On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the European Parliament to pay the whole of the costs, including those of the applicant.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 30 May 1984.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 12 APRIL 1984 [1]

Mr President,
Members of the Court,

The proceedings with which I am to deal today concern the filling of a post of principal administrator (Career Bracket A 5/A 4) in the Treasury-Accounts Division of the Directorate General for Administration, Personnel and Finance of the European Parliament.

A — The procedure for filling the post was opened by the issuing of Notice No 3599 on 10 May 1982, pursuant to Article 29 (1) (a) of the Staff Regulations. In that notice the duties associated with the post were defined as follows:

1 — Translated from the German.

"Responsible, under the authority of the Accounting Officer, for all aspects of the Accounting Service, the Recovery Service and the Service controlling imprest accounts."

As regards qualifications and experience, the notice required,

inter alia:

"Very good knowledge of accounting procedures . . .; Experience in the field of computerized accounting."

The closing date for applications for transfer or promotion was 25 May 1982.

That action brought no result. Only one official from the Parliament, in Grade B 1, made application, relying on the possibility alluded to in the notice that an internal competition might be organized.

During the validity of that notice a further vacancy notice, No PE/A/75, was addressed to the other Community institutions pursuant to Article 29 (1) (c) of the Staff Regulations. According to that notice officials of other institutions might, before 3 June 1982, apply for transfer if they were either classified in Grade A 5 or A 4 or had been classified in Grade A 6 for at least two years on the closing date for applications.

Pursuant to that notice, on 27 May 1982 the applicant in these proceedings applied for the post in question. He is an official in Grade A 6 at the Office for Official Publications of the European Communities. He had the required seniority in his grade of two years.

His application was however unsuccessful. He was so informed, in reply to his inquiry of 5 July 1982, by a letter of 20 August 1982 from the Director for Personnel and Social Affairs of the European Parliament. The letter stated that the department concerned had decided that the education and experience of the applicant did not meet the requirements laid down, in particular as regards experience in the field of computerized accounting, and that another applicant had therefore been selected.

As appears from a letter of 28 May 1982 from the Secretary General of the Parliament to the Chairman of the Joint Committee, the Parliament had in fact altered the procedure for filling the post in May 1982 and had decided to apply Article 29 (2) of the Staff Regulations, which provides as follows:

"A procedure other than the competition procedure may be adopted by the appointing authority for the recruitment of Grade A 1 or A 2 officials and, in exceptional cases, also for recruitment to posts which require special qualifications."

According to Recruitment Notice No PE/5/S, the qualification requirements referred to above applied also to the new procedure. The applications received, including the applicant's, were reviewed by an *ad hoc* selection committee. By decision of 6 August 1982 an employee of a private undertaking was appointed as a probationary official; he had apparently been offered the post as early as 5 July 1982.

The applicant was not satisfied with this outcome, and on 16 November 1982 he submitted a formal complaint to the Parliament. In the complaint he argued that

the rejection of his application was unjustified, since he possessed the required qualifications. He contended that the information he had given in his application had not been examined, and objected to the application of the procedure laid down in Article 29 (2) of the Staff Regulations.

Since he received no answer to his complaint, he brought the matter before the Court on 15 June 1983, claiming that the Court should:

1. Declare the application admissible;

2. Declare that as regards the substance it is well founded and consequently annul the rejection of the applicant's candidature;

3. Declare that Mr Young's appointment under Article 29 (2) of the Staff Regulations is illegal and consequently annul it;

4. In any event order the Parliament to pay the costs.

The Parliament considers these claims to be unfounded, and in so far as the second claim is concerned, inadmissible.

B — My opinion on the matter is as follows.

1. First and second claims

In his application the applicant made several submissions, which may be summarized as follows:

The finding that he did not meet the requirements laid down in the vacancy notice was unfounded and incorrect;

His application was not considered, or at least was not sufficiently seriously and carefully considered;

The decision rejecting his application did not adequately state the grounds on which it was based, as required by Article 25 of the Staff Regulations.

In his reply he additionally submits that he was first informed of the rejection of his candidature by a letter from the Parliament of 20 August 1982, later than should have been the case. A notification in that respect should properly have been sent to him at the beginning of July 1982, that is, immediately after the selection for the filling of the post at which his application had been found not to meet the requirements.

(a) An objection of inadmissibility was made against that submission with reference to the fact that it was raised for the first time in the reply. The defendant relies on Article 42 (2) of the Rules of Procedure according to which proceedings in the Court are governed by the principle that all issues should be raised in the originating application.

The objection seems well founded, since the new complaint is clearly not "based on matters of law or of fact" which first came to light in the course of the written procedure. It may in fact be concluded from Annex 7 to the application that the decision on the applicant's candidature was taken as early as the beginning of July 1982; the applicant therefore already knew at the time of bringing these proceedings that there had been a considerable delay between that decision and its notification to him. The new submission may consequently be dismissed without further discussion.

