

JUDGMENT OF THE COURT (Fourth Chamber)

9 October 2008*

In Case C-16/07 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 18 January 2007,

Marguerite Chetcuti, member of the auxiliary staff of the Commission of the European Communities, residing in Zejtun (Malta), represented by M.-A. Lucas, avocat,

appellant,

the other party to the proceedings being:

Commission of the European Communities, represented by V. Joris and K. Herrmann, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of Chamber, T. von Danwitz, R. Silva de Lapuerta, E. Juhász (Rapporteur) and G. Arestis, Judges,

Advocate General: Y. Bot,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 13 March 2008,

after hearing the Opinion of the Advocate General at the sitting on 12 June 2008,

gives the following

Judgment

- ¹ By her appeal, Ms Chetcuti asks the Court of Justice to set aside the judgment of the Court of First Instance of the European Communities of 8 November 2006 in Case T-357/04 *Chetcuti v Commission* [2006] ECR-SC I-A-2-255 and II-A-2-1323 ('the

judgment under appeal'), by which the Court of First Instance dismissed her action for annulment of the decision of 22 June 2004 of the selection board rejecting her candidature in a competition procedure ('the contested decision') and of acts subsequent to that procedure.

Relevant provisions

- ² Article 4 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), in the version in force until 30 April 2004 applicable to the facts of this case, provides:

'No appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided for in these Staff Regulations.'

Vacant posts in an institution shall be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled.

If the vacancy cannot be filled by transfer, promotion or an internal competition, it shall be notified to the staff of the three European Communities.'

3 Article 27 of the Staff Regulations provides:

‘Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Communities.

...’

4 Article 29(1) of the Staff Regulations provides:

‘Before filling a vacant post in an institution, the appointing authority shall first consider:

(a) whether the post can be filled by promotion or transfer within the institutions;

(b) whether to hold competitions internal to the institution;

- (c) what applications for transfer have been made by officials of other institutions of the three European Communities;

and then follow the procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests. Annex III lays down the competition procedure.

The procedure may likewise be followed for the purpose of constituting a reserve for future recruitment.'

5 Article 1 of Annex III to the Staff Regulations, entitled 'Competitions' provides:

'1. Notice of competitions shall be drawn up by the appointing authority after consulting the Joint Committee.

It must specify:

- (a) the nature of the competition (competition internal to the institution, competition internal to the institutions, open competition ...);

(b) the kind of competition (whether on the basis of either qualifications or tests, or of both qualifications and tests);

(c) the type of duties and tasks involved in the post to be filled;

(d) the diplomas and other evidence of formal qualifications or the degree of experience required for the posts to be filled;

...'

6 Article 3 of the Conditions of Employment of Other Servants of the European Communities, in the version in force until 30 April 2004 applicable to the facts of this case ('the Conditions of Employment'), provides:

'For the purposes of these conditions of employment, "auxiliary staff" means:

(a) staff engaged, within the limits set in Article 52, for the performance of full-time or part-time duties in an institution but not assigned to a post included in the list of posts appended to the section of the budget relating to that institution;

(b) staff engaged, after the possibilities of temporary posting of officials within the institution have been examined, to replace certain persons who are unable for the time being to perform their duties, namely:

- officials or temporary staff in Category B, C, or D or in the Language Service;

- exceptionally, officials or temporary staff in Category A, other than those in Grade A 1 or A 2, occupying a highly specialised post;

such staff are paid from the total appropriations for the purpose under the section of the budget relating to the institution.’

7 Under Article 9 of the Conditions of Employment, temporary staff are not to be engaged for any purpose other than that of filling, in accordance with Title II thereof, vacant posts included in the list of posts appended to the section of the budget relating to each institution.

8 Article 12(1) of the Conditions of Employment provides:

‘The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity,

recruited on the broadest possible geographical basis from among nationals of Member States of the Communities.

...'

9 However, the Conditions of Employment do not contain any requirement concerning the standard of ability and efficiency expected of auxiliary staff in their employment.

10 Article 52 of the Conditions of Employment provides:

'The actual period of employment of auxiliary staff, including any period under renewal shall not exceed:

(a) if the servant is engaged to replace an official or a member of the temporary staff who is unable for the time being to perform his duties, the period of assignment for that purpose;

(b) three years, in all other cases.'

