

JUDGMENT OF THE COURT (THIRD CHAMBER)  
9 OCTOBER 1984 <sup>1</sup>

**Robert Adam and Others**  
**v Commission of the European Communities**

(Officials — Promotions)

Joined Cases 80 to 83/81 and 182 to 185/82

*Measures adopted by the Community institutions — Internal directive — Rules indicating the practice to be followed by the Administration — Whether binding on the Administration*

*(Staff Regulations of Officials, Art. 5 (3))*

Although the Court has consistently held that internal directives or measures of an internal nature may not be regarded as rules of law which the Administration is always bound to observe, they nevertheless form rules of practice from which the Administration may not depart without giving the reasons which led it to do so, since otherwise the principle of equality of treatment would be infringed.

In Joined Cases 80 to 83/81 and 182 to 185/82

ROBERT ADAM, ÉMILE DE BLUST, PAUL DE WINDT AND JEAN-CLAUDE GODAERT, scientific officers at the Joint Research Centre at Ispra, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Mario Tramontana, 43 Rue des Glacis,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jean-Pierre Delahousse, Principal Legal Adviser, and Daniel Jacob, a member of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Manfred Beschel, also a member of the Commission's Legal Service, Jean Monnet Building, Kirchberg,

defendant,

<sup>1</sup> — Language of the Case: French.

APPLICATION for the annulment of the decision dated 9 June 1980 by which the *ad hoc* Committee charged with assessing the ability of Category B officials in the scientific and technical services to perform Category A duties refused to place the applicants on the list of suitable candidates and of the decision dated 24 September 1981 by which the Commission adopted the *ad hoc* Committee's decision to place the applicants on the list of suitable candidates, without, however, stating their fields of competence as is required by Section III (2) (e) of the Procedural Arrangements approved by the Commission on 17 November 1978 (*Administrative Notices* No 220 of 20. 12. 1978),

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn  
Registrar: D. Louterman, Administrator

gives the following

## JUDGMENT

### Facts and Issues

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

#### I — Facts and written procedure

##### 1. *Relevant provisions*

Article 45 (2) of the Staff Regulations states that "an official may be transferred

from one service to another or promoted from one category to another only on the basis of a competition".

However, the second paragraph of Article 98 of the Staff Regulations sets that requirement aside in the case of "officials of the Communities in the scientific and technical services".

The Commission therefore introduced a system by which the ability of Category B officials in the scientific and technical

services to perform Category A duties could be assessed without a competition in order that such officials could move into that category. For that purpose, it published, in *Administrative Notices* of 20 December 1978, a notice entitled "Procedures to be implemented prior to decisions on the transfer from Category B to Category A of officials in the scientific and technical services" (hereinafter referred to as "the Procedural Arrangements").

Section III of the Procedural Arrangements provides that an "*ad hoc* Committee", the members of which are to be nominated by the Commission, is to examine applications in accordance with the procedure laid down in Section III (2) (a) to (d). That procedure consists in examining the application documents, supplemented, where appropriate, by an interview with the candidate and an assessment of a dissertation written by the candidate on a scientific or technical subject chosen by the Committee.

Section III (2) (e) provides that:

"Following its deliberations, the Committee will submit a reasoned report to the appointing authority with a list of candidates considered capable of performing Category A duties. The report will indicate the areas in which each candidate is regarded as being competent. A transfer decision will then be taken by the appointing authority in the light of service requirements and the budgetary situation."

## 2. *Origin and development of the dispute*

Mr Adam, Mr De Blust, Mr De Windt and Mr Godaert, who had submitted their applications within the time-limit laid down in Section IV of the Pro-

cedural Arrangements, were informed on 9 June 1980 by the Directorate-General for Personnel and Administration that, after examining the merits of each candidate, the *ad hoc* Committee "had not been able" to include their names on the list of suitable candidates.

On 8 September 1980 the four applicants each lodged a complaint against that decision, pursuant to Article 90 (2) of the Staff Regulations, and then brought appeals against the implied decisions rejecting their complaints, all of which were registered at the Court on 10 April 1981 under Nos 80/81, 81/81, 82/81 and 83/81.

By letters dated 17 March and 28 April 1981, Mr O'Kennedy, the Member of the Commission responsible for staff matters, informed the applicants that, in view of their complaints, the Commission had decided to refer their cases and those of other officials to the *ad hoc* Committee for reconsideration.

