

the possession of the bodies deciding on his candidature, the promotion procedure must be regarded as unlawful.

5. Annulment of the decision rejecting an official's candidature for promotion and

of the decision appointing another candidate affords adequate and sufficient compensation for the material or non-material harm suffered by the official, including that occasioned by the delay in drawing up his staff report which rendered the promotion procedure unlawful.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
16 December 1993<sup>\*</sup>

In Case T-58/92,

**Andrew Macrae Moat**, an official of the Commission of the European Communities, represented by Luc Govaert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14A Rue des Bains,

applicant,

v

**Commission of the European Communities**, represented by Thomas F. Cusack, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Nicola Anecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions of the Commission of 26 March 1992 and 21 May 1992 rejecting the applicant's candidature for the posts of Head of Unit IX. A.7 (Recruitment) in the Directorate-General for Personnel and Administration and Head of Unit IV. D.3 (Transport and Tourism) in the Directorate-General for Competition, for the annulment of the decisions

<sup>\*</sup> Language of the case: English.

appointing T. and F. to those posts, and for three awards of damages for the harm allegedly suffered by the applicant through his staff reports' being drawn up late and their not being consulted when the abovementioned posts were filled and through his receiving no reasoned reply to his complaint,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: A. Kalogeropoulos, President, R. Schintgen and D. P. M. Barrington,  
Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 28 October  
1993,

gives the following

## Judgment

### Facts and procedure

- 1 The applicant, Andrew Macrae Moat, is an official in Grade A 4 at the Commission. He points out that since 1986 he has requested in all his staff reports a transfer to a post enabling him to use his management skills, and contends that, given the ability to manage which his staff reports have praised since 1981, he can reasonably expect promotion or internal transfer.
- 2 In November 1991, his assessor's secretary put to him the assessor's suggestion that his 1987/1989 staff report be carried over to the assessment period 1989/1991. The applicant rejected that suggestion on the ground that his work had changed.

3 On 4 December 1991, the Director-General of the Directorate-General for Competition (DG IV) suggested to the applicant that he develop a thesaurus for one of the Directorate-General's databases. The applicant accepted that project but pointed out that he considered himself to be better suited to a management post.

4 After a fortnight's sick leave in October 1991, the applicant was again absent for a month from 5 December 1991 because of illness, related, in his view, to the stress from which he was suffering as a result of the Commission's not taking into consideration his wish to be transferred.

5 On 30 January 1992, the Commission published two vacancy notices COM/6/92 and COM/4/92 relating to the posts of Head of Unit IX. A.7 (Recruitment) in the Directorate-General for Personnel and Administration (DG IX) and Head of Unit IV. D.3 (Transport and Tourism) in DG IV, to be filled at Grades A 3, A 4 or A 5. The applicant's candidatures for those posts were recorded as received on 6 February 1992.

6 On 27 February 1992, the secretary of the Advisory Committee on Appointments (hereinafter the 'ACA') of the Commission informed the applicant that the post of Head of Unit IX. A.7 would be filled at Grade A 3 and that, the ACA's having reviewed the candidatures for the post in question, his candidature was not being considered for that post.

7 On 3 March 1992, the former head of the applicant's unit asked him to provide details of the changes in the description of his duties.

8 On 10 March 1992, the applicant's assessor sent him a copy of a draft staff report covering the period from July 1989 to June 1991. The applicant returned the draft to the assessor pointing out that the 'ad hoc' group, which, in accordance with the Guide to Staff Reports, acts as assessor in relation to the activities of officials who

have been elected or seconded to represent staff under the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') or for trades unions, had not been consulted.