Background

- 11 The appellant performed duties as a member of the local staff of the delegation of the Commission of the European Communities to Malta from 1 November 1991 to 30 April 2004. Her contract ended when the Republic of Malta acceded to the European Union on 1 May 2004, which resulted in the closure of the delegation in that country.
- 12 On 27 April 2004 the appellant signed a contract to join the auxiliary staff in Category B for the period from 1 May 2004 to 31 December 2004. Article 2 of her contract stated that she would perform duties as a ‘staff member responsible for complex tasks of drafting, correcting, accounting or technical work’.
- 13 On 6 April 2004 the Commission published a notice of competition entitled ‘notice of internal competition for progression from Category B to Category A (COM/PA/04)’. It concerned a competition based on tests for the purpose of drawing up a reserve list from which to fill vacant administrative posts (A7/A6).
- 14 Point III.1 of the notice of competition, entitled ‘Conditions of admission’ was worded as follows:

‘1. The following shall be eligible to apply:

officials, temporary staff referred to in Title 1 (General provisions), Article 2 of [the Conditions of Employment] who are classified in one of the grades in Category B,

officials and temporary staff referred to in Title 1 (General provisions), Article 2 of the [Conditions of Employment] who are classified in one of the grades of the higher category

and who, at the final date for submitting applications ...:

...

(b) have at least 5 years of service in Category B or a higher category as an official [or member of the temporary or auxiliary staff, groups I, II, III, IV and V] at the Commission or in part at other institutions or agencies (Annex 1) the staff of which are governed by the Staff Regulations or the [Conditions of Employment].

...'

15 The appellant applied for that competition.

16 By the contested decision, Ms Chetcuti's candidature was rejected on the ground that she did not satisfy the requirements as regards length of service and administrative situation, in so far as only officials or temporary staff were eligible to apply.

Proceedings before the Court of First Instance and the judgment under appeal

- 17 By application lodged at the Registry of the Court of First Instance on 31 August 2004, Ms Chetcuti brought an action for annulment of the contested decision and of acts subsequent to the competition procedure.
- 18 By her first plea, she submitted that, because it reserves access to the disputed competition solely to officials and temporary staff, thus excluding auxiliary staff, the notice of competition infringes Articles 4, 27 and 29(1)(b) of the Staff Regulations and also the principle of equal treatment. The contested decision is therefore unlawful.
- 19 By her second plea, Ms Chetcuti claims that the notice of competition, in so far as it requires five years of service in Category B or a higher category as an official, temporary staff member or auxiliary staff member in Groups I to V and excludes length of service as a local staff member, is contrary to Articles 27 and 29 of the Staff Regulations, and also the interests of the service and the principle of equal treatment. Accordingly, the contested decision is unlawful also on that ground.
- 20 As regards the first plea, the Court of First Instance examined, in paragraphs 49 to 51 of the judgment under appeal, the nature and degree of the discretion granted to the institutions as regards recruitment procedures. It held that the Staff Regulations confer a wide discretion on the institutions as regards recruitment procedures and that review by the Community judicature is limited to whether or not the authority concerned has used its discretion in a manifestly erroneous manner.

- 21 In paragraphs 52 and 53 of that judgment, the Court of First Instance pointed out that the different categories of person employed by the Communities meet legitimate needs of the Community administration. It added that the essential requirements laid down in respect of the engagement of officials and temporary staff are different from those in respect of auxiliary staff.
- 22 The Court of First Instance held, in paragraph 56 of the judgment under appeal, that it is apparent from the notice of competition that the disputed competition was ‘an internal competition for progression from Category B to Category A’ of which the main purpose was for officials and temporary staff to progress from Category B to Category A. In paragraph 57 of that judgment, the Court held that, in this case, it had not been established that the Commission had misused its discretion by laying down as a condition of admission that the candidate must be an official or member of the temporary staff and not a member of the auxiliary staff.
- 23 The Court of First Instance held to be irrelevant the applicant’s argument that the disputed competition was not only a competition for progression from Category B to Category A, but also an internal competition of another kind because it is open to both temporary staff in Category A or B and officials in Category A. It stated that temporary staff and officials who are eligible for the competition, regardless of whether they are in Category A or Category B have, unlike auxiliary staff, already demonstrated their skills at the time of their initial recruitment in accordance with Article 27 of the Staff Regulations and Article 12 of the Conditions of Employment.
- 24 The Court of First Instance held that, since those two provisions had applied at the time of the initial recruitment of officials and temporary staff, the applicant’s argument that the Commission misconstrued the purpose of all recruitment defined by those provisions was unfounded.

