

- in deciding upon the rules of the competition in view of these criteria and in the interests of the service.
4. It appears clearly both from a comparison of the versions in the various languages and from the relationship between the first and third paragraphs of Article 3 of Annex III to the Staff Regulations of Officials that this provision must be interpreted as meaning that if the members of the Selection Board are officials they must be of a grade at least equal to that of
  5. the post to be filled without, however, either the members or the president of the Selection Board having necessarily to be officials. The intervention of a third party in the organization of the competition tests is authorized by the second paragraph of Article 3 of Annex III to the Staff Regulations on condition that it is in an advisory capacity and that the Selection Board retains ultimate control over the procedures and its discretionary power.

In Case 90/74

FRANCINE GELDERS (NÉE DEBOECK), an official of the Commission of the European Communities, residing at 2 Stobbaertsdreef, Overijse (Belgium), represented by Marcel Slusny, Advocate at the Cour d'appel, Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny, 34 B IV, rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Thomas F. Cusack, acting as Agent, with an address for service in Luxembourg at the offices of Mario Cervino, Legal Adviser to the Commission, Place de la Gare,

defendant,

Application for the annulment of Internal Competition COM/BS/9/73 together with the appointments made as a result of that competition.

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars (Rapporteur), president of Chamber, R. Monaco and A. O'Keeffe, Judges,

Advocate-General: J.-P. Warner

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Facts

The facts and arguments of the parties expounded in the course of the oral procedure may be summarized as follows:

#### I — Facts and procedure

1. In 1955 the applicant entered the service of the High Authority of the ECSC and on 1 January 1960 transferred to the service of the Commission of the EEC. Since 1 January 1970 she has been at Step 8 in Grade C 1, that is to say, the highest step in that grade.

Regulation No 1473/72 of the Council of 30 June 1972 (OJ 1972, L 160 of 16. 7. 1972), amending the Staff Regulations of Officials, created the new basic posts of Senior Secretarial Assistant and Secretarial Assistant classified in Category B and coming within career brackets B 3 - B 2 and B 5 - B 4 respectively.

In this connexion the Council decided to convert 45 C 1 posts into 45 B 3 posts, 23 C 2 posts into 30 B 4 posts and 22 C 3 posts into 15 B 5 posts.

The Commission considered that this constituted a regrading of occupied posts and that it was unnecessary to publish a vacancy notice beforehand. It therefore inserted in Staff Courier No 251 of 16 April 1973 a notice relating to Internal Competition COM/BS/9/73 based on qualifications and on tests, 'for the posts of Senior Secretarial Assistant and Secretarial Assistant'. A document entitled 'Information Booklet' dated June 1973 was subsequently sent to the candidates.

2. The notice of competition provided for three compulsory and two optional tests. The former consisted of a written test, practical tests and two oral tests. To qualify for the oral tests the candidates had to obtain a minimum of 10 out of 20 marks in the written test and 15 out of 30 marks in the practical tests.

The applicant took part in the written and practical tests but she was notified by letter of 5 December 1973 that on the basis of the results obtained she had not been admitted to the oral tests. The marks which she had obtained were communicated to her by letter of 13 December 1973. On 1 March 1974 the applicant lodged a complaint under Article 90 of the Staff Regulations of Officials with the object of having all the tests held again. This complaint was rejected by letter of 21 August 1974.

The present application, dated 20 November 1974, was lodged at the Court Registry on 21 November 1974. After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

#### II — Conclusions of the parties

The applicant claims that the Court should:

1. declare null and void the entire procedure of Internal Competition COM/BS/9/73 and consequently the appointments made on the basis of that competition;
2. if appropriate, declare null and void the refusal to allow the applicant to

take part in the oral and optional tests;

3. declare null and void the express rejection of the applicant's complaint by the defendant's letter of 21 August 1974;
4. order the defendant to bear the costs and expenses of the proceedings;

*Alternatively:*

5. order the defendant to produce without exception all the documents relating to the abovementioned competition, particularly the decisions of the Council of Ministers, the preparatory documents relating to the decisions taken by the Commission, the said decisions of the Commission, all communications, notices, and in general all publications whatsoever relating to the abovementioned competition which appeared in the Staff Courier or in any other publications addressed to the staff, the minutes of the selection board together with all documents relating to the competition which were submitted to the selection board and/or to the examiners so that they may calculate the candidates' marks, and in particular all the 'situations' which were the subject of the practical tests; the above list of documents is illustrative and not exhaustive.

