differences in national educational systems, the selection board is not in breach of that duty where it refuses to admit a candidate to the tests on the ground that the latter has not obtained a degree or diploma because he did not pursue a university course to the end.

In Case 178/78

JOHN SZEMEREY, an official of the Commission of the European Communities, residing at 27 Rue Mareyde, Brussels, represented and assisted by J. Saels, Advocate of the Brussels Bar, with an address for service in Luxembourg at the home of Rolzna Turkel, 11 Boulevard Grande-Duchesse Charlotte,

applicant,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, R. Baeyens, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, M. Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in particular for the annulment of Open Competition No COM/A/154 based on tests, which was organized by the Commission in order to constitute a reserve of administrators in Grades 7 and 6 of Category A (Official Journal C 213 of 7 September 1977, p. 9),

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, M. Sørensen and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

1. By Notice of Competition No COM/A/154 (Official Journal C 213 of 7 September 1977, p. 9) the Commission organized an open competition, based on tests, to constitute a reserve of administrators in Grades 7 and 6 of Category A. The duties relating to the posts to be filled are in the following fields: general administration, administration of research activities, external relations, information, financial and budgetary affairs and social affairs.

The application form contained a special section in which the candidate had to indicate which of the six fields he had chosen. The "special conditions" contained in the notice of competition required university education, with degree of diploma, in a field appropriate to the option chosen and, in addition, "at least one year's practical experience, obtained after graduation" relevant to the option chosen. As regards the first condition they also provided that "the selection board will allow for differences in national education systems".

2. The applicant, who is a British national, is employed by the Commission, as an official in Category B, Grade 3, in the staff information service. On 6 October 1977 he applied to enter the above-mentioned competition and selected as his option the field of information. By letter of 5 December 1977 the Directorate-General for Personnel and Administration of the Commission informed the applicant of the refusal of the selection board for the competition to enter his name on the list of candidates admitted to the written tests and gave the following reason for the refusal: "your qualifications were not considered adequate" (the formula used in the standard letter).

In 1959 the applicant began studying Law at the University of London (Holborn College) but subsequently gave up his studies in order to work as a journalist. He also attended evening classes, in particular, in transport, economics, philosophy and public relations. In addition, he took part successfully in a course of administrative and financial management organized by the Commission under the aegis of the University of Louvain.

By memorandum of 10 January 1978, received at the Secretariat General on 17 January, the applicant lodged a complaint with the Commission under Article 90 (2) of the Staff Regulations of Officials against the refusal of his application.

By letter of 17 April 1978 the Commission notified to the applicant the decision rejecting his complaint.

3. The present application was lodged on 24 August 1978.

After hearing the report of the Judge Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to open the oral procedure without holding any preparatory inquiry.

II — Conclusions of the parties

1. The *applicant* claims that the Court should.

(i) Declare that, in this instance, in the recruitment and competition procedure the Commission is bound strictly to apply the second subparagraph of Article 5 (1) of the Staff Regulations;

(ii) Declare that inasmuch as they require a university degree or diploma the special conditions relating to Competition No COM/A/154 are contrary to the Staff Regulations and must therefore be annulled and declared void;

(iii) In the alternative, declare that the applicant was wrongly refused admission to the competition by the selection board since no allowance was made with regard to him for differences in national education systems;

(iv) Consequently, declare that Competition No COM/A/154 must be annulled and reorganized in accordance with the Staff Regulations;

(v) Declare that the applicant's qualifications are adequate and are those necessary for admission to the competition;

(vi) Order the Commission to pay the costs.

2. The *Commission* contends that the Court should:

(i) Dismiss the application as unfounded;

(ii) Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. The applicant maintains, first, that the decision to reject his application conflicts with the second paragraph of Article 25 of the Staff Regulations, since the reasons on which it is based are not stated sufficiently clearly. In fact, the statement of those reasons does not make clear which qualifications were considered to be inadequate or insufficient.

The applicant also maintains that the wording of the notice of competition in dispute is not in accordance with the second subparagraph of Article 5 (1) and Article 27 of the Staff Regulations.

The applicant considers that by using the word "or" the former provision provides that university education is equivalent to equivalent professional experience.

However, the notice of competition stipulated as a condition for admission that the candidates must have both a "University education, with degree or diploma", and "at least one year's practical experience, obtained after graduation".

The applicant adds that that question is of particular importance where the qualifications necessary in order to occupy a post may be acquired just as well through obtaining a university degree of diploma as through practical experience. He also observes that in the field of public relations and journalism there are no appropriate university degrees of diplomas. In that context he

refers to the draft proposal for a directive drawn up by the Commission on the co-ordination of certain provisions laid down by law, regulation or administrative action concerning the performance of activities related to journalism under the professional qualification in journalism (doc. XIV/366/71 Rev. 1).