25 In paragraph 61 of the judgment under appeal, the Court of First Instance stated that the fact that pursuant to Article 3 of the Conditions of Employment auxiliary staff may perform all types of duties where their engagement is not aimed at securing replacement of an official is not sufficient to mean that they should be treated in the same way as officials and temporary staff for the purposes of competitions for promotion.

26 Lastly, in paragraph 62 of the same judgment the Court of First Instance held that the applicant was wrong to rely on infringement of the principle of equal treatment since officials and temporary staff, on the one hand, and auxiliary staff, on the other, are in legal situations which are not comparable, owing to the difference in their respective conditions of recruitment.

27 In the light of all of those considerations, the Court of First Instance rejected the applicant's first plea and concluded that, since the Commission could lawfully reserve access to the disputed competition to officials and temporary staff, the rejection of the applicant's candidature was justified. The Court therefore took the view that there was no need to give a ruling on the second plea regarding the length of service required to enter the competition or on the acts subsequent to the competition procedure.

Forms of order sought

28 By application lodged at the Court Registry on 18 January 2007, the appellant brought the present appeal and asks the Court to:

— set aside the judgment under appeal;

— annul the contested decision;

— annul the acts subsequent to the competition procedure, and in particular the list adopted by the selection board of candidates meeting the conditions fixed by the notice of competition, the Commission decision determining on that basis the number of posts to be filled, the list of suitable candidates adopted by the selection board on completion of its task, and the appointment decisions taken by the appointing authority on that basis;

— order the Commission to pay the costs connected with the proceedings before the Court of First Instance and these proceedings.

²⁹ The Commission asks the Court to:

— dismiss the appeal;

— order the appellant to pay the costs.

The appeal

30 According to the application, the appellant relies, essentially, on three pleas in law in support of her appeal.

31 By her first plea, she claims that the judgment under appeal is in breach of the concept of 'internal competition' within the meaning of Articles 4 and 29(1)(b) of the Staff Regulations and failed to have regard to the objective of all recruitment under Articles 4(1) and 27 of those regulations. By her second plea, the appellant submits that the Court of First Instance infringed the principle of equal treatment. By her third plea, the appellant submits that the judgment under appeal was not reasoned to the requisite legal standards.

32 Since the appellant's main and predominant argument is that her candidature was handled in a manner contrary to the principle of equal treatment, the Court takes the view that the examination of this appeal should begin with the second plea.

The second plea

Arguments of the parties

33 By her second plea, the appellant submits that the judgment under appeal infringes the principle of equal treatment. In her view, the Court of First Instance was wrong to hold that the legal situation of officials and temporary staff is not comparable to that of auxiliary staff.

34 In particular, the appellant claims that the Court of First Instance erred in law in so far as it justified that conclusion by stating that, unlike officials and temporary staff, auxiliary staff were not required to demonstrate, at the time of their initial recruitment, the highest standard of ability, efficiency and integrity.

35 Thus, the appellant notes that officials or temporary staff in Category B have only demonstrated their skills in relation to duties falling within that category and have not demonstrated additional skills for performing Category A duties. Contrary to the findings of the Court of First Instance, therefore, it does not follow from the different recruitment conditions of officials and temporary staff that their situation is not comparable to that of auxiliary staff for the purposes of being admitted to the disputed competition.

36 The appellant claims that the fact that auxiliary staff may, like officials or temporary staff, carry out all types of duties is sufficient to demonstrate their ability to perform the duties of the posts to be filled.

37 The Commission is of the opinion that, having regard to the differences relating to the engagement of temporary staff compared with auxiliary staff, the exclusion of the latter from the disputed competition does not infringe the principle of equal treatment.

38 It states that the requirement of the highest standard of ability, efficiency and integrity necessary for the recruitment of officials and temporary staff determines not only the nature of their legal relationship with the institution but also whether or not they have career opportunities within the institution.