The defendant contends that the Court should:

- declare inadmissible the submissions put forward by the applicant under Sections IV and V of her application and accordingly dismiss them;
- declare that all the applicant's submissions which constitute her application are inadmissible and consequently dismiss it;
- order the applicant to pay the costs.

### III — Submissions and arguments of the parties

1. A first submission is derived from the fact that contrary to the second paragraph of Article 4 of the Staff

Regulations of Officials no vacancy notice was published.

The Commission considers that this submission is unfounded because the obligation to publish a vacancy notice only exists under the second paragraph of Article 4, once 'the appointing authority decides that the vacancy is to be filled'. However, in the present case new posts were not created; there was merely a conversion of C posts into B posts. Once the competition procedure had been completed and the list of successful candidates drawn up, the posts in Grade C held by the 80 candidates highest placed on the list were 'elevated' and the candidates appointed to the post of Senior Secretarial Assistant (B 3) or Secretarial Assistant (B 4 or B 5) in accordance with their classification on the list of suitable candidates and with the notice of competition.

The applicant replies that since promotion was concerned it could only have taken place in order to fill a vacant post and a vacancy notice was thus required.

The line of argument based on the conversion of the post confuses considerations relating solely to the budget with the question of the vacancy. The argument relating to the 'elevation' of the post contradicts the definition of duties adopted by the decision of the Commission which appeared in Staff Courier No 272 of 4 September 1973 and with the classification of the posts in categories according to their nature and to the duties attaching to them, which appears in Article 5 of the Staff Regulations of Officials. According to the applicant the rule as to publicity in the second paragraph of Article 4 is fundamental since it constitutes a guarantee for the staff.

In its *rejoinder* the Commission considers that to concur with the applicant would only require pointless and unnecessary procedural formalities.

It adds that even if there had been vacant posts the Commission would nevertheless have fulfilled the obligations imposed on it by Article 4 of the Staff Regulations. In fact, in considering the various courses open to it under Article 29 (1) (a) (b) and (c), the (appointing) authority may decide not to proceed by way of promotion or transfer but to hold an internal competition. In those circumstances it is no longer necessary to publish a vacancy notice since the authority has completely fulfilled its obligations to the staff through its notification to the staff and the notice of competition. Finally, the applicant has not been adversely affected since she took part in the competition.

2. The *applicant* maintains secondly that the fact that the same tests for the two types of post to be filled were prescribed and arranged constitutes an infringement of Article 5 (4) of the Staff Regulations of Officials in that the correspondence between basic posts and career brackets as set out in Annex I to the Staff Regulations of Officials was disregarded, since in Category B the posts of Senior Secretarial Assistant and Secretarial Assistant correspond to two distinct grades.

The defendant replies that, even if it were conceded that holding a single competition to fill posts of completely different natures and levels conflicts with the spirit of Article 5, this is not so when, as in the present case, appointments are to be made to two types of post which overlap and which are moreover identical in their duties, the only difference between them relating to the level of responsibility on which the duties are to be performed. Furthermore the system of marking the tests and drawing up the lists of suitable candidates provided for in the notice of competition enabled the necessary classifications to be made at the end of the competition.

The applicant replies that the Court has recognized the validity of a series of

parallel competitions in order to fill posts of administrator in the same grade but has never recognized the validity of a single competition to fill different posts, since the appointment must be made according to the number of marks obtained by the candidates. She considers that it is precisely the level of responsibility placed on officials in Grades B2 - B3 which distinguishes them from the officials in B4 - B5. The concept of overlapping employed by the defendant is only appropriate to grades in the same career bracket.

In its *rejoinder* the defendant concedes that the organization of a single competition for two career brackets coming under different categories (A, B, C, D) would in fact be incompatible with the general scheme of the provisions in question although it is not expressly prohibited. However, this is not so with regard to the organization of a single competition for two overlapping career brackets coming within the same category, the more so if it is considered that under the Staff Regulations those two career brackets consist of posts corresponding to duties of the same nature and of the same level. However, according to the definition of duties, the secretarial assistant performs under supervision the same work as that which the senior secretarial assistant carries out on her own responsibility.