Moreover, it can easily be shown that the grounds of complaint raised by the applicant does not justify the annulment of the measure in question. It must indeed be conceded that the Parliament did not comply with the provisions of Article 25 of the Staff Regulations (immediate notification in writing of the rejection of the application), since, contrary to the view of the Parliament, the crucial time is not that of the

decision appointing another candidate but that of the actual selection which led to the elimination of the applicant. That decision was taken at the beginning of July 1982, as appears from the letter of 13 September 1982 from the President of the Parliament to the Chairman of the Staff Committee. In that letter it is expressly stated that an offer was made on 5 July 1982 to the candidate eventually appointed. Article 25 of the Staff Regulations requires the immediate notification of decisions to the officials concerned. It is directed towards something which must be done *after the adoption* of a measure. Failure to comply with that provision cannot however call in question the validity of the measure already adopted. Its incorrect application may at the most be significant in another respect, particularly with reference to observance of time-limits.

(b) The applicant further argues that the rejection of his application was not objectively justified.

In examining this ground of complaint the Court is, according to its settled case-law, bound by narrow limits in so far as questions of evaluation are concerned (for example, the existence of a manifest error). According to the relevant vacancy notice "very good knowledge of accounting procedures and experience in the field of computerized accounting" were required. In the letter of 20 August 1982 referred to above the applicant was told in general terms that his education and experience did not correspond to the qualifications required. It was added that this was in particular the case with reference to experience in the field of computerized accounting. In reply to a question put by the Court the following further details were given in that regard:

The experience which the applicant acquired as teacher of accounting in a grammar school could not be regarded as *practical* experience.

The applicant gave no further details as to his duties in the office of an accountant, which precludes acceptance of the suggestion that he obtained *very good* knowledge in that way.

At the Office for Official Publications of the European Communities he was responsible only for receipts; that could not be considered sufficient for the post in question as at the Parliament duties of that kind were dealt with by an official in Grade B 1.

The Sagap-2 system referred to by the applicant in his *curriculum vitae* concerned only computer *addressing;* his contribution to the implementation of that system cannot therefore have provided adequate experience in the field of computerized accounting.

In reply to those points the applicant refers to his studies, which led in 1965 to his becoming "Professeur d'Économie d'Entreprise et de Comptabilité". He also refers to the fact that from 1965 to 1971, with a short interruption, he taught in that field, and stresses the fact that from 1968 on he was employed in a "Cabinet d'Expert Comptable et Financier". In my view it is difficult to deny that he may have fulfilled *one* of the stated prerequisites (very good knowledge of accounting procedures); in any event, in that respect a negative decision seems scarcely justified on the

basis of the application documents alone, that is, without further inquiry.

That is not the case, on the other hand, in regard to the other essential point for the filling of the post, experience in the field of computerized accounting. It is true that the applicant asserts in his reply that he has considerable *knowledge* in that field. But it cannot be concluded from his *curriculum vitae* that he could have acquired relevant *experience* before his entry into the service of the Communities (for example, in the "Cabinet d'Expert Comptable" referred to), and in so far as he refers to his experience in the Office for Official Publications of the European Communities (in connection with the implementation of the Sagap-2 system), it was pointed out by the Parliament, and not disputed, that the system is restricted to treatment of addresses and cannot therefore have provided proper experience in the field of computerized accounting.

It may therefore be held, without trespassing upon the margin of discretion reserved to the administration, that in that regard the rejection of the applicant's candidature seems objectively entirely justified and cannot therefore be attacked on the basis of an error of assessment.

(c) The applicant further complains — also an alleged ground for annulment — that the Parliament did not fulfil the obligation of careful examination which is incumbent upon it in procedures for the filling of posts. He refers in that regard to the fact that the responsible selection committee did not contact him or make further inquiries. He contends, moreover, relying on the fact that an offer was made as early as 5 July 1982 to the candidate eventually appointed, that the selection was made with unseemly haste.

On this point too it is difficult for us to accept the applicant's complaint.

In this respect it is important, first, that it is for officials who apply for transfer pursuant to Article 29 (1) (c) to submit all the documents required by the vacancy notice and to submit such evidence as to establish that they fulfil the prerequisites for the post.

As a matter of principle the institution concerned is not obliged, therefore, to press for further particulars. We have also seen that in this case, at least in regard to the question of experience in the field of computerized accounting, a negative decision was possible without more ado on the basis of the information provided by the applicant. There were therefore no reasonable grounds for the Parliament to make further contact with the applicant in order to avoid the accusation that it had only superficially examined his application.