39 In the Commission's view, the appellant's arguments that temporary staff may perform all types of duties are not supported by any specific evidence. The mere fact that the latter may perform all types of duties does not suffice to establish that the disputed competitions must be open to them. The Commission submits in that respect that it is compulsory for officials and temporary staff, unlike auxiliary staff, to fulfil the conditions of recruitment prescribed by Article 27 of the Staff Regulations and Article 12 of the Conditions of Employment. Furthermore, the Commission notes that the actual performance of duties by auxiliary staff was taken into account under the second admission criterion, which includes experience as a member of the auxiliary staff in calculating the length of service required.

Findings of the Court

- 40 First of all, it should be recalled that the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 56, and Case C-276/07 *Delay* [2008] ECR I-3635, paragraph 19).
- 41 In that respect, it is necessary to examine whether, as the appellant argues, the Court erred in law by stating that the situation of auxiliary staff is not comparable to that of officials and temporary staff.
- 42 As noted by the Advocate General in paragraphs 87 to 92 of his Opinion, it is clear from the provisions of the Staff Regulations and the Conditions of Employment that there are differences between the administrative status, recruitment requirements and conditions of engagement of auxiliary staff and those of officials and temporary staff.
- 43 First, it is clear from reading Articles 5 and 6 of the Staff Regulations in conjunction with Articles 3 and 9 of the Conditions of Employment that, whereas officials and temporary staff occupy permanent posts included in the list of posts, auxiliary staff, except in the case of the temporary replacement of an official, perform administrative work without being assigned to a post included in that list (see, to that effect, Case 17/78 *Deshormes v Commission* [1979] ECR 189, paragraph 35, and Case 106/80 *Fournier v Commission* [1981] ECR 2759, paragraph 9).

44 Secondly, as the Court of First Instance noted in the judgment under appeal, a provision similar to that applicable to officials and temporary staff under the first paragraph of Article 27 of the Staff Regulations and Article 12(1) of the Conditions of Employment does not exist in respect of auxiliary staff. Unlike officials and temporary staff, auxiliary staff do not have to demonstrate the highest standard of ability, efficiency and integrity at the time of their recruitment.

45 Thirdly, unlike officials and temporary staff, auxiliary staff are not subject to a promotion system or to periodical reports.

46 Fourthly, it must be noted that Articles 32 and 8 of the Conditions of Employment refer, in respect of temporary staff, to the possibility of continuing their career as an official in accordance with the procedures laid down in the Staff Regulations. In that case, the seniority in grade acquired as a temporary agent is to be preserved if the servant in question was appointed an official in the same grade immediately at the end of that period. There are no similar provisions in respect of auxiliary staff.

47 Fifthly, auxiliary staff are not part of the social security regime laid down by common agreement of the Community institutions, to which officials and members of the temporary staff belong.

48 It follows from those differences that auxiliary staff are not recruited to fulfil a permanent role within the Community institutions. On the contrary, as the Court has already held, the outstanding feature of contracts for auxiliary staff is their

precariousness since they may be used only to provide a temporary replacement or to ensure the performance of administrative duties which are of a transitory nature or which fulfil an urgent need or which are not clearly defined (see *Deshormes v Commission*, paragraph 37, and *Fournier v Commission*, paragraph 9, both cited above). Auxiliary staff therefore constitute a separate category which meets separate requirements of the institutions which employ such staff.

⁴⁹ It follows that temporary staff cannot expect to be treated in the same way as officials and temporary staff as regards career opportunities in the European institutions.

⁵⁰ Accordingly, the Court of First Instance rightly found that the situation of auxiliary staff is different from that of officials and temporary staff and that, in the light of that difference, the exclusion of auxiliary staff from the disputed competition does not infringe the principle of equal treatment.

⁵¹ The appellant's second plea must therefore be rejected as unfounded.

The first plea

Admissibility

52 The Commission, as a preliminary point, that the appellant's arguments are inadmissible in so far as they call into question the characterisation of the disputed competition. It recalls that, according to settled case-law, the Court of First Instance, as a court of first resort, has sole jurisdiction to find and assess the facts. In its unappealable assessment of the facts and without misinterpreting them in any way, the Court of First Instance took the view, from reading the wording of the conditions of admission to the competition and thus in an objective manner, that that internal competition was, essentially, a competition for progression between categories or for promotion.

53 In that connection, it is settled case-law that when the Court of First Instance has found or assessed the facts, the Court of Justice has jurisdiction under Article 225 EC to review the legal characterisation of those facts by the Court of First Instance and the legal conclusions it has drawn from them (see Case C-551/03 P *General Motors v Commission* [2006] ECR I-3173, paragraph 51, and judgment of 22 May 2008 in Case C-266/06 P *Degussa v Commission and Council*, paragraph 72).

54 It follows that the appellant's arguments that the Court of First Instance's legal characterisation of the competition in dispute was erroneous is admissible.

Substance

— Arguments of the parties

55 By its first plea, the appellant claims that the Court of First Instance misconstrued the concept of ‘internal competition’ within the meaning of Articles 4 and 29(1)(b) of the Staff Regulations and failed to have regard to the objective of all recruitment under Article 4(1) and the first paragraph of Article 27 of the Staff Regulations.

56 First, the appellant submits that the Court was wrong to take as a basis the principal purpose of the disputed competition which was assigned to it in a subjective manner by the title of the notice of competition, namely ‘internal competition for progression’, to determine the categories of candidates who could or could not lawfully be admitted to that competition.

57 The appellant submits that that determination should instead have been made on the basis of the objective nature of the competition, in accordance with the objective conditions of admission stipulated in the notice of competition itself. The appellant states, in that regard, that the competition at issue was open, not only to officials in Category B wishing to become officials in Category A, but also to temporary staff in Categories A and B wishing to be established as officials.

58 The appellant claims that, provided that a competition is characterised as a ‘competition internal to the institution’, auxiliary staff cannot be excluded from participating,

in accordance with the case-law of the Court of Justice and the Court of First Instance and, in particular, Case 16/64 *Rauch v Commission* [1965] ECR 179 and *Van Huffel v Commission* [2001] SC I-A 219 and II-1011.

- 59 The appellant submits, in the alternative, that although the view could be taken that the Court characterised the disputed competition as a ‘competition for progression’ and not a ‘competition internal to the institution’, it erred in law because such characterisation is based on subjective criteria chosen by the parties. She explains that, even if the disputed competition was for the purpose, essentially, of progression from Category A to Category B, the fact remains that it was also a competition for establishment as an official and therefore, was to be characterised as ‘internal competition’ since the case-law on Articles 4 and 29 of the Staff Regulations define such a competition as a competition open to the staff covered by the regulations in the broad sense, that is to say, all those in the service of the institution by virtue of a public law relationship.
- 60 Secondly, the appellant submits that the Court erred in law by stating that the exclusion of auxiliary staff from the disputed competition did not undermine the purpose of all recruitment as set out in Article 4(1) and 27 of the Staff Regulations and the case-law of the Court of First Instance and, in particular, the judgment in *Van Huffel v Commission*.
- 61 The appellant claims that that objective requires the conditions of admission to a competition to be drawn up on the basis of the requirements of the posts to be filled. According to the appellant, that is not the case as regards the conditions of admission to the disputed competition because they exclude categories of potential candidates even though those candidates have skills equivalent to those of candidates admitted to that competition.

62 The appellant repeats in that connection that, for the purposes of the disputed competition, the situation of temporary staff is comparable to that of officials or temporary staff in Category B, in so far as none of those three categories of staff has demonstrated skills in relation to the duties falling within Category A. In addition, the fact that, under Article 3 of the Conditions of Employment, auxiliary staff may perform all types of duties implies that those members of staff have ability which is equivalent, or almost equivalent, to that of officials. She also claims that the notice of competition itself allowed, as relevant professional experience, not only periods as an official or member of the temporary staff, but also those as a member of the auxiliary staff. In the appellant's opinion, it follows that experience in either of those capacities is equivalent. The appellant believes that demonstration of the highest standard of ability, efficiency and integrity must be inferred from success in the preselection and selection tests.

63 The Commission submits that the Court of First Instance correctly acknowledged that the competition was essentially a competition for progression from Category B to Category A, which concerned the career advancement of officials and temporary staff, who had, in each case, already been recruited by the Commission under Article 27 of the Staff Regulations and Article 12 of the Conditions of Employment.