By order of 30 June 1981, the four cases were joined for the purposes of the procedure and the judgment.

At the Commission's request, the President of the Second Chamber decided on 9 July 1981 to stay the proceedings in all four cases until further notice.

On 24 September 1981, Mr Morel, the Director-General for Personnel and Administration, notified the applicants that, although the Committee had decided at the end of its meeting on 30 July of that year that the applicants were eligible for a change of category, it had not been able to determine the fields of competence in which they could "currently perform scientific or technical

duties in Category A at the level of competence required by the Commission services"; however, their names would be notified to the appointing authority and published in *Administrative Notices* (*Administrative Notices* No 339 of 16. 10. 1981).

On 17 December 1981, the applicants lodged a complaint against the contested decision of 24 September 1981 on the ground that none of their fields of competence were defined nor any indication given as to their classification on the "priority" list. On 23 July 1982, they appealed against the implied decision rejecting their complaint by applications registered at the Court under Nos 182/82, 183/82, 184/82 and 185/82.

By letters dated 29 July 1982, Mr Burke, the Member of the Commission responsible for staff matters, rejected the complaints lodged by them on 17 December 1981.

Owing to the change in its composition, the Court decided to assign those cases to the Third Chamber. By order of 26 October 1982, the four cases were joined for the purposes of the procedure and the judgment.

By order of 5 May 1983, both sets of cases, 80 to 83/81 and 182 to 185/82, were joined for the purposes of the procedure and the judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to order measures of inquiry pursuant to Article 21 of the

Statute and Article 45 of the Rules of Procedure.

By letter dated 29 March 1984, the Registrar of the Court invited the Commission to produce the following documents before 20 April 1984:

- (a) *Administrative Notices* No 281 of 10 June 1980, of which the applicants appended only an extract to their reply and which contains the list of suitable candidates initially drawn up by the *ad hoc* Committee;
- (b) *Administrative Notices* No 339 of 16 October 1981, containing the addendum to the previous list;
- (c) the list of the officials placed on the list in question and promoted to Category A since 10 June 1980.

The Commission supplied those documents on 18 April 1984. They show that, of the nine officials added by the addendum published in *Administrative Notices* No 339 of 16 October 1981 to the list of officials eligible for transfer from Category B to Category A published in *Administrative Notices* No 281 of 10 June 1980, two were promoted, namely Mr Willy Lycke, on 1 January 1982, and Mr Émile De Blust, on 1 January 1984.

Because of his promotion, Mr De Blust, by letter dated 23 May 1984, withdrew his application in Case 183/82. However, he maintains the formal conclusions set out in his application in Case 81/81.

II — Conclusions of the parties

1. In Cases 80 to 83/81 the *applicants* claim that the Court should:

- (1) Declare that the *ad hoc* Committee's decision to refuse to place the applicants on the list of suitable officials with a university education is null and void;
- (2) Order the defendant to pay the costs.

The *Commission* contends that the Court should declare that the acts forming the subject-matter of Joined Cases 80 to 83/81 were withdrawn on 30 July 1981 and that it is therefore unnecessary to make an order with regard to them.

2. In Cases 182 to 185/82 the *applicants* claim that the Court should:

- (1) Join Cases 182 to 185/82 to Cases 80 to 83/81;
- (2) Declare null and void the decision notified to them in the letter of 24 September 1981, according to which the *ad hoc* Committee was unable to determine the fields of competence in which the applicants could currently perform scientific or technical duties in Category A at the level of competence required by the Commission services, in so far as that decision is prejudicial to them;
- (3) Declare null and void the decision to which the appointing authority referred in the letter of 24 September 1981 and by which it adopted the decision of the *ad hoc* Committee;
- (4) Declare null and void the decisions of both the *ad hoc* Committee and the appointing authority to include

the applicants in a list but without indicating whether that list was to be incorporated in the "first priority" list published in *Administrative Notices* No 281 of 10 June 1980;

- (5) Declare null and void all promotions from Category B to Category A granted to officials in the scientific and technical services of the Joint Research Centre since 10 June 1980;
- (6) Order the defendant to pay the costs.

The *Commission* contends that the Court should dismiss the applications as unfounded and order the applicants to pay the costs.

III — Submissions and arguments of the parties

A — Cases 80 to 83/81

The first submission

The first submission is that the authority which notified the applicants of the contested decision of 9 June 1980 lacked competence.