- 9 On 20 March 1992, the 'ad hoc' group submitted to the Director of DG IV its comments on the applicant's performance when seconded to the Staff Committee and carrying out his duties as elected official, representative or delegate on trade union working parties.
- 10 On 25 March 1992, the secretary of the ACA informed the applicant that the post of Head of Unit IV. D.3 would be filled at Grade A 3 and that his candidature was not being considered for that post.
- 11 By memorandum of 26 March 1992, the Head of Division responsible for structure and A and LA staff at DG IX informed the applicant that his candidature for the post of Head of Unit IX. A.7 had been rejected.
- 12 On 2 April 1992, the applicant lodged a complaint pursuant to Article 90 of the Staff Regulations against the rejection of his candidatures for the posts of Head of Unit IX. A.7 and Head of Unit IV. D.3, in which he complained that the Commission was late in drawing up his staff report for 1989 to 1991 and that it had rejected his candidatures for the abovementioned posts without having consulted his staff reports.
- 13 After a discussion with his assessor on 8 April 1992, on 13 April 1992 the applicant signed the final version of his staff report covering the period from July 1989 to June 1991, emphasizing that, following the abovementioned discussion, his assessment had been made more detailed.

- 14 By memorandum of 21 May 1992, a Head of Division at DG IV informed the applicant that his candidature for the post of Head of Unit IV. D.3 had been rejected.
- 15 On 12 August 1992, the applicant lodged a second complaint against the rejection of his candidature for the post of Head of Unit IV. D.3, in which he complained that the Commission had acted in disregard of his personal interests and its own in refusing to find him a position matching his abilities.
- 16 It is in those circumstances that, by application lodged at the Registry of the Court of First Instance on 20 August 1992, the applicant brought this action.
- 17 By letter of 17 November 1992, the Director-General of Personnel and Administration sent the applicant the Commission's decision of 13 November 1992 responding to and rejecting his complaint of 12 August 1992. The reason given for the decision was that the unavailability of the applicant's last staff report when the post of Head of Unit IV. D.3 was being filled did not influence the decision not to appoint him to the post in question and that in any event since the procedure for filling a vacant post was governed by Articles 4, 7 and 29 of the Staff Regulations the applicant's complaint alleging contravention of Article 45 of the Staff Regulations was wholly unfounded, as were his claims for compensation.
- 18 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.
- 19 The parties presented oral argument, and gave replies to the questions put by the Court, at the hearing on 28 October 1993.

## Forms of order sought

20 The applicant claims that the Court should:

- (1) declare the application admissible and well founded;
- (2) condemn the Commission for its failure to prepare the applicant's staff report for the period July 1989 to June 1991 by the due date;
- (3) condemn the Commission for its failure to consult his report when deciding how to fill the posts of Head of Unit IX. A.7 and Head of Unit IV. D.3, cancel its subsequent rejection of the applicant's candidatures for those posts and cancel, in consequence, the appointments of Mr T. and Mr F. respectively;
- (4) condemn the Commission for its failure to give the applicant a reasoned decision in respect of his complaint within the time-limit imposed by the Staff Regulations;
- (5) order the Commission to pay the applicant the sums of BFR 500 000, BFR 250 000 and BFR 100 000 respectively as compensation for the damage it has caused him.

21 The Commission contends that the Court should:

- (1) decide on the admissibility of the application in accordance with its powers under Article 114 of its Rules of Procedure;
- (2) declare the application unfounded in its entirety and dismiss it;
- (3) make the appropriate order as to costs.

The claims for the annulment of the decisions rejecting the applicant's candidature for the posts of Head of Unit IX. A.7 and Head of Unit IV. D.3 and of the decisions appointing Mr T. and Mr F. to those posts