64 In the Commission's view, even if that competition were also, in certain circumstances, a competition for establishment as an official, that fact could not require the appointing authority to open it to all the staff of the institution and, therefore, to circumvent its main purpose. If that were the case the wide discretion granted to the appointing authority in the area of competitions would be undermined.

65 The Commission contends that, contrary to the appellant's claims, the interest of the service lay in the career advancement of officials and temporary staff, an objective which had already been held to be lawful by the Community courts (Case 90/74

Deboeck Commission [1975] ECR 1123, and Joined Cases T-40/96 and T-55/96 *Kerros and Kohn-Bergé v Commission* [1997] ECR II-135, paragraph 46). Moreover, it submits that Article 45(2) of the Staff Regulations also provides for the organisation, in respect of officials only, of internal competitions so that they can progress to a higher category, which rules out the participation of auxiliary staff in those competitions because, by reason of the particular features of their regime of employment, they are not entitled to apply for those competitions.

⁶⁶ The Commission submits that the judgment in *Rauch v Commission*, does not have the definitive effect which the appellant seems to accord it. It points out that the case which gave rise to that judgment concerned a competition organised during 1963 which was characterised by the circumstances of that time, that is to say, circumstances in which the Commission organised itself and made wide use of auxiliary staff. The Commission argues that, during 2004, it had a large number of officials and temporary staff to whom, through the disputed competition, it wished to give a last chance to advance to a higher category by internal competition before the entry into force of rules which would abolish that possibility.

⁶⁷ The Commission takes the view that it is pointless for the appellant to plead the requirements of the posts to be filled in order to prove that the criterion relating to initial recruitment is entirely irrelevant. When the disputed competition was being held, the posts to be filled had not yet been determined clearly. That competition was designed to establish a reserve list for certain areas. Consequently, the requirements associated with initial recruitment were an appropriate criterion. That is all the more the case since the continued demonstration of the skills and integrity of officials and temporary staff is subject to periodic appraisal.

— Findings of the Court

- 68 It should be stated that, in paragraph 56 of the judgment under appeal, the Court of First Instance held that the disputed competition was described in the notice of competition as ‘internal competition for progression from Category B to Category A. It was a ‘competition internal to the institution’ within the meaning of Article 29(1)(b) of the Staff Regulations.
- 69 Relying on the judgment in *Rauch v Commission*, the appellant claims that such a competition must necessarily be open to all persons within the service of the institution, in whatever capacity. Consequently, contrary to the Court’s findings, auxiliary staff could not be excluded prima facie from a competition internal to the institution.
- 70 Such an argument cannot be accepted.
- 71 In the case which gave rise to the judgment in *Rauch v Commission*, the appellant disputed the right of the appointing authority to extend to auxiliary staff entitlement to participate in a competition internal to the institution. The case related to whether or not the appointing authority had the right to allow the participation of auxiliary staff in a competition internal to the institution.
- 72 The Court gave an affirmative answer to that question, but it does not follow that the appointing authority is henceforth required to open each competition internal to the institution to all persons within the service of that institution.

- 73 Although it is true that a purely literal reading of *Rauch v Commission*, could be understood to mean that all persons in the service of an institution are concerned by a competition internal to that institution, the provisions at issue must also be interpreted in accordance with the scheme and aims of the Staff Regulations and the Conditions of Employment.
- 74 In those circumstances, the Court of First Instance was correct to hold in paragraph 48 of the judgment under appeal, citing the judgment in *Rauch v Commission*, that a competition internal to an institution concerned ‘in principle’ all persons within the service of the institution but to dismiss the appellant’s argument, taking into account the wide discretion conferred by the Staff Regulations on the institutions in the organisation of competitions.
- 75 Furthermore, in accordance with the Commission’s arguments (set out in paragraph 66 of this judgment), a judgment delivered by the Court in 1965 concerning the management of the staff of the institutions must be interpreted in the light of current requirements.
- 76 Finally, it should be pointed out that an interpretation to the effect that the appointing authority is required to admit to a competition internal to the institution all persons in the service of that institution would undermine the wide discretion which, according to the settled case-law of the Court, is accorded to the Community institutions in organising their services and, in particular, in determining the procedure and conditions of competitions (see *Deboeck v Commission*, cited above, paragraph 29; Case 39/83 *Fabius v Commission* [1984] ECR 627, paragraph 7; Case 135/87 *Vlachou v Court of Auditors* [1988] ECR 2901, paragraph 23; and Case C-409/02 *Pflugradt v ECB* [2004] ECR I-9873, paragraph 42).