The *applicants* contend that the *ad hoc* Committee is merely an auxiliary body whose task is to draw up the lists of suitable candidates on the basis of which the appointing authority decides to promote officials in Category B to Category A.

The second submission

The second submission is that the *ad hoc* Committee exceeded its powers.

In this regard, the *applicants* point out that the *ad hoc* Committee required a written dissertation to be submitted,

although the Procedural Arrangements laid down such a requirement only in the case of officials without a university degree. Secondly, the committee misused the interview provided for under the Procedural Arrangements; its purpose was to determine candidates' fields of competence and not to assess their comparative merits, as is done by the appointing authority under Article 45 (1) of the Staff Regulations or by a selection board.

The *Commission* contends that, since the applicants' situation was reconsidered by the *ad hoc* Committee, since they were notified of the results of its deliberations on 24 September 1981 and since the acts challenged by the applicants were consequently withdrawn at the Commission's request, there is no longer any cause to discuss their validity.

#### B — Cases 182 to 185/82

##### The first submission

The first submission is that the *ad hoc* Committee failed to carry out its obligation under Section III (2) (d) and (e) of the Procedural Arrangements to assess and determine the fields of competence of the officials whose names appeared on the list of suitable candidates.

In the *applicants'* view, it follows from the aforesaid provisions that the task of the *ad hoc* Committee is to determine the fields of competence of the officials concerned and not their level of competence shown by the diplomas obtained in their Member States of origin. The fact that Section I (c) of the Procedural Arrangements provides for different procedures "depending on whether or not candidates hold a

university degree" proves that the Commission intended to place reliance on the education authorities of the Member States.

The applicants take the view that, contrary to what is stated by the Commission, the essential purpose of the system is not to enable officials without university degrees to move into the higher category. Although not wishing to state their views on the question whether every official with a university degree should automatically be included on the list of officials able to perform Category A duties, the applicants argue that, if the *ad hoc* Committee placed them on that list, it ought to have complied with the provisions of the Procedural Arrangements in full and stated their fields of competence. By failing to give those particulars the *ad hoc* Committee made their promotion, if not impossible, at least more difficult, since the mention of such particulars was not a mere formality but was necessary in order to enable the appointing authority to eliminate from consideration officials whose abilities are of no immediate value to the Joint Research Centre at the present stage of its development.

In this connection the applicants point out that in the list drawn up on 31 July 1981 the *ad hoc* Committee indicated fields of competence merely by stating the sector, division or department in which the selected candidates worked. The *ad hoc* Committee could therefore have done the same thing in the applicants' case.

In the *Commission's* view, it is clear from both the aims and wording of the Procedural Arrangements that the *ad hoc* Committee enjoys a margin of discretion.

The preamble to the Procedural Arrangements states in fact that:

“The purpose of the arrangements outlined below is to provide a means of assessing the ability of Category B officials in the scientific and technical services to perform Category A duties . . . with a view to their transfer to this Category.”

That purpose, which applies to any candidate for a transfer to Category A, whether or not he has a university degree, necessarily entails that the *ad hoc* Committee must ascertain whether the candidate is able to perform Category A duties in a particular field. Moreover, Section III (2) (d) of the Procedural Arrangements provides for candidates having a university degree to be interviewed to enable the *ad hoc* Committee to “assess” their areas of competence.

In the Commission’s view, it is worth pointing out in this regard that it is stated in the Procedural Arrangements approved by the Commission on 3 June 1983 that candidates holding a university degree or similar qualification:

“will be recognized as eligible for transfer following verification of their diplomas and an interview with the Committee to assess their area of competence” (*Administrative Notices* No 409 of 24 June 1983, see especially pages 27 to 30).

If, as the applicants argue, the determination of an official’s field of competence is not a mere formality, it follows that the *ad hoc* Committee cannot confine itself to stating that the field of competence of the officials

concerned is the field in which they work.

The *ad hoc* Committee’s discretion is confirmed by the wording of the Procedural Arrangements. The Commission points out that, when drawing up the list of suitable candidates, the Committee must take into account, according to Section I (a), the fact that “transfer from Category B to Category A is the exception rather than the rule . . .”, and, according to Section I (d), “the budgetary situation”.

In the event of budgetary restrictions, however, the applicants’ argument would make the *ad hoc* Committee’s discretion meaningless by giving absolute priority to officials with university degrees. That line of argument is at odds with the purpose of the entire scheme, which is primarily designed to enable Category B officials, who, though not having university degrees, can rely on professional experience at the level of Category A, to move into the higher category.