3. The third submission is based on the fact that the circumstances under which the competition took place give the impression that it was a competition based on tests only, whereas the notice of competition provided for a competition based on qualifications and tests. Under heading V the notice of competition indeed provided for 'marking' for professional experience but it was a mere fiction since regard is had only to seniority in the service without taking into account the importance of the duties according to their specific features. In view of the desired objective of the competition, which was to provide a new

career bracket for officials who had some time ago reached a point where they could progress no further in their career bracket, a notice of competition prescribing only relatively short seniority in the service of the Communities, five years, and making the wholly relative consideration of professional experience conditional on prior success in the eliminatory written and practical tests, must be considered as inconsistent and contrary to the principle *patere legem quam ipse fecisti*.

In its *statement of defence* the Commission observes that in the 'Notice to the Staff' dated 16 April 1973 it had already notified the candidates that their experience would be appraised by submitting them to appropriate tests. Furthermore, in addition to the requirement of 5 years' service in the Communities the notice of competition also called for professional experience of at least 9 years in secretarial work.

Furthermore, holding preliminary eliminatory tests is not incompatible with the broad lines laid down by the Commission since the practical tests were designed so as to enable the candidates to prove their secretarial experience as well as to make it possible to assess their personal and professional qualities as a whole.

The applicant replies that she does not dispute the Commission's right to organize a competition on the basis of qualifications and tests but she considers that the tests could not have been the decisive factor, as was the case, since they were eliminatory.

She considers that consultation and examination of the candidates' personal files together, where appropriate, with an additional opinion from the immediate superior would have constituted a much better test of the candidates' abilities.

In its *rejoinder* the Commission denies that the object of the operation was to

open a new career bracket to officials with considerable seniority. On the contrary, the intention was to fill the new posts with the best of those eligible for them whilst at the same time favouring to some extent candidates with seniority in the profession of secretary and in the service of the Communities. In view of this information the criticism relating to the requirement of 5 years' service in the Communities becomes irrelevant. Consultation and examination of the candidates' personal files advocated by the applicant would, because these files are built up from different sources, conflict with the fundamental concept of a competition involving tests, namely impartial consideration of the performances of all the candidates by a single body applying the same criteria to everyone. Moreover, the criticisms relating to the efficacy of one type of tests in relation to another concerns their appropriateness and does not fall within the Court's jurisdiction.

The maxim *patere legem quam ipse fecisti* is irrelevant to the present case because the amendment to the Staff Regulations which creates the new career brackets in Category B is not qualified by any rule derogating from the regulatory provisions of the Staff Regulations which constitute the *lex* governing all competitions. The *lex* allegedly infringed was a mere course of action which, according to the applicant the Commission has adopted, whilst the Commission itself disputes this.

4. According to the applicant the competition in dispute is also unlawful because, although the chairman of the selection board was an official when he was appointed he was no longer one when he carried out his duties. In accordance with the spirit and the practice of the Staff Regulations the chairman of the selection board must be an official when there is a competition the object of which is the promotion of officials engaged in executive duties.

Basing itself on Article 38 of the Rules of Procedure, the Commission raises an objection of inadmissibility, since according to it the legal aspects of the submission relied on have not been sufficiently elaborated. It adds that there is no legal provision preventing persons from outside the institutions from being members of the selection board in a competition. This point of view accords with the prevalent methods in the national laws on the public service.

With regard to the objections of inadmissibility the applicant replies that, by virtue of the principle *iura novit curia* and because the Court applies the law and not its letter, the applicant is not required to indicate any specific provision either of the Treaty or of the document on which she relies. Furthermore a submission outlined in the application may be developed in the reply, and even in the course of the oral procedure. With regard to the substance of the case the applicant considers that it is clear from the first and third paragraphs of Article 3 of Annex III to the Staff Regulations of Officials that members of the selection board must be chosen from officials.

In its *rejoinder* the Commission observes that the third paragraph of Article 3 of Annex III, which provides that 'Members of the selection board shall be chosen from officials whose grade is at least equal to that of the post to be filled', only applies to the specific situation when members of the selection board are officials. The fact that the first paragraph of that article provides that one member of the selection board shall be 'an official appointed by the Staff Committee' does not allow any conclusions to be drawn as to the other members of the Board. The Commission points out that the applicant has not suggested that she has been adversely affected in any way by the fact that the chairman of the selection board was a former official.

5. In her fifth submission the applicant criticizes the form in which the practical

tests were conceived and the manner in which they were carried out. Those tests were organized in a new form which, according to its advocates, was designed 'so that persons with considerable practical experience as secretaries should not be discouraged from entering a competition which, because it is based on excessively theoretical skills, might seem to them to favour candidates who were less experienced but who had had more recent schooling'. The results of the competition indicated that the object in view was not attained: candidates with long secretarial experience, advanced training as high-level secretaries and with good periodical reports were eliminated in favour of candidates without much experience who had often been trained by the former.

The applicant complains that the tests were carried out in a manner other than that announced in the Notice to the Staff which appeared in the Staff Courier of 16 April 1963 and in the 'Information Booklet' sent to the candidates in June 1973. These took the form of 'psycho-technical tests' in which an answer had to be given within a fixed time to questions based on theoretical situations unrelated to the duties carried out by the executive secretaries in the Administration.

The Commission replies that all the applicant's criticisms as to the organization and carrying out of the tests relate to the practical test which the applicant passed. The submission is thus inadmissible since she has no legal interest. The applicant's exclusion from the oral tests was, in accordance with the provisions of the notice of competition, based on her failure in the written test which she does not criticize.

With regard to the substance of the case, the Commission replies that it was by no means intended systematically to weight the competition in favour of secretaries with the greatest seniority. It denies that

there was a disparity between the Information Booklet and the administration of the test which, far from being a 'psychotechnical test', was in fact a practical test intended to facilitate appraisal of the candidates' personal and professional capacities.

As to the legal basis of the submission the applicant observes in her reply that she is not bound to specify the cause of the nullity upon which she relies since the statement of facts is clear enough to allow the type of nullity invoked to be discerned. The Court may in any event refer to the general principles of law, in particular to equality amongst officials and to a certain extent respect for vested rights. In addition it is beyond dispute that the Commission is bound to observe the principle *patere legem quam ipse fecisti*.

The applicant requests the Court to verify whether the manner in which the competition was conceived and carried out corresponds to the stated intentions of the defendant in the form in which they can be inferred from the wording of the minutes of the Commission and from the preparatory documents, and as they appear in any event from a perusal of the Notice to the Staff. She also asks the Court to verify whether the selection of certain tests and the manner in which they were conducted is in accordance with the provisions binding the defendant.

In its *rejoinder* the Commission replies that, with regard to infringement of the general principles of law, the applicant has provided no evidence of divergence between its stated intentions with regard to the subject-matter of the test and the manner in which it was conducted. The applicant's criticisms relating to the effectiveness of the practical test alone are concerned with its appropriateness and effectiveness and not with its legality.

6. The applicant finally criticizes the use of private undertaking both for the choice of tests and their marking. Moreover, since the results were handled by a computer, it was impossible for the selection board to check the tests and the marking.

In the opinion of the Commission this criticism is unfounded. The selection board in Competition COM/BS/9/73 was assisted by a number of examiners, three of whom were experts from a private firm, whilst the others were serving officials. These experts devised and drew up the practical test, considered the responses to it and made a report to the selection board which calculated the final marks, having to hand the papers, including the candidates' answers. The Commission states that since Article 6 of Annex III to the Staff Regulations of Officials requires that the proceedings of the selection board shall be secret, the minutes of the latter will be produced only if they are specifically requested by the Court. The applicant has failed to produce any evidence whatsoever to justify her claims.

In her *reply*, the applicant repeats her request for production of the minutes which alone make it possible to check the truth of the Commission's declarations. The principle laid down in Article 6 of Annex III to the Staff Regulations of Officials must yield to the public interest when the latter is concerned. With regard to the evidence required by the Commission, the applicant observes that officials have no access to any of the evidence and can only make allegations. Consequently the Court ought to order production of the documents relating to the dispute, under the powers which it possesses, in particular under Article 21 of the Protocol on the Statute of the Court of Justice of the EEC and the wider provision in Article 23 of the Protocol on the Statute of the Court of Justice of the ECSC.

In its *rejoinder* the Commission replies that under administrative law there is also an obligation to submit the beginnings of proof in support of allegations as to fact. It produces extracts from minutes dated 1 December 1973 which cover 20 meetings of the selection board from which it is clear that in the course of those meetings the board itself considered the marks of the test

complained of and drew up the table setting out the marks.

In the course of the hearing on 26 June 1975 the parties developed the arguments set out in the course of the written procedure.