Admissibility

*Arguments of the parties*

- 22 In its defence, the Commission raises an objection of inadmissibility on the ground that the complaint of 2 April 1992 and the application, in so far as they concern the decisions rejecting the applicant's candidature for the post of Head of Unit IV. D.3 and the appointment of another candidate to that post, are premature.
- 23 In support of its objection of inadmissibility, the Commission submits, first, that the complaint of 2 April 1992, inasmuch as it concerns the rejection of the applicant's candidature for the post of Head of Unit IV. D.3, pre-dated the communication sent to the applicant on 21 May 1992 to inform him that his candidature had been rejected. Accordingly, the Commission considers that, being devoid of purpose, that complaint was inadmissible as premature.
- 24 Secondly, the Commission notes that the applicant submitted a second complaint against the appointment in question on 12 August 1992, that is to say on the day on which this action was started. The action, in so far as it concerns the rejection of his candidature for the post of Head of Unit IV. D.3, is accordingly also premature, since the applicant has not waited until the four-month period provided for by Article 90(2) of the Staff Regulations has expired before bringing the action.
- 25 The Commission accepts that the application for annulment is admissible in so far as it concerns the decisions rejecting the applicant's candidature for the post of Head of Unit IX. A.7 and the appointment of Mr T. to that post.

- 26 Referring to the principle of economy of procedure, the Commission has no objection, however, to the Court's dealing similarly with the two applications for annulment by giving one judgment on both matters, given the particular circumstances of this case. It emphasizes that it is advancing no formal objection as to admissibility and that, since the question is one of public interest, it relies on the wisdom of the Court.
- 27 In this regard, the Commission refers to the judgment of the Court of Justice in Case 28/64 *Müller v Council* [1965] ECR 237 in which, according to the Commission, the Court appears to formulate the principle that a premature application may be validated by a subsequent decision confirming the stance which was prematurely contested. It also points out that in its order in Case 103/86 *Du Besset v Council* [1986] ECR 2619, the Second Chamber of the Court of Justice stated that the object of the precontentious procedure is 'to allow the administration to reconsider the contested measure.' In this case, the Commission has no intention of going back on its decision not to appoint Mr Moat to the post in question. An express reply to the complaint of 12 August 1992 is in preparation and is to be sent to the applicant within the time-limit laid down in Article 90(2) of the Staff Regulations. The only purpose of that reply, according to the Commission, is to give the applicant the reasons for which it believes that his criticisms of the procedure leading to the rejection of his candidatures for the posts of Head of Unit IX. A.7 and Head of Unit IV. D.3 are unfounded.
- 28 Aware of the possibility that the application may be held inadmissible in so far as it concerns the decision to appoint Mr F. to the post of Head of Unit IV. D.3, the applicant, who treats the decision to appoint as an implied decision rejecting his complaint of 2 April 1992, gives as his reason for bringing his action his concern to comply with the relevant time-limit. He accepts that he was informed during the precontentious procedure that the appointing authority had drawn up a draft reply which, if communicated within the time-limit, would start time for bringing an action running again, but states that, given the possibility that the draft would not materialize, he was moved to bring the action so as to preserve his rights.

29 In his reply, to which he has annexed the Commission's response of 17 November 1992 to his complaint of 12 August 1992, the applicant points out that the Commission is not opposed to the two applications for annulment being dealt with in one judgment and requests the Court to rule on both applications at the same time.

30 At the hearing, the applicant informed the Court that he was to be retired on 31 January 1995. On being asked by the Court, he stated that he was maintaining his claims for the annulment of the decisions appointing Mr T. and Mr F. notwithstanding his impending retirement.

### *Findings of the Court*

31 It should be noted that it is settled law that in order for an official or a former official to be able to bring an action under Articles 90 and 91 of the Staff Regulations for the annulment of a decision of the appointing authority making an appointment, he must have a personal interest in the annulment of the contested decision (see the judgments of the Court of Justice in Joined Cases 81/74 to 88/74 *Marenco and Others v Commission* [1975] ECR 1247, Case 111/83 *Picciolo v Parliament* [1984] ECR 2323, Case 126/87 *Del Plato v Commission* [1989] ECR 643 and the judgment of the Court of First Instance in Case T-20/89 *Moritz v Commission* [1990] ECR II-769).

32 It is accordingly for the Court to ascertain whether, having regard to the fact that he will be retiring on 31 January 1995, the applicant could still reasonably aspire to be appointed to the posts in question. At the time when the action was started, on 12 August 1992, the applicant was due to retire in two years, five months and 19 days. Taking into account the time required for compliance with a judgment, the prospect that the applicant will at that date still be employed by the institution within which the posts filled by the contested measures were vacant cannot be excluded. It follows that the applicant has a legitimate interest in seeing the appointments of the candidates appointed to those posts annulled.

- 33 In so far as it seeks the annulment of the decisions rejecting the applicant's candidature for the post of Head of Unit IX. A.7 and appointing Mr T. to that post, the action is accordingly admissible.
- 34 In so far as the action concerns the rejection of the applicant's candidature for the post of Head of Unit IV. D.3 and the appointment of Mr F. to that post, the defendant also pleads that it is premature. It adds however that it has no objection, in the circumstances of this case and notwithstanding the fact that the action is premature, to the Court's ruling on the merits of the application for annulment concerning the filling of the post of Head of Unit IV. D.3 at the same time as it rules on the merits of the application for annulment concerning the filling of the post of Head of Unit IX. A.7.
- 35 The Court considers, first, that the appointment of Mr F. to the post of Head of Unit IV. D.3 cannot be regarded as an implied decision rejecting the applicant's complaint of 2 April 1992 in so far as the complaint concerned the filling of that post. Such an interpretation would amount to accepting that the complaint was validly made against the decision of the ACA not to propose the applicant for appointment to the post in question.
- 36 It is clear from the case-law of the Court of First Instance that preparatory acts, such as the opinion of an Advisory Committee on Appointments which has merely advisory powers, cannot, even if they are the only acts of which the applicant claims to be aware, be the subject-matter of an action (Case T-27/90 *Latham v Commission* [1991] ECR II-35).
- 37 In this case, it is the decisions rejecting the applicant's candidature for the post of Head of Unit IV. D.3 and the appointment of Mr F. to that post which are the decisions adversely affecting the applicant which he could have contested by first submitting a complaint in accordance with Article 90(2) of the Staff Regulations.

- 38 It follows that the action, in so far as it concerns those decisions, was brought before the pre-litigation procedure had been completed and is accordingly premature.
- 39 It should be noted next that the time-limits in an action are a matter of public policy and are not at the discretion of the parties or the court, having been established with a view to ensuring legal clarity and certainty (see the judgments of the Court of First Instance in Case T-19/90 *von Hoessle v Court of Auditors* [1991] ECR II-615, Case T-54/90 *Lacroix v Commission* [1991] ECR II-749 and the order of the Court of First Instance in Case T-34/91 *Whitehead v Commission* [1991] ECR II-1723). It is imperative that an action brought against an act of the appointing authority adversely affecting an official should be preceded by a complaint prior to action which has been rejected by an express or implied decision. The purpose of such a procedure is to give the administration the possibility of reconsidering the contested measure (see the order in *Du Besset v Council*, cited above) and the official the possibility of accepting the reasons underlying the contested measure and deciding not to bring an action and, accordingly, the parties cannot circumvent it.
- 40 The Court considers furthermore that the circumstances in *Müller v Council*, cited above, on which the Commission relies, were exceptional and cannot be compared with those in this case. In *Müller v Council*, the Court of Justice accepted that an action brought prematurely had been validated by a subsequent decision confirming the defendant's earlier stance, in so far as that decision applied to Mr Müller a new rule which had come into force after the defendant first made its position known to him and before he brought the action. The Court of First Instance considers that the express rejection of a complaint which occurs after an action has been commenced against the decision which is the subject-matter of that complaint cannot be regarded as validating an action brought prematurely and thereby permit the parties to bring forward the procedural time-limits.
- 41 In so far as it seeks the annulment of the decisions rejecting the applicant's candidature for the post of Head of Unit IV. D.3 and appointing Mr F. to that post, the action must accordingly be dismissed as inadmissible because it was brought prematurely.

The substantive issues

- 42 In support of its application for the annulment of the decision rejecting the applicant's candidature for the post of Head of Unit IX. A.7 and appointing Mr T. to that post, the applicant puts forward a single plea alleging contravention of Article 45 of the Staff Regulations.

### The plea alleging contravention of Article 45 of the Staff Regulations

#### *Arguments of the parties*

- 43 The applicant notes, first, that his appointment to the post in question could have involved a promotion for him and that accordingly the appointing authority was required by Article 45 of the Staff Regulations to consider the comparative merits of himself and his staff reports as against those of the other candidates.
- 44 According to the applicant, his staff report for 1989 to 1991 had still not been completed when the appointing authority decided to appoint Mr T. to the post of Head of Unit IX. A.7, so that it made that appointment without having compared the candidates' staff reports, thus contravening Article 45 of the Staff Regulations.
- 45 In its defence, the Commission points out first of all that 71 Grade A 4 officials having, like the applicant, 18 years' or more seniority work for the Commission and that his case is not exceptional.
- 46 The Commission, which does not dispute that the appointing authority did not have the applicant's last staff report available when it appointed Mr T., then goes on to rebut the applicant's claim that the unavailability of his staff report when the post at issue was filled must entail the annulment of the appointment in question. In support of its view, the Commission relies on the judgments of the Court of Justice in Case 263/81 *List v Commission* [1983] ECR 103 and Case 7/86 *Vincent v Parliament* [1987] ECR 2473, in which the Court decided that in an appointment procedure it is not the case that all candidates must be at the same stage regarding the state of their staff reports and that the appointing authority should postpone

its decision if the most recent staff report on one or other of the applicants has not yet been drawn up; the fact that the personal file of one applicant is irregular or incomplete is not a sufficient ground for the annulment of the appointments unless it is established that this was capable of having a decisive effect on the procedure.

- 47 In the present case, the Commission considers that the unavailability of the applicant's most recent staff report was not capable of having a decisive effect on the appointment procedure. The Commission points out that the staff report for 1989 to 1991 contains, in the section headed 'Analytical Assessment', certain marks, namely 10 'excellents' and four 'very goods', which are identical to those in the staff report for 1987 to 1989 which was on the applicant's personal file and was accessible both to the ACA and to the appointing authority.
- 48 In his reply, the applicant responds that the staff report for 1989 to 1991 is not identical to the 1987-1989 staff report because the 1989-1991 report contains the following additional comment: 'It is noteworthy that in 1991, when he was responsible for six of B 2's 10 priority cases, these did not suffer in spite of his being occupied almost full time with pay negotiations. His willingness to progress his cases while detached full time in the Staff Committee was also much appreciated.'
- 49 According to the applicant, the fact that those in charge of filling the post at issue were not aware of that assessment had a decisive effect on their decisions. The assessment in question demonstrates that despite his Staff Committee work and his position in the public eye during the pay negotiations, he accomplished all his other work very well.

50 In its rejoinder, the Commission counters by saying that the general assessment in the 1989-1991 staff report, without being identical to that in the previous report, is couched in similar terms. Consequently, the applicant cannot reasonably claim that the absence of his staff report had any effect at all on the procedure for appointing an official to the post of Head of Unit IX. A.7.

51 The Commission also pursues the line of reasoning already developed in its response of 17 November 1992 to the applicant's complaint of 12 August 1992 to the effect that the procedure for making appointments to the post at issue in this case is governed not by Article 45 of the Staff Regulations but by Articles 4, 7 and 29 thereof.

52 On this issue, the Commission explains that the procedure laid down by Article 29 of the Staff Regulations consists in a call for candidatures on the terms set out in the vacancy notice and in scrutiny of those candidatures with a view to assessing the applicants' qualifications for the post in question. In the context of that procedure, which, according to the Commission, is distinct from that under Article 45 of the Staff Regulations (judgment of the Court of Justice in Case 15/63 *Lassalle v Parliament* [1964] ECR 31), candidates must submit their curriculum vitae and are able to emphasize any interest they may have in and aptitude for the post in question so as to compensate for any absence of a staff report.

53 The Commission also points out that the institution must choose the candidate who is the most apt for the post to be filled, who will not necessarily be the candidate with the best staff report. Furthermore, middle-management posts are always published as Grades A 3, A 4 and A 5, which also indicates that the appointment procedure in question is not governed by Article 45 of the Staff Regulations. It follows that the plea based on contravention of Article 45 is without substance.

54 The Commission accordingly concludes that, given that the applicant alleges no other defect affecting the appointment of Mr T., the application for the annulment of the decisions at issue must be dismissed.

55 At the hearing, the defendant's representative withdrew its submission that Article 45 is not applicable in this case. He stated, however, that the staff report is not the only factor which must be taken into account in considering the comparative merits of candidates and concluded from this that the unavailability of the most recent staff report of a candidate for a vacant post when that post is being filled cannot in itself be regarded as being liable to vitiate the appointment of another candidate to that post and necessarily entail its annulment.

### *Findings of the Court*

56 It should be noted at the outset that consideration of candidatures for internal transfer or promotion must comply with Article 45 of the Staff Regulations, since the requirement laid down in that article for the comparative merits to be considered is an expression of both the principle of equal treatment of officials and the principle that they should have reasonable career prospects (judgment of the Court of Justice in Joined Cases 20/83 and 21/83 *Vlachos v Court of Justice* [1984] ECR 4149; judgment of the Court of First Instance in Case T-52/90 *Volger v Parliament* [1992] ECR II-121; and judgments in Case T-58/91 *Booss and Another v Commission* and in Case T-22/92 *Weissenfels v Parliament* [1993] ECR II-1095).

57 It is accordingly for the Court to ascertain whether the Commission, in exercising its power of assessment, has in fact carried out a proper consideration of the comparative merits of the candidates for the post declared vacant by notice COM/6/92.

58 The Court notes that when filling the post of Head of Unit IX. A.7, neither the ACA nor the appointing authority had the applicant's last staff report available when they took their decision because of the delay in drawing up the report, a delay for which the defendant does not deny responsibility.

59 According to the settled case-law of the Court of Justice (Case C-68/91P *Moritz v Commission* [1992] ECR I-6849) and the Court of First Instance (Case T-25/92 *Vela Palacios v Economic and Social Committee* [1993] ECR II-201), staff reports

provide indispensable information whenever the careers of officials are considered for the purpose of adopting a decision. A promotion procedure is irregular if the appointing authority has not been able to consider the comparative merits of the candidates because, owing to the fault of the administration, the staff reports of one or more candidates were drawn up with a significant delay, unless the appointing authority had available other information concerning the candidates' merits on the basis of which it was able to consider their comparative merits.

60 The question whether the unavailability of the applicant's last staff report could have had an effect on the contested appointment procedure so as to entail the annulment of the contested decisions must therefore be considered.

61 The Commission contends that the unavailability of the staff report was compensated by the fact that when the post in question was being filled the applicant's previous staff report, which contained the same number of assessments of 'good' and 'excellent' as the missing report, was available and by the fact that the candidates had the opportunity to submit their curriculum vitae with their candidatures.

62 It should be noted, first, that even if a missing staff report repeats the highly appreciatory comments made in the earlier reports, it is likely to add a certain 'lustre' to it (Case T-13/92 *Moat v Commission* [1993] ECR II-287).

63 Furthermore, the Court finds that in this case the applicant's last staff report contains the following additional appreciatory comment: 'It is noteworthy that in 1991, when he was responsible for six of B 2's 10 priority cases, these did not suffer in spite of his being occupied almost full time with pay negotiations. His willingness to progress his cases while detached full time in the Staff Committee was also much appreciated.' This even more favourable comment, which was not included in the applicant's previous staff report, should have been one of the factors taken into

account when the post in question was being filled. The unavailability of the applicant's last staff report must accordingly be regarded as having had an effect on his promotion prospects.