It is also significant that few applications were made. Under the transfer procedure pursuant to Article 29 (1) (c) of the Staff Regulations only one application was made, that of the applicant. That procedure was open for applications until 3 June 1982. Similary, few applications were received under the procedure carried out according to Article 29 (2), as was asserted by the Parliament and not disputed. If the selection committee appointed by the Parliament arrived at an opinion within a correspondingly short period it is impossible to speak of unseemly haste and thus of inadequate examination.

(d) Finally, the applicant's argument in regard to the inadequacy of the statement of reasons must be examined; that is, it must be ascertained whether the letter of 20 August 1982 in which the applicant was informed of the negative outcome of his application may be regarded as having adequately stated the reasons on which it was based, as provided in Article 25 of the Staff Regulations.

In this respect the applicant relies in particular on case-law regarding decisions of selection committees not to admit applicants to competitions. In such cases certain requirements have been laid down regarding the statement of reasons on which acts adversely affecting employees are based. Thus a statement of reasons has been considered inadequate which merely indicated which conditions an applicant had not fulfilled, [1] and it has been considered necessary to give the reasons for a selection made in the introductory stage of a competition. [2]

Seen in those terms the reasons given to the applicant in the notification of 20 August 1982, to which I referred at the outset, can hardly be regarded as adequate since, along with the clearly inadequate general allusion to the applicant's education and experience, they contain specific reference only to one prerequisite for the post (experience in the field of computerized accounting). I would also say in this regard that the standard applied for the rejection of an application in a procedure pursuant to Article 29 (2) of the Staff Regulations can hardly differ from that applied for decisions of selection committees not to give further consideration to an application.

I do not however wish to propose that the applicant's second claim pursuant to Article 25 of the Staff Regulations be upheld. That seems simply illogical, since it has been shown that the rejection of the applicant's application for transfer was *objectively* justified and it is therefore clear that a repetition of the procedure after the quashing of the decision in question, must once again have, for the applicant, a negative result. The only consequence which may be drawn for the applicant's case from the observations regarding Article 25 of the Staff Regulations must therefore be restricted to the area of costs. That is, in spite of the dismissal of the application, the Parliament should be ordered to pay the costs of the proceedings pursuant to the second subparagraph of Article 69 (3) of the Rules of Procedure, not least, in addition because although the applicant made a formal complaint he received no reply with further explanations, which might have deterred him from instituting proceedings.

(e) In summary, I therefore consider that there is no clear reason to uphold the second claim.

2. Third claim

The central point in this respect is the Parliament's objection that the claim is *simply inadmissible.* That is, according to the Parliament, the applicant has no interest in claims regarding the appointment of another candidate to the post in question since he himself has no possibility of obtaining it should the decision of 6 August 1982 be annulled, as he does not fulfil the prerequisites for the post.

1 — Judgment of 15 March 1973 in Case 37/72, *Marcato* v *Commission,* [1973] ECR 361, 369, paragraphs 21 and 22.

2 — Judgment of 28 February 1980 in Case 89/79, *Bonu* v *Council,* [1980] ECR 553, 563, paragraph 5.

In view of what I have already said to the first claim and of what may be deduced from the case-law in such matters, that objection is clearly sound.

For example, it was stressed in the judgment in Joined Cases 81 to 88/74 [1] that an applicant must have a personal interest in the annulment of a disputed measure, and in the judgment in Case 85/82 [2], it was made equally clear that the existence of a personal grievance is decisive; claims in the interests of the law or of the institutions of the Communities are not admissible.

As has already been established, the Parliament was correct in acting on the basis that the applicant did not fulfil all the requirements of the vacancy notice and in particular did not have the necessary experience in computerized accounting. If that is the case, the applicant has no interest worthy of protection in attacking the appointment of another candidate to the post in question. A different conclusion would allow the applicant to obtain a review of the correct observance of provisions of the Staff Regulations without himself being able to derive any benefit from the result of that review.

The third claim must therefore in any event be dismissed. In those circumstances I can refrain from considering the submissions made by the applicant in that regard, namely:

That the conditions for the application of Article 29 (2) of the Staff Regulations (existence of an exceptional case and the filling of post which requires special qualifications) were not in fact met;

That no adequate reasons were stated for the decision to apply that provision; and

That the Parliament was wrong to disregard the fact that the Joint Committee had given its approval of the application of the procedure under Article 29 (2) only on condition that sufficient publicity be given.

C — I therefore propose that Mr Picciolo's application be dismissed and that the Parliament be ordered to pay the costs.

1 — Judgment of 29 October 1975 in Joined Cases 81 to 88/74, *Marenco and Others* v *Commission*, [1975] ECR 1247, 1255, paragraphs 5 to 7.

2 — Judgment of 30 June 1983 in Case 85/82, *Schloh* v *Council*, [1983) ECR 2105, paragraph 14.