The Advocate-General delivered his opinion at the hearing on 18 September 1975.

## Law

- 1 The application lodged at the Court Registry on 21 November 1974 is essentially for the annulment of internal competition COM/BS/9/73 based on qualifications and on tests organized by the Commission and relating to posts of Senior Secretarial Assistant in Grades B 3 - B 2 and Secretarial Assistant in Grades B 5 - B 4 and, consequently, for the annulment of the appointments made following this competition.
- 2 The applicant relies on various submissions, the first based on the absence of a vacancy notice preceding the notice of competition, and the others based on irregularities allegedly vitiating the organization and the conduct of the tests and on their incompatibility with the objective pursued by the Council of Ministers in adopting Regulation No 1473/72 of 30 June 1972 (OJ L 160 of 16. 7. 1972 p. 1) amending Annex I to the Staff Regulations of Officials by the creation of two new basic posts.
- 3 The Commission, in order to meet the needs of Executive Secretaries and Principal Secretaries within career bracket C 1 and of Secretary/Shorthand-typists in career bracket C 3 - C 2, who are frequently held back in these grades at the end of their careers and because it considered 'that about 10 % of these secretaries carry out secretarial duties of category B' obtained from the Council the conversion of a certain number of posts previously classified under Category C into posts of Senior Secretarial Assistant within career bracket B 3 - B 2 and of Secretarial Assistant within career bracket B 5 - B 4.
- 4 Without publishing a vacancy notice, the Commission organized an internal competition based on qualifications and tests, the conditions of which specified, *inter alia*, that the 40 highest placed candidates, provided that they



had obtained a total of 70 marks in the compulsory tests, would be appointed to posts converted to Senior Secretarial Assistant in Grade B 3 and that the next 40 candidates, provided that they had obtained 60 marks, would be appointed to posts of Secretarial Assistant in Grade B 5.

- 5 This competition, the contents of which were identical for posts of Senior Secretarial Assistant (B 3 - B 2) and of Secretarial Assistant (B 5 - B 4) included, in addition to optional tests, compulsory tests, first written and then practical, and, for the candidates who had passed those tests, an oral test.
- 6 Lastly, a system of bonus marks was provided for officials with greater seniority in the service of the Communities as a secretary and/or previous professional experience of secretarial work.
- 7 Thus the competition, without in principle excluding other candidates, clearly favoured secretaries of the Commission in career brackets C 1 and C 3 - C 2.
- 8 The applicant, an Executive Secretary in Grade C 1, was informed after taking part in the written and practical tests that she had not qualified for the oral tests.
- 9 Before commencing the examination of the first submission it should be said that there is room for doubt as to the regularity of a procedure for the regrading of certain posts as considered necessary, which results in determining from amongst, a number of posts those which are to be regraded, not in a general and abstract manner in accordance with the nature and the level of the duties which they involve, in accordance with the requirements of Article 5 and of Annex I of the Regulations, but, *a posteriori*, in accordance with results obtained after a competition between holders, of posts who, furthermore, will continue to carry out duties identical to those which they performed previously.
- 10 This argument, however, has not been raised and the Court considers that it is not necessary to examine it of its own motion.

### First submission

- 11 According to the applicant the competition in question must be annulled because the notice of competition was not preceded by the publication of the vacancy notice which is required by the second paragraph of Article 4 of the Staff Regulations of Officials.
- 12 This submission, which relates to a condition of form to the fulfilment of which the regularity of the contested measure is subject, is inadmissible because of lack of interest on the part of the applicant.
- 13 Although the vacancy notice must necessarily precede the notice of competition, failing which there is an infringement of the second and third paragraphs of Article 4 of the Staff Regulations, this is in order to enable the appointing authority to examine, before commencing the procedure for a competition, whether the post should be filled by transfer or promotion.
- 14 The applicant, however, could not have benefited from either of these two measures since, being an official in Category C, she needed to obtain a post in Category B which, under Article 45 (2) of the Staff Regulations, can take place only on the basis of a competition.
- 15 Furthermore, that omission could also have adversely affected possible candidates who were thereby prevented from taking part effectively in the competition, but that is not the case as regards the applicant.
- 16 The submission must be rejected.

### Second submission

- 17 According to the applicant the contested decision infringes Article 5 of the Staff Regulations of Officials concerning the classification of posts and the description of duties corresponding to each basic post, in that one and the same competition was organized for different posts corresponding to different grades.