The Commission therefore considers that, in placing the applicants on the list of suitable candidates without stating their fields of competence, the Committee did not disregard the Procedural Arrangements and that consequently the first submission is unfounded.

#### The second submission

The second submission is that the appointing authority did not correct the Committee’s errors or omissions and allowed the list of suitable candidates

containing the applicants' names to be published, although their respective fields of competence were not stated.

The *applicants* argue, in the first place, that, in so far as the *ad hoc* Committee did not observe the Procedural Arrangements, it was the Commission's duty to make the necessary corrections.

Secondly, they do not accept the Commission's argument that the fact that the fields of competence of the officials concerned were not stated could not prejudice their position because appointments are decided upon by the appointing authority "in the light of service requirements and the budgetary situation". The Commission has itself stated that it grants promotions on the basis of the list of suitable candidates. The Commission must therefore ensure that it has full and comparable information on each candidate so that they have an equal chance.

The *Commission* believes that the *ad hoc* Committee complied with the provisions of the Procedural Arrangements and that it did not therefore have to correct the list of suitable candidates. The determination of an official's field of competence is not a necessary pre-condition for the appointing authority's decision since that authority makes appointments in the light of service requirements and the budgetary situation. Since officials' fields of competence are defined quite broadly, the appointing authority bases its decisions on the criteria mentioned above and on a candidate's personal file, which contains all the details of his training and professional experience.

The third submission

The third submission is that the *ad hoc* Committee or the appointing authority,

or both, drew up the "list of Category B officials eligible for transfer" without providing for the applicants to be placed "in the first group, and with retroactive effect".

In the *applicant's* view, the Commission must ensure, without, however, encroaching on the *ad hoc* Committee's scientific independence, that the Committee carries out its duties in full in accordance with Section III of the Procedural Arrangements so as to have all the information which is indispensable for the exercise of its power of appointment.

The applicants point out in this connection that, although the Committee fundamentally amended its original decision of 9 March 1980 at the request of the Director-General for Personnel and Administration, by deciding on 31 July 1981 to add their names to the 1980 transfer list by means of an addendum, the effect of the addendum was not made clear. Consequently, in view of the budgetary restrictions, the appointing authority promoted to Category A by way of priority officials who were on the original list and whose fields of competence had been stated.

In the applicants' view, the *ad hoc* Committee should have avoided that risk by stating that its decision was to have retroactive effect and that the applicants were therefore to be included in the first group of officials eligible for promotion and secondly by making it clear that, in view of their university degree, they were first in priority for promotion.

The applicants consider that only the annulment of the promotions granted



since 10 June 1980 can eliminate the discrimination which they have suffered.

In the *Commission's* view, the third submission must be rejected in so far as it is directed against the appointing authority since the authority has no power at all under the Procedural Arrangements to draw up, let alone to amend, the list of suitable candidates.

In so far as this submission is directed against the *ad hoc* Committee's work, the Commission first points out that after interviewing the applicants, the Committee considered itself unable to determine their respective fields of competence and that therefore it had no criteria enabling it to classify them in the first or second group of selected officials or to give them priority in the forthcoming promotions.

Secondly, the Commission points out that the relevant provisions do not provide for the selected candidates to be classified into several groups or for priority to be given to candidates with university degrees; consequently, such findings cannot be binding on the appointing authority.

Thirdly, the Commission submits that, since the *ad hoc* Committee's duties consist only in drawing up a list of suitable candidates and not in making appointments, the Committee cannot retroactively include certain officials on that list. In this connection, it points out that the fact that the names of the applicants were added to the original list by means of an addendum could not have prejudiced their position because the appointing authority considered all the names put forward; indeed, one of the officials listed in the addendum in

question has been promoted to Category A.

The fourth submission

The fourth submission is that the appointing authority did not withdraw all the appointments it made on the basis of the tables published in *Administrative Notices* No 281 of 10 June 1980 and that its omission resulted in discrimination against the applicants.

The *applicants* stress that, in view of the provisions of the Staff Regulations, which grant the appointing authority a wide discretion in this regard, they do not wish either to claim a right to automatic promotion or to ask the Court to substitute its judgment for that of the Commission; on the other hand, the applicants do request the Court to verify whether the Commission observed the rules which it laid down itself and which, by virtue of the principle *patere legem quam ipse fecisti*, are binding upon it.