- 77 The conditions of admission of a competition must be assessed in accordance with the interests of the service and, in order to assess that interest, the Community institutions have a wide discretion (see, to that effect, *Case 324/85 Bouteiller v Commission* [1987] ECR 529, paragraph 6; *Case 233/85 Bonino v Commission* [1987] ECR 739, paragraph 5; and *Case C-277/01 P Parliament v Samper* [2003] ECR I-3019, paragraph 35).
- 78 In the light of those considerations, it must be recognised that the Court of First Instance did not err in law by stating that the disputed competition could reasonably exclude auxiliary staff without that necessarily entailing an infringement of the concept of ‘competition internal to the institution’.
- 79 The appellant claims, moreover, that the disputed competition infringes the mandatory provisions of Article 4(1) and the first paragraph of Article 27 of the Staff Regulations according to which the conditions of admission to a competition must be laid down on the basis of the requirements of the posts to be filled. That obligation was not complied with in the case of the disputed competition since the conditions of admission to that competition exclude categories of potential candidates who possess skills equivalent to those of candidates admitted to that competition.
- 80 That argument is, however, unconvincing.
- 81 First of all, for the reasons set out in paragraph 44 of the present judgment, it has not been established that auxiliary staff necessarily possess skills equivalent to those of officials and temporary staff.

82 Secondly, it does not follow from the obligation to lay down conditions of admission on the basis of posts to be filled that the appointing authority is required to admit all categories of potential candidates to a competition internal to the institution.

83 It follows that the Court did not err in law by stating that the exclusion of auxiliary staff from the disputed competition was not in breach of the purpose of all recruitment in accordance with Articles 4(1) and 27 of the Staff Regulations.

84 Consequently, the first plea must be rejected as unfounded.

The third plea

Arguments of the parties

85 By her third plea, the appellant claims that the Court of First Instance failed to respond to certain arguments raised by her before that court and, above all, those intended to refute the Commission's argument that the absence in the notice of competition of any requirement concerning the qualifications required is due to the fact that the disputed competition sought the participation of candidates who had already demonstrated the highest standard of ability, efficiency and integrity at the time of their initial recruitment.

86 The Commission considers that, contrary to the appellant's submissions, the judgment under appeal is sufficiently reasoned in so far as the Court of First Instance

relied on the criterion in Article 27 of the Staff Regulations and Article 12 of the Conditions of Employment applied at the time of initial recruitment in order to dismiss the first plea.

Findings of the Court

⁸⁷ According to settled case-law, the obligation of the Court of First Instance to state reasons, pursuant to the first sentence of Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice, does not require the Court of Justice to provide an account that follows exhaustively and point by point all the reasoning articulated by the parties to the case. The Court's reasons may therefore be implicit, provided that they enable the person affected by a decision of the Court of First Instance to be informed of the reasons on which that decision is based and for the Court of Justice to have sufficient information in order to exercise judicial review (see *Degussa v Commission and Council*, paragraph 103).

⁸⁸ In that respect, it follows from paragraphs 49 to 53, 56, 57 and 59 to 62 of the judgment under appeal that the Court of First Instance explained to the requisite legal standard the reasons for which the exclusion of auxiliary staff from the disputed competition is justified and showed that the purpose ascribed to all recruitment had been respected.

⁸⁹ Accordingly, the third plea must be dismissed as unfounded.

⁹⁰ It follows from all of the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

- ⁹¹ Under the first subparagraph of Article 69(2) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In accordance with Article 70 of the Rules of Procedure, which is also applicable to disputes between the Communities and their servants, the institutions are to bear their own costs. Nevertheless, it follows from the second paragraph of Article 122 of the Rules of Procedure that Article 70 does not apply to appeals brought by an official or any other servant of an institution against that institution.
- ⁹² Since the Commission applied for costs against Ms Chetcuti and the latter has been unsuccessful, she must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Ms Chetcuti to pay the costs.**

[Signatures]