- 18 The organization of one competition for different posts would be incompatible with Article 5 mentioned above if this were to result in a clear inadequacy in the tests with regard to the evaluation which the selection board must make of the qualifications required to occupy either of the posts to be filled.
- 19 According to the description of duties laid down by the Decision of the Commission of 28 May 1973, the posts of Senior Secretarial Assistant (B 3 - B 2) and of Secretarial Assistant (B 5 - B 4) involve the performance of very similar duties but with a different level of responsibility, since holders of the former posts have to be capable of carrying out difficult and complex secretarial duties 'within the framework of general directives' whilst holders of the latter must carry out the same duties 'under supervision'.
- 20 In these circumstances, the organization of a single competition and the provision that the more responsible tasks will be reserved for the highest placed candidates and the tasks requiring less responsibility for those placed below the former, does not infringe Article 5 quoted above.
- 21 The submission must be rejected.

### Third submission

- 22 The applicant again claims that although the competition was based on qualifications and tests, the defendant attached too much importance to the tests and insufficient importance to the qualifications of the candidates.
- 23 In this respect, she refers to the wishes which were expressed by members of the Commission that careers at the top of Category C should be carried forward into a higher category.
- 24 She asks, for the purpose of providing support for her argument, that the Court should order the production of all documents and minutes of the Commission which led to the publication of the notice of competition.
- 25 It is established, as was pointed out above, that the aim of the contested competition was to give certain categories of officials held back in grades in

Category C, or who might be held back there, the chance of access to grades in Category B.

- 26 However, neither the Notice to Staff from Mr Coppé, a member of the Commission, dated 6 June 1972 (Schedule V to the reply) nor his communication preceding the notice of competition make it possible to infer that the intention was to organize the competition so as to ensure, in fact, quasi-automatically, prolongation of careers for those with seniority.
- 27 Furthermore, if such had been the case, the appointing authority would have disregarded Articles 7 and 27 of the Staff Regulations.
- 28 Consequently the request for production of documents must be rejected.
- 29 Since a change of category was involved and a competition was consequently indispensable, the Commission enjoyed a wide discretion in deciding upon the criteria of ability required for the newly-created post and, consequently, in deciding upon the rules of the competition in view of these criteria and in the interests of the service.
- 30 No factor has been put forward to show that the Commission exceeded the limits of the discretion which is granted to it in this respect.
- 31 The submission must be rejected.

#### Fourth submission

- 32 The applicant also claims that the competition is irregular because the Selection Board was presided over by a person not having the status of an official.
- 33 According to Article 3 of Annex III to the Staff Regulations of Officials.

'The Selection Board shall consist of a chairman, one or more persons appointed by the appointing authority and an official appointed by the Staff Committee.

The Selection Board may, for certain tests, be assisted by one or more examiners serving in an advisory capacity.

Members of the Selection board shall be chosen from officials whose grade is at least equal to that of the post to be filled'.

- 34 The applicant wrongly deduces from this provision, and especially from the third paragraph thereof, that the Selection Board must be officials.
- 35 It appears clearly both from a comparison of the versions in the various languages and from the relationship between the first and third paragraphs of the said Article 3 that this provision must be interpreted as meaning that if the members of the Selection Board are officials, they must be of a grade at least equal to that of the post to be filled without, however, either the members or the chairman of the Selection Board having necessarily to be officials.

#### Fifth and sixth submissions

- 36 The fifth and sixth submissions criticize the organization of certain tests and in particular the intervention, for the practical tests, of a private undertaking working by means of computers.
- 37 These criticisms relating to the methods used in the tests with varying degrees of success, concern matters of fact which do not bring the legality of the competition into question.
- 38 On the other hand the intervention of a third party in the organization of the tests is authorized by the second paragraph of Article 3 of Annex III to the Staff Regulations on condition that it is in an advisory capacity and that the Selection Board regains ultimate control over the procedures and its discretionary power.
- 39 It has not been shown or even alleged that such was not the case.
- 40 These submissions must be rejected.

Costs

- 41 The applicant has failed in her application.
- 42 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.
- 43 Nevertheless, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the application;
2. Orders the parties to bear their own costs.

Monaco

Mertens de Wilmars

O'Keeffe

Delivered in open court in Luxembourg on 16 October 1975.

A. Van Houtte

Registrar

R. Monaco

President of the First Chamber