In this regard the applicants point out that the appointing authority did not delegate its power of appointment but a technical task which had to be performed prior to the exercise of that power and which consisted in drawing up a list of suitable candidates with all pertinent information; it therefore had to grant promotions only on the basis of full and comparable information on all the candidates.

The *Commission* again emphasizes that the absence of findings regarding the applicants' fields of competence could not reduce their chances of eventually moving into Category A since the appointing authority takes its decisions in the light in particular of the requirements

of the service. Since the appointing authority enjoys a wide discretion in this regard, for which the Court has always refused to substitute its own judgment, and since the applicants have not been able to prove that it committed any manifest error in preferring another candidate on the list of candidates, this submission is unfounded.

#### Subsidiary argument as to costs

The *applicants* state that, although the Commission initially relented after the applications in Cases 80 to 83/81 were lodged, its attitude later compelled them to lodge a new complaint and bring further actions. It must therefore bear the costs of both sets of proceedings.

In the event of the Court's deciding not to uphold their actions, the applicants also point out that the Commission did not reply to their complaint of 17 December 1981 until 29 July 1982, that is to say after the second set of actions had been brought.

The *Commission* did not comment on the matter.

#### IV — Oral procedure

At the sitting on 30 May 1984, the parties presented oral argument.

During the hearing the applicants laid before the Court a statement of the Staff Committee dated 22 May 1984, from which it appears that the officials mentioned in the list of suitable candidates published on 10 June 1980 and not yet promoted to Category A and the officials mentioned in the "addendum" published on 16 October 1981 will each be promoted in turn every time the appointing authority recruits externally four officials in Category A.

The Advocate General delivered his Opinion at the sitting on 5 July 1984.

## Decision

- 1 By applications lodged at the Court Registry on 10 April 1981, Mr Adam, Mr De Blust, Mr De Windt and Mr Godaert, scientific and technical officers in Category B at the Joint Research Centre, Ispra, brought actions for the annulment of the decision notified to them by letter of 9 June 1980 from the Directorate-General for Personnel and Administration by which the *ad hoc* Committee charged with assessing the ability of Category B officials in the scientific and technical services to perform Category A duties refused to place them on the list of suitable candidates to be drawn up for that purpose.

- 2 By applications lodged at the Court Registry on 23 July 1982, Mr Adam, Mr De Blust, Mr De Windt and Mr Godaert also brought actions for:

The annulment of the decision contained in the letter of 24 September 1981 by which the Commission adopted the decision taken by the *ad hoc* Committee on 30 July 1981 to include the applicants on the list of suitable candidates but without defining their fields of competence and without placing them in one of the "priority" groups established for the other officials eligible for the change of category;

The annulment of all promotions from Category B to Category A granted to officials in the scientific and technical services of the Joint Research Centre at Ispra since 10 June 1980.

- 3 On 9 June 1980 Mr Adam, Mr De Blust, Mr De Windt and Mr Godaert were informed by the Directorate-General for Personnel and Administration that, after examining the merits of each candidate, the *ad hoc* Committee "had not been able to include their names on the list of suitable candidates". The *ad hoc* Committee was formed under the "Procedures to be implemented prior to decisions on the transfer from Category B to Category A of officials in the scientific and technical services" (hereinafter referred to as "the Procedural arrangements"), approved by the Commission on 17 November 1978 in accordance with the second paragraph of Article 98 of the Staff Regulations (*Administrative Notices* No 220 of 20. 12. 1978).
- 4 Following the implied decision rejecting the complaints which they had lodged on 8 September 1980 against the decision of 9 June 1980, the applicants brought actions for annulment which were registered under numbers 80 to 83/81.
- 5 However, by letters dated 17 March and 28 April 1981, the Member of the Commission responsible for staff matters informed the applicants that their cases, like those of other officials also concerned by the measure in question, would be referred to the *ad hoc* Committee for reconsideration.

- 6 It is clear from the letter which the Director-General for Personnel and Administration wrote to the applicants on 24 September 1981 that, although the *ad hoc* Committee found at its meeting on 30 July 1981 that they were eligible for a change of category, it also stated that it had not been able to determine the fields of competence in which they could “currently perform scientific or technical duties in Category A at the level of competence required by the Commission services”. The *ad hoc* Committee’s decision was published as an addendum to the original list of suitable candidates in *Administrative Notices* No 339 of 16 October 1981.
- 7 On 17 December 1981, the applicants lodged a complaint against that decision, contending that, since the *ad hoc* Committee had found them suitable for a change of category, the Committee, or if not the Committee, the Commission, ought to have stated their fields of competence in accordance with the provisions of the Procedural Arrangements and secondly that the principle that all the officials found suitable for a change of category should be treated equally required that the applicants should be included in one of the “priority” groups appearing in the original list published in June 1980. That complaint remained unanswered by the Commission.