- 64 It follows that consideration of the application submitted by the applicant in response to vacancy notice COM/6/92 for the post of Head of Unit IX. A.7 in DG IX could have been affected by the fact that his last staff report was not in his personal file.
- 65 Moreover, since the Commission has not been able to establish that those responsible for taking the decisions concerning the applicant were aware of other information equivalent to the missing staff report, it must be held that the appointing authority did not properly consider the comparative merits of the applicant when filling the post of Head of Unit IX. A.7.
- 66 It follows that the plea alleging a breach of Article 45(1) of the Staff Regulations is well founded.
- 67 The decision rejecting the applicant's candidature for the post of Head of Unit IX. A.7 in DG. IX and the decision appointing Mr T. to that post must accordingly be annulled.

**The claims for compensation from the Commission for the harm allegedly suffered by the applicant**

*Arguments of the parties*

- 68 The applicant has made three claims for compensation in support of which he advances three pleas. The first plea concerns the late drawing up of his staff report, the second the breach of Article 45 of the Staff Regulations and the third the breach of Article 90(2) of the Staff Regulations.

- 69 The applicant calculates that the Commission's delay of 129 days in drawing up his staff report for 1989 to 1991 represents 13% of his remaining career from 7 April 1992 until his retirement, and he assesses the sum required to make good the damage suffered at BFR 500 000, while he assesses the sum required to make good the damage suffered through breach of Article 45 of the Staff Regulations at BFR 250 000, taking into account the fact that the period of 178 days between the submission of his application for the posts at issue and the implied rejection of his complaint of 12 August 1992 represents 20% of his remaining career. The applicant also complains that the Commission did not reply with a reasoned decision to his complaint of 2 April 1992 and he assesses the sum required to make good the damage suffered as a result of that omission at BFR 100 000.
- 70 The Commission maintains that the applicant has not adduced any specific, unquestionable evidence to show how its behaviour caused him any damage.

### *Findings of the Court*

- 71 The Court considers that in this case the applicant has provided no evidence of any material or non-material harm arising from the contested decisions which cannot be adequately compensated by the annulment of those decisions. Even on the assumption that the applicant's pleas in support of his claims for compensation are well founded, the effect of the delay in the drawing up of his staff report was that that report was not available when the post in question was filled, which is sanctioned by the annulment of the decisions concerning that post. Similarly, the Court considers that annulment constitutes, in this case, an adequate and sufficient sanction for the failure to provide reasons for the contested decision, in the absence of any specific harm due to an act other than the decision rejecting his candidature (see the judgments of the Court of Justice in Case C-343/87 *Culin v Commission* [1990] ECR I-225 and of the Court of First Instance in Case T-158/89 *van Hecken v Economic and Social Committee* [1991] ECR II-1341).
- 72 It follows that the claims for compensation must be dismissed without its being necessary to consider whether they are admissible.

## Costs

- 73 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.
- 74 Since the applicant has been unsuccessful in part in his claims for annulment and compensation, while the Commission has been unsuccessful in part in seeking the dismissal of the applicant's other claims, the Court considers that it is equitable to order the applicant to bear half of his own costs and the Commission to bear its own costs and half the applicant's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Annuls the Commission's decision rejecting the applicant's candidature for the post of Head of the Recruitment Unit IX. A.7 in DG IX;
2. Annuls the Commission's decision appointing Mr T. to that post;
3. Dismisses the remainder of the application;

**4. Orders the Commission to bear its own costs and half of the applicant's costs and the applicant to bear half of his own costs.**

Kalogeropoulos

Schintgen

Barrington

Delivered in open court in Luxembourg on 16 December 1993.

H. Jung

A. Kalogeropoulos

Registrar

President