In that context the applicant then points out that the course which he followed at the University of Louvain was "started in order to prepare officials to face the tests held in internal or open competitions organized for the purpose of constituting reserve lists for administrative appointments". The applicant wonders what the value of that course is if the officials who have successfully followed it are refused admission to competitions.

The applicant observes further that under Article 27 of the Staff Regulations staff recruitment must be organized so as to secure the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis and no posts shall be reserved for the nationals of particular Member States.

Having regard to the criterion relating to the qualifications and ability of officials required by Article 27 the applicant maintains that the aim of Article 5 of the Staff Regulations was to enable applications from officials possessing equivalent practical experience to be accepted in addition to applications from officials possessing a degree or diploma, which is not *a priori* evidence of ability even if it is evidence of a qualification.

The applicant considers that he has shown that his education is strictly equivalent to university education. In that context he refers to the qualifications listed in his application form and in the annexes thereto and emphasizes that he is an active member of the Institute of Journalists, which has a Royal Charter, and of the Institute of Public Relations. The qualifications required in order to become a full member of that institute recognize that university education is strictly equivalent to the professional and practical experience of which the applicant is able to provide evidence. Thus, as regards the applicant, not only was no allowance made for the difference emphasized in the notice of competition which exists between the national education systems but it was not even necessary to make allowance for such differences with regard to him, since the applicant possessed a practical qualification which in his country of origin was equivalent to a university education with degree or diploma.

The applicant goes on to observe that the basic tendency of the national education policy in the United Kingdom, which is less formal than in other Member States, is that practical knowledge takes precedence over theoretical knowledge. The applicant considers that, as a result, if the Court accepts the exclusion procedure by reference to practical experience employed in the present recruitment procedure the number of British nationals capable of occupying posts in Category A will always be less than the number from other Member States where, contrary to the situation prevailing under the national education system in Great Britain, a much greater number seek a university degree. There is thus violation of the principle of equality acknowledged in Article 27. In that context the applicant refers to the Commission's reply of 4 March 1977 to Written Question No 857/76 submitted to the European Parliament by Mr

Clerfayt (Official Journal C 94 of 18 April 1977, p. 23) from which it is clear that the British officials employed by the Commission are few in number.

2. The *Commission* observes that the submission based on the insufficient statement of reasons for the decision of the selection board not to accept the applicant's application is in fact unfounded since the letter sent to him on 5 December 1977 refers to the lack of any university qualifications as the reason for the refusal.

The Commission also maintains that Article 5 of the Staff Regulations provides for a general classification of posts and does not in any way affect recruitment procedures, since the detailed rules relating to competitions are laid down in Article 29 *et seq* and in Annex III to the Staff Regulations.

The Commission maintains that, taken as a whole, those provisions of the Staff Regulations form a general framework which is intended to guide the appointing authority in the organization of its departments and, in particular, in fixing the conditions for the recruitment of its staff. Outside the limits expressly fixed by the Staff Regulations the appointing authority has sole power to appraise the conditions relating to degrees or diplomas, or indeed to the equivalent practical experience, which must be required of candidates in order for them to be able to take part *inter alia* in an open competition held in order to constitute a reserve for future recruitment.

According to the Commission the notice of competition in dispute validly stipulated as a special condition of admission that candidates must have both a "University education, with degree or diploma" and "at least one year's practical experience, obtained after graduation".

As regards the applicant's argument that no appropriate university degrees exist in the field of public relations and journalism the Commission observes, first, that the option referred to in the notice of competition concerns information, which is a concept covering a wider field than journalism, and, secondly, that there is a considerable difference between the lack of any university degree or diploma and the submission by candidates in the competition of certificates of higher education which relate approximately to the field selected by them.

As regards the draft proposal for a directive on journalism referred to by the applicant the Commission points out that it is a working document which is obsolete and that the work in connexion with it was abandoned a long time ago. It recalls that alone as regards the right to use the title of journalist Article 2 of that preliminary draft emphasizes the importance of a "diploma, certificate or qualification covering a course of study of at least two years and involving at least 1 800 hours of theoretical and practical instruction" or of a "University degree or diploma covering a course of study of at least two years".

The Commission does not see how the notice of competition in dispute infringes Article 27 of the Staff Regulations. It considers that its requirement of a complete university education, with degree or diploma, within the context of an open competition for the recruitment of young officials in Category A is perfectly in accordance with that article.

In the Commission's view the fact that the applicant is a member of two institutes which, in the United Kingdom, are involved with professional organizations and not university education, is irrelevant.