The actions brought in Cases 80 to 83/81 against the decision contained in the letter of 9 June 1980

- 8 It should be noted that, after these actions had been brought, the contested decision was withdrawn at the Commission’s request and replaced by the *ad hoc* Committee’s decision notified to the applicants on 24 September 1981.
- 9 These actions have therefore become purposeless and it is no longer necessary to give judgment on them.
- 10 Article 69 (5) of the Rules of Procedure provides that, where a case does not proceed to judgment, costs are in the discretion of the Court.
- 11 Since these actions resulted from errors made by the *ad hoc* Committee, which the Commission has acknowledged, the Commission must pay the costs of Cases 80 to 83/81.

Case 183/82

- 12 By letter dated 23 May 1984 lodged at the Court Registry on 25 May 1984, Mr De Blust notified the Court that he was withdrawing this action and requested it to order the Commission to pay the costs of this case.
- 13 The Court must therefore order Case 183/82 to be removed from the Register.
- 14 Article 69 (4) of the Rules of Procedure provides that a party who discontinues or withdraws from proceedings must be ordered to pay the costs, unless the discontinuance or withdrawal is justified by the conduct of the opposite party.
- 15 Mr De Blust withdrew his action after being promoted to Category A by virtue of a decision adopted by the Commission on 1 January 1984; this satisfied his wishes and brought the dispute between the parties to an end.
- 16 The Commission must therefore be ordered to pay the costs of Case 183/82.

Cases 182, 184 and 185/82

*The claim that the decision contained in the letter of 24 September 1981 should be annulled*

- 17 In support of this claim the applicants make two submissions which are in essence that:

The appointing authority and the *ad hoc* Committee infringed Section III (2) of the Procedural Arrangements by failing to state the fields of competence in which the applicants were considered capable of performing Category A duties;

In disregard of the principle of equal treatment the appointing authority and the *ad hoc* Committee failed to classify the applicants in one of the two "priority" groups forming the original list of suitable candidates.

*The submission that the provisions of the Procedural Arrangements were infringed*

18 It should be pointed out first of all that Section III of the Procedural Arrangements requires the *ad hoc* Committee, whose members are nominated by the Commission, to consider candidates' applications in accordance with the procedure laid down in Section III (2) (a) to (d). The procedure consists in the examination of a candidate's application, supplemented, where appropriate, by an interview with the candidate, and the assessment of a written dissertation on a scientific or technical subject chosen by the Committee for those candidates who do not have a degree in that subject from a university or comparable scientific or technical establishment. Candidates having such a degree are automatically eligible for a change of category, following verification of their degrees and an interview with the Committee to assess their fields of competence.

19 Section III (2) (e) of the Procedural Arrangements provides that:

“Following its deliberations, the Committee will submit a reasoned report to the appointing authority with a list of candidates considered capable of performing Category A duties. The report will indicate the areas in which each candidate is regarded as being competent. A transfer decision will then be taken by the appointing authority in the light of service requirements and the budgetary situation.”

20 The Commission argues in essence that the *ad hoc* Committee was unable to state the applicants' field or fields of competence and that in any event this was not a pre-condition for deciding a promotion, since such a decision is taken by the appointing authority on the basis of the other criteria mentioned above and, where appropriate, on the basis of the candidate's personal file.

21 It should be pointed out in the first place that, although the *ad hoc* Committee has a discretion under the Procedural Arrangements to decide the field of competence into which each candidate for a change of category must be classified, the exercise of that discretion must, according to Section III (2) (e) of the Procedural Arrangements, lead to the definition of one or

more fields of competence for each candidate. It is established that in this instance the *ad hoc* Committee did not observe those provisions.

22 Secondly, although the Court has consistently held that internal directives or measures of an internal nature such as the Procedural Arrangements laid down by the Commission may not be regarded as rules of law which the Administration is always bound to observe, they nevertheless form rules of practice from which the Administration may not depart without giving the reasons which led it to do so, since otherwise the principle of equality of treatment would be infringed.

23 At the hearing the Commission was unable to state the reason for which it was impossible to determine the applicants' fields of competence, in contrast to its treatment of all the officials on the original list of suitable candidates.

24 Consequently, the submission that the Procedural Arrangements were infringed must be upheld as well founded.

*The submission alleging a breach of the principle of equal treatment*

25 In the applicants' view, the principle that officials considered eligible for a change of category must be treated equally was disregarded in so far as the original list of suitable candidates, published in June 1980, and the supplementary list contained in the "addendum" published in October 1981, were not drawn up in the same way.

26 Indeed, it is clear from the documents before the Court that all the officials on the original list of suitable candidates were divided into two groups, the first, described as "1st priority", containing the names of the officials in alphabetical order and the second, described as "2nd priority", containing the names in descending order of merit. However, the officials whose names were subsequently placed on the list of suitable candidates and who included the applicants were listed in the above-mentioned addendum without any reference to one of the two groups in the original list, into which they were to be incorporated.

- 27 The Commission contends that, since the relevant provisions do not provide for the selected candidates to be classified into several groups, the appointing authority cannot be bound to make such findings. The Commission further points out that the fact that the applicants' names were added to the original list by means of an addendum could not have prejudiced their position since two officials figuring in the relevant addendum have in fact been promoted to Category A.
- 28 Leaving aside the question whether or not the *ad hoc* Committee and the Commission had to classify candidates into "priority" groups on the original list, the Court is of the view that the Committee, and in any event the Commission, were under a duty to ensure that all the officials considered eligible for a change of category were treated equally.
- 29 Although it is true that the inclusion of an official's name on the list of suitable candidates does not automatically give him a right to be promoted to Category A and that in this regard the appointing authority enjoys a wide discretion to decide which of the candidates on the list are to be promoted, that discretion must be exercised in such a way as to ensure that a scrupulous examination of the candidates' merits is carried out in the light of comparable sources of information and of data obtained in conformity with the principle of equality.
- 30 It is clear from the documents before the Court that in the applicants' case that requirement was not observed. By not placing them in one of the "priority" groups in the original list the Commission has made it impossible for their merits to be compared with those of the candidates on the original list in accordance with the principle of equal treatment. The submission alleging a breach of that principle must therefore be accepted as well founded.
- 31 It is clear from the examination of the two submissions on which the claims for the annulment of the decision contained in the letter of 24 September 1981 are based that the decision must be annulled in so far as the applicants' fields of competence and their ranking in relation to that of the other officials included in the original list of suitable candidates were not stated.



*The claims for the annulment of the promotions granted since the publication of the original list of suitable candidates on 10 June 1980*

- 32 The applicants contend that only the annulment of all the promotions granted since 10 June 1980 can put an end to the discrimination which they have suffered.
- 33 However, the applicants' rights will be adequately protected if the Commission reconsiders its decision. Consequently, there is no reason to inquire into all the decisions which have been taken and to annul the promotions granted pursuant to them.
- 34 It follows from the foregoing that the claims for the annulment of all the promotions granted since 10 June 1980 must be dismissed.

#### Costs

- 35 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the defendant has essentially failed in its submissions, it must also be ordered to pay the costs of Cases 182, 184 and 185/82.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that it is unnecessary to give judgment in Cases 80 to 83/81;
2. Orders Case 183/82 to be removed from the Register;

3. In Cases 182, 184 und 185/82,

- (i) annuls the decision contained in the letter of 24 September 1981 in so far as the applicants' fields of competence and classification in one of the "priority" groups in the original list of suitable candidates were not stated;
- (ii) for the rest, dismisses the applications;

4. Orders the Commission to pay the costs of all the actions.

Kakouris

Everling

Galmot

Delivered in open court in Luxembourg on 9 October 1984.

For the Registrar

H. A. Rühl

Principal Administrator

C. Kakouris

President of the Third Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN  
DELIVERED ON 5 JULY 1984

*My Lords,*

The provision in Article 45 (2) of the Staff Regulations that an official may be promoted from one category to another only on the basis of a competition does not, by virtue of Article 98 (2) of those regulations, apply to certain officials occupying posts in the field of nuclear

science calling for scientific or technical qualifications. For such officials, at the time relevant to the present cases, the Commission issued in *Administrative Notices* No 220 of 20 December 1978 "Procedures to be implemented prior to decisions on the transfer from Category B to Category A of officials in the scientific and technical services" ("the notice").