not to appoint her' to the post in question adversely affects her and therefore it should have stated the reasons on which it was based in accordance with Article 25 of the Staff Regulations.

However, no formal decision 'not to appoint' the applicant has taken place, but only a decision to appoint Miss Kurz. This decision did not need to state the reason on which it was based to the person to whom it was addressed since it did not adversely affect her.

The applicant's demand would mean that the appointing authority would have to give reasons for not having taking another decision. The recruiting procedure is clearly designed to make such a statement of reasons unnecessary, and in any event to state them might well be to the detriment of the unsuccessful candidates.

This complaint is therefore unfounded.

IV—Fourth submission

Here the applicant complains that the Selection Board accepted Miss Kurz's application although it was only made on 12 September 1963, that is, after the final date, fixed by the Notice of Competition as 9 September 1963.

Whilst agreeing that Miss Kurz's departmental superior lodged the application on her behalf the applicant raises doubts as to whether in doing so he complied with the abovementioned time-limit. Furthermore, she draws attention to the fact that according to the terms of the application form drawn up by the defendant, and intended to be used for making applications, the latter must be signed by the candidate personally.

It is not disputed that Miss Kurz was on holiday throughout all the time between the date of publication of the Notice of Competition and 9 September 1963. In these circumstances Miss Kurz's departmental superior could validly act on her behalf provided that he complied with the time-limits and correctly interpreted her intentions. He did both; the application was received by the defendant on 9 September, as appears from the date-stamp on it, and was confirmed by Miss Kurz as early as 12 September.

This complaint is therefore unfounded.

V—Fifth submission

The applicant asserts that the defendant failed to adopt general provisions for giving effect to the rules concerning competitions and thus infringed Article 110 of the Staff Regulations or alternatively that such general provisions were adopted without consultation with the Staff Committee or the Staff Regulations Committee.

1. *Admissibility*

The defendant takes the view that this submission which was raised for the first time in the reply, is inadmissible because it is out of time. However, it was only during the course of the present proceedings that the applicant learnt of the existence of document S/01965/63 dated 21 June 1963 dealing with the 'composition of Selection Boards for competitions'. As knowledge of the existence of this document may well have led her to put forward this submission, the objection of inadmissibility must be rejected.

2. *On the substance*

It is accordingly necessary to consider whether the said document amounts to a general provision for giving effect to any provisions of the Staff Regulations within the meaning of Article 110 thereof.

The expression '*The* general provisions for giving effect to these Staff Regulations' appearing in Article 110 mentioned above refers in the first instance to the provisions which each institution is *obliged* to make in execution of certain mandatory provisions of the Regulations, such as the first paragraph of Article 2 and the second subparagraph of Article 5 (4).

In the absence of such rules, the obligations to adopt 'general provisions for giving effect' to the Staff Regulations can be recognized only in the cases in which the provisions of the Regulations are not sufficiently explicit by themselves.

The provisions of the Regulations concerning the procedure for competitions nowhere provide that the institutions shall adopt general provisions for giving effect to them. Moreover the said provisions are sufficient in themselves.

Thus in relation to competitions, the defendant was not obliged to adopt 'general provisions for giving effect' to the relevant Regulations within the meaning of Article 110 mentioned above. Moreover, the document S/01965/63 mentioned above is to be considered as an internal measure which was not subject to the formalities set out in the said Article.

It follows from the considerations set out above that this submission must be rejected.

VI—Sixth submission

In this submission the applicant puts forward several distinct complaints, namely:

'(a) Although the Selection Board was dealing with a competition on the basis of qualifications, it went so far as to give real tests under the guise of "interviews", and the interview held with the applicant amounted to a series of "trick questions";

(b) The Selection Board did not take qualifications into account, as the marks were given for knowledge of languages and vocational experience; as for knowledge of languages it should be noted that the Selection Board treated knowledge of English a decisive criterion whereas the Notice of Competition specified "thorough knowledge of one of the languages of the Community (preferably French)"; the applicant possesses an excellent knowledge of French and, finally, has lived in England for fourteen years while Miss Kurz was there for the first time;

(c) The Selection Board should not have taken into account the vocational experience which Miss Kurz acquired at the defendant's London office.'

1. *Admissibility*

The defendant raises an objection of inadmissibility based on the fact that this submission was only raised for the first time in the reply, and in the defendant's view is not based on matters of law or of fact which came to light in the course of the written procedure.

This defence is clearly well founded as regards the complaint set out at (a) above. However, it should be rejected as regards the complaints listed at (b) and (c) because in the opinion of the Court these complaints arise from certain documents filed by the defendant as Schedules to the statement of defence.

2. *On the substance*

(a) As regards the complaint under (b), the applicant has not alleged any precise fact giving grounds for the supposition that the Selection Board did not duly take the qualifications of the candidates into account.

Furthermore the Notice of Competition made a clear distinction between 'qualifications or certificates' and 'vocational experience', so that it obviously put these two criteria on an equal footing.

Next, the said notice specified 'thorough knowledge of the English language desirable'. Therefore the Selection Board was within its rights to take knowledge of this language as a decisive criterion in so far as the candidate had a comparable knowledge of the other languages concerned.

Finally, while it is often true that a long stay in a foreign country gives the person concerned a clear superiority in the linguistic field, nevertheless this is not necessarily the case.

(b) As regards the complaint mentioned at (c) it was natural for the Selection Board to take into account vocational experience acquired by a candidate in the carrying out of duties identical or similar to the ones needed for the post to be filled.

It follows from the foregoing that this submission must be rejected.

VII — Seventh submission

The applicant complains that the Selection Board in its assessment of the candidates considered knowledge of languages and vocational experience together, instead of evaluating them separately.

There is no rule forbidding the Selection Board to proceed in the way thus criticized unless the appointing authority is, as a result, rendered incapable of taking a just and equitable decision. There is no element in this case which lends itself to the supposition that this may have been so here.

This complaint is therefore unfounded.

Since the applicant has not succeeded in any of her submissions, her application must be rejected as unfounded.

VIII — Costs

The applicant has failed in her case. In accordance with Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. However, under Article 70 of the said rules, expenses incurred by institutions in proceedings brought by employees of the Communities shall be borne by the institutions themselves.

By order dated 24 June 1964, the Court (Second Chamber) rejected the applicant's request for the grant of legal aid, reserving the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Staff Regulations of officials of the European Economic Community and the European Atomic Energy Community;
Having regard to the Conditions of Employment of Other Servants of these Communities;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities and in Particular Articles 69 and 70 thereof;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application No 16/64 as unfounded;**
2. **Orders the applicant to bear the costs including those relating to the request for the grant of legal aid, but not including the costs incurred by the defendant.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 31 March 1965.

A. Van Houtte
Registrar

A. M. Donner
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND 16 FEBRUARY 1965[1]

Mr President,
Members of the Court,

A notice 143/B, published in the EEC Commission Staff Information Bulletin dated 16 August 1963, announced to persons interested that a competition internal to the institution was to be held on the basis of qualifications for a post as an assistant B3/B2 at the London

1 – Translated from the French.