Finally, the Commission maintains that the very general criticisms concerning the recruitment policy traditionally followed

by the Commission cannot be taken into consideration as grounds for the annulment of the competition procedures since they do not relate to the application of the rules contained in the Staff Regulations to the proceedings and decisions of the selection board for the competition. The Commission adds that it would have been better to produce the table which it provided in reply to Written Question No 1221/77 submitted by Mr Petersen (Official Journal C 113 of 16 May 1978, p. 22), which relates to the situation existing on 31 December 1977, and to quote the staff statistics for 30 September 1978 which are even more recent and which show that the number of British nationals employed by the Commission in Category A amounts to 316 out of a total of 2 145 officials.

IV — Oral procedure

The parties presented oral argument at the hearing on 5 July 1979.

The Advocate General delivered his opinion at the hearing on 13 September 1979.

Decision

1 The application, which was lodged on 24 August 1978, seeks the annulment of Open Competition No COM/A/154 organized by the Commission in order to constitute a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A. The application arises out of the fact that having applied to enter that competition the applicant was refused admission to the written tests by decision of the selection board on the ground that his qualifications were not considered adequate.

2 The first submission relied on by the applicant concerns the special conditions for admission fixed by the notice of competition. In accordance with those conditions a candidate had to have both a university education, with degree or diploma, in a field appropriate to the option chosen by him and practical experience, obtained after graduation, also relevant to that option. The applicant maintains that this double condition is incompatible with the second subparagraph of Article 5 (1) of the Staff Regulations of Officials, according to which posts in Category A require, as alternative and not cumulative conditions, either university education or equivalent professional experience.

3 That complaint however cannot be accepted. As the Court has already held in its judgment of 5 April 1979 in Case 117/78, *Orlandi* v *Commission of the European Communities,* the provisions of Article 5 of the Staff Regulations seek to provide a general definition of the minimum level required for an official of the category in question drawn up according to the nature of the duties to which the posts correspond and do not concern conditions of recruitment. Those are governed by the provisions of Article 29 and Annex III to the Staff Regulations and there is nothing to prevent this notice of competition from fixing conditions in relation to certain posts or certain categories of posts which are more rigorous than those which correspond to the minimum requirements resulting from the classification of posts, whether such conditions are fixed in order to fill a specific vacant post or for the purpose of constituting a reserve with which to fill posts in a certain category.

4 The second complaint is based upon the first paragraph of Article 27 of the Staff Regulations, according to which:

"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."

The applicant maintains that that provision was infringed since by requiring possession of a university degree or diploma the Commission ruled out in advance the possibility of recruiting a candidate such as the applicant who, as a result of his practical experience, has the abilities necessary for the post to be filled.

5 That complaint must also be rejected. The requirement of possession of a university degree or diploma in addition to practical experience is generally, in all normal and typical cases, calculated to ensure that that provision is complied with and indeed to comply with it still further. In fixing that double condition the notice of competition does not conflict with the Staff Regulations. It is impossible to maintain, as the applicant does, that the candidates who are nationals of certain Member States thereby suffer a disadvantage. The combination of an academic education and practical experience does not seem to be a characteristic of candidates from certain Member States in contrast to those from others. Candidates with substantial practical

experience although without a university degree or diploma may be found among the nationals of all the Member States.

6 The applicant also maintains that by refusing to allow him admission to the written tests the selection board for the competition infringed the terms of the notice of competition which oblige it to allow for differences in national education systems. More particularly, the selection board failed to make allowance in his case for the special features of the education system in the United Kingdom.

7 In that connexion it is established that the applicant has not completed a university education in his country of origin, that is, the United Kingdom. That has, however, nothing to do with the education system in that country. The conditions of admission to a university course leading to a degree are no more restrictive in the United Kingdom than in the other Member States. Furthermore, the applicant began a course of study at university level in London without, however, pursuing it to the end. It may be necessary to make allowances for the differences in education systems referred to in the notice of competition where it is necessary to discover whether the degree or diploma possessed by a candidate relates to the field of duties which he has selected. However, that problem does not arise in this instance, since the applicant does not possess a university degree or diploma.

8 Finally, the applicant contests the refusal of the selection board on the ground that no sufficient statement of reasons was given for the decision. It is true that in certain other cases relating to the same competition (judgment of 30 November 1978 in Joined Cases 4, 19 and 28/78, *Salerno and Others* v *Commission of the European Communities* [1978] ECR 2403) the Court held that inadequate reasons were given for a refusal which contained, as the only statement of the reasons on which it was based, a mere reference to an item in a standard letter. In those cases it was impossible to discover to which of the components making up the conditions required the reference related. In this instance, on the other hand, there can be no doubt that it is the lack of any university degree or diploma which is the reason for the refusal and it is, moreover, in that sense that the applicant himself understood it. In those circumstances the statement of reasons given in this instance cannot be declared inadequate.

9 As none of the submissions has been upheld the application must be dismissed.

Costs

10 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. As the applicant has failed in his submissions he must be ordered to pay the costs.

However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, the institutions shall bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Mackenzie Stuart Sørensen Touffait

Delivered in open court in Luxembourg on 2 October 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber