

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
3 March 1993 \*

In Case T-25/92,

**Juana de la Cruz Elena Vela Palacios**, an official of the Economic and Social Committee, residing in Brussels, represented by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

applicant,

v

**Economic and Social Committee of the European Communities**, represented by M. Bermejo Garde, Legal Adviser, acting as Agent, assisted by D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of R. Hayder, of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Economic and Social Committee of 28 October 1991 rejecting the applicant's candidature for a vacant post of secretary/shorthand typist and, in so far as is necessary, for the annulment of the decision of 20 December 1991 dismissing her complaint,

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

\* Language of the case: French.

composed of: C. W. Bellamy, President, H. Kirschner and A. Saggio, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 14 January 1993,

gives the following

## Judgment

### Facts

1 The applicant, Juana de la Cruz Elena Vela Palacios, a Spanish national, has been an official of the Economic and Social Committee (hereinafter 'the ESC') since 1986. She currently occupies a post as a Grade C 3 shorthand typist in the Spanish typing pool.

2 On 20 August 1991, vacancy notice No 56/91 for a post of secretary/shorthand typist in the General Directorate, Research and Meetings Division, was published. The 'qualifications sought' included 'thorough knowledge of one Community language' and 'a satisfactory knowledge of another Community language'. The notice stated, among other comments, that the appointing authority would consider first whether the post could be filled by promotion or transfer.

3 Following the publication of that vacancy notice, the applicant and two other officials applied to be transferred; two officials put forward a request for promotion. The five candidatures were considered by a principal administrator in the Research and Meetings Division.

- 4 By decision of 28 October 1991, the vacant post was filled by promotion. By letter of the same date from the Secretary-General of the ESC, the other candidates, including the applicant, were notified that their applications had not been successful.
- 5 It is common ground that at that time, five years after the applicant was established, her personal file did not include any periodical report as provided for in Article 43 of the Staff Regulations of officials of the European Communities (hereinafter the 'Staff Regulations'). It was not until April 1992 that the applicant received periodical reports for the periods 1986 to 1988 and 1988 to 1990.
- 6 On 27 November 1991, the applicant submitted a complaint pursuant to Article 90(2) of the Staff Regulations, in which she complained, *inter alia*, that the administration had not stated its reasons for rejecting her application and pointed out that she had not been given any periodical report, contrary to Article 43 of the Staff Regulations.
- 7 On 8 January 1992 she received a memorandum from the Secretary-General, dated 20 December 1991, informing her that her complaint had been rejected for the following reasons:

'No official decision rejecting your application for vacant post No 56/91 has been taken and, secondly, in accordance with the case-law of the Court of Justice, the appointing authority is not bound to give reasons in its decisions concerning candidates who have not been chosen during the selection procedure provided for in Article 29(1)(a) of the Staff Regulations.

By my decision of 28 October, the candidate who was considered to be the most suitable, having regard to the duties and qualifications required for the post of secretary/shorthand typist in the General Directorate, Research and Meetings Division, was appointed. Having regard also to the fact that that decision was taken

after considering a report from the head of the division in question, who interviewed each of the five candidates, it is not appropriate to accede to your request.’

## Procedure

8 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 9 April 1992, the applicant brought these proceedings.

9 The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry. At the hearing the applicant was given leave to enter in the case file a number of documents attesting to her knowledge of languages.

10 The applicant claims that the Court of First Instance should:

— declare her action admissible and well founded;

— accordingly, annul the decision of the Secretary-General of the ESC of 28 October 1991 rejecting her application for the vacant post of secretary/shorthand typist in the Research and Meetings Division and, in so far as is necessary, annul the decision of 20 December 1991 rejecting her complaint;

— order the defendant to pay the whole of the costs.

11 The ESC claims that the Court should:

— dismiss the application as unfounded.

## Substance

- 12 The applicant has put forward two pleas in support of her application, one alleging that there was an inadequate statement of reasons and the other failure to have regard to the interests of the service and infringement of the principle of good management and sound administration.

## First plea

### *Arguments of the parties*

- 13 The applicant submits that the decision rejecting her candidature failed to state any reasons whatsoever and that the decision rejecting her complaint did not contain an adequate statement of reasons. Consequently, there was a flagrant breach of the second paragraph of Article 25 of the Staff Regulations. In that regard, the applicant refers to the judgments of the Court of Justice in Case 195/80 *Michel v Parliament* [1981] ECR 2861, paragraph 22, and of the Court of First Instance in Case T-1/90 *Perez-Minguez Casariego v Commission* [1991] ECR II-143, paragraphs 73, 76 and 80, in order to emphasize the fundamental nature of the requirement to provide an adequate statement of reasons.

- 14 As regards the absence of reasons for rejecting the applicant's candidature, the ESC refers to the established case-law of the Court of Justice, according to which the appointing authority is not obliged to give reasons for promotion decisions in so far as they affect candidates who have not been promoted; a statement of these reasons might harm some if not all unsuccessful candidates (see, for example, the judgment of the Court of Justice in Case 188/73 *Grassi v Council* [1974] ECR 1099). *Perez-Minguez Casariego v Commission*, cited by the applicant, is not relevant since that case related to a different situation, namely appointment following a competition.

- 15 As far as an express decision rejecting a complaint challenging a promotion is concerned, the ESC points out that although the appointing authority is obliged to state reasons for such decisions, it is neither required to disclose to the unsuccessful candidate the comparative assessment made by it of him and the successful candidate for promotion nor must it set out in detail in what way it considered that the appointed candidate fulfilled the conditions in the vacancy notice. The appointing authority may confine itself to a statement of reasons concerning the fulfilment

of the legal conditions on which the validity of a promotion depends (see the judgments of the Court of First Instance in Case T-25/90 *Schönherr v Economic and Social Committee* [1992] ECR II-63, paragraph 21, and in Case T-11/91 *Schloh v Council* [1992] ECR II-203, paragraph 73). The ESC maintains, however, that in this instance the reasons given, although succinct, fulfil those requirements and satisfy the purpose of the duty to state the reasons upon which a decision is based, which are to permit both the person concerned and the Court to review the legality of the decision and recognize the essential factors which guided the administration in its decision (see, for example, the judgment of the Court of Justice in Case C-169/88 *Prelle v Commission* [1989] ECR 4335, paragraphs 9 and 10).

- 16 Lastly, the ESC considers that the reasons for rejecting the candidature in question are clear in any event from a memorandum dated 21 October 1991 which Mr Catling, the principal administrator responsible for considering the candidatures, sent to the Secretary-General of the ESC in which he stated as follows:

‘... I have examined the candidatures of all the officials who applied for this vacancy, and interviewed each of the five candidates who are at present working at the ESC.

For this post, which involves, among other things, a wide range of duties conducted in at least four Community languages, it is necessary to find someone with a command of at least one romance language and one germanic language. In addition, if possible, someone should be found from within the ESC.

As regards the three candidates in Grade C 3, only Mrs Fe. is able to use a germanic language (English) but her knowledge is not entirely satisfactory. Mrs A. (Italian/French) and Mrs Vela Palacios (Spanish/Italian) do not meet the basic linguistic requirements.

It is therefore necessary to proceed to the promotion stage. In this regard, two people applied: Mrs B. (who unfortunately does not have sufficient seniority for promotion) and Mrs Fi. Mrs Fi., who has spent several years in South Africa, has a very good knowledge of English and French and an excellent knowledge of “WordPerfect”, which is very important for the sound operation of our departments.

I would therefore ask you to take the necessary steps in order to promote Mrs Fi. to Grade C 3 and appoint her as secretary to the Research and Meetings Division.’

- 17 The ESC points out that the Court intimated in the judgments in *Perez-Minguez Casariego v Commission* (at paragraphs 83 to 89) and in *Schlob v Council* (at paragraph 86) that a statement of reasons, even where it follows the commencement of proceedings, may render irrelevant a plea based on infringement of Article 25 of the Staff Regulations (see also the judgment of the Court of Justice in Joined Cases 64/86, 71 to 73/86 and 78/86 *Sergio and Others v Commission* [1988] ECR 1399, paragraphs 52 and 53). In this case, the ESC has difficulty in understanding the applicant’s interest in pursuing her action, since the only possible outcome of any annulment for a defective statement of reasons would be a new — substantively identical — decision, reiterating the reasons that have already been made known to her.
- 18 In her reply, the applicant avers that the case-law cited by the ESC in an attempt to attenuate the requirement to provide a statement of reasons basically refers to promotion decisions, whereas this case involves a transfer. Moreover, the judgment in *Perez-Minguez Casariego v Commission* makes the duty to provide a statement of reasons a general one *vis-à-vis* unsuccessful candidates. From that point of view, the memorandum rejecting her complaint did not provide any valid reasons in that it contained only purely formal reasons which neither enabled her to recognize the real reasons for which her application had been rejected nor enabled the Court to review the justification of that decision.
- 19 In its rejoinder the ESC, which refers to Article 7(1) and Article 29(1)(a) of the Staff Regulations, submits that, under the Staff Regulations, transfer is subject to rules strictly identical to those governing promotion. It follows from that which the Court has consistently held that promotions and transfers are to be considered as being ‘on a par’ (see, for example, the judgment of the Court of Justice in Case 55/70 *Reinarz v Commission* [1971] ECR 379, paragraphs 4 and 5). Consequently, the case-law cited, according to which there is no obligation to give a statement of reasons in the event of a decision not to promote, does indeed apply even to a decision rejecting a request for a transfer. In the judgment in Case 233/85 in *Bonino v Commission* [1987] ECR 739, paragraph 4, the Court of Justice even applied that principle to decisions assigning an official to a new post.

- 20 In so far as the applicant appears to criticize in that plea the fact that no reference was made in the decision rejecting the complaint to the lateness with which her periodical reports were submitted, the ESC claims that that omission cannot amount to a defect in the statement of reasons, since the applicant was fully aware of the situation and it was she herself who, in her complaint, brought that point to the administration's attention (see, for example, the judgment of the Court of Justice in Case 61/76 *Geist v Commission* [1977] ECR 1419, paragraphs 23 to 26).
- 21 At the hearing, the applicant maintained that Mr Catling's memorandum dated 21 October 1991, which was not raised in the proceedings until the stage of the statement in defence, contains new factors which were adduced late and, as a result, is manifestly inadmissible. The ESC cannot, by producing that memorandum in the proceedings before the Court, rectify the absence of a statement of reasons characterizing the administrative procedure. Instead, the reasons set out in that memorandum should have been set forth in the contested decision or in the decision rejecting the complaint.

### *Findings of the Court*

- 22 It should be noted *in limine* that the Court held in the judgment in Case T-52/90 *Volger v Parliament* [1992] ECR II-121, paragraph 36, that in the case of a decision rejecting a candidature, the appointing authority is bound to give a statement of reasons, at the very least when it rejects a complaint about such a decision. That accords with Article 90(2) of the Staff Regulations, which requires that the appointing authority gives a 'reasoned decision' in reply to a complaint. As promotions and transfers involve choices, it suffices that the statement of reasons for the rejection of the complaint deals with the existence of the legal conditions laid down by the Staff Regulations for the procedure to be lawful.
- 23 In this case, the Court finds that, in his memorandum of 20 December 1991 rejecting the applicant's complaint, the Secretary-General of the ESC stated that the appointing authority was not bound to state reasons for its decisions concerning candidates excluded during the selection procedure provided for in Article 29(1)(a) of the Staff Regulations. However, that statement expresses only the legal opinion of the Secretary-General. It therefore cannot be regarded, simply in itself, as establishing the absence of a statement of reasons. In fact, notwithstanding the legal opinion which he expressed, the Secretary-General sought, in the third paragraph

of the aforementioned memorandum, to provide reasons for rejecting the complaint.

24 As regards the question whether the two grounds put forward in that memorandum are sufficient having regard to Article 90(2) of the Staff Regulations, the Court of First Instance notes that the memorandum states that 'the candidate who was considered to be the most suitable, having regard to the duties and qualifications required for the post of secretary/shorthand typist in the General Directorate, Research and Meetings Division, was appointed'. It is apparent from that explanation that the ESC undertook an examination of the comparative aptitudes and merits of the candidates and that that examination resulted in a candidate other than the applicant being selected. Moreover, the memorandum mentions that the contested decision 'was taken after considering a report from the head of the division in question, who interviewed each of the five candidates'. That memorandum therefore informs the applicant of the actual procedure which was followed by the appointing authority in choosing between the various candidates. Having regard to the two pieces of information accordingly notified, there can be no question of a total absence of a statement of reasons.

25 However, as emerges from Mr Catling's memorandum, and as the ESC emphasized before the Court, the main reason for not choosing the applicant for the post in dispute was an alleged inadequacy of her knowledge of languages. In those circumstances the Court considers that the ESC ought to have informed the applicant, at the latest in its decision rejecting her complaint, of that individual, relevant reason (see the judgment of the Court of First Instance in Case T-156/89 *Valverde Mordt v Court of Justice* [1991] ECR II-407, paragraph 130, including references to the case-law of the Court of Justice, which laid down the obligation of a selection board for an internal competition to inform each candidate of the marks which he personally was awarded in the appraisal of his qualifications or after his participation in the tests). The general and purely procedural reasons given by the ESC in the decision rejecting the complaint are therefore inadequate.

26 However, it is settled case-law that, where the statement of reasons is inadequate, additional information on that subject may be provided at the hearing (judgment of the Court of First Instance in Case T-37/89 *Hanning v Parliament* [1990] ECR II-463, paragraph 44). Mr Catling's memorandum, which was produced

during the written procedure before the Court and revealed the decisive reason for which the applicant's candidature was rejected, does indeed complete the statement of reasons contained in the decision rejecting the complaint. That memorandum dates from 21 October 1991 and is therefore prior to the contested decision of 28 October 1991. Contrary to the applicant's argument, it is accordingly not an inadmissible new plea in law within the meaning of Article 48(2) of the Rules of Procedure, but an argument of fact which the ESC was entitled to raise in its defence under Article 46(1)(b) of those rules. The applicant was given an opportunity during the proceedings before the Court to verify the relevance of the reason relating to her knowledge of languages, which moreover she did by relying, in her reply, on an error of assessment (see paragraph 35 below). The said memorandum has also enabled the Court to review the legality of the procedure for filling the post in dispute and the contested decision.

- 27 In those circumstances, it should be held that the plea based on an inadequate statement of reasons has been rendered irrelevant by the explanations given by the ESC in the course of the proceedings (judgment of the Court of Justice in *Sergio and Others v Commission*, paragraph 52, and judgment of the Court of First Instance in *Schlob v Council*, paragraph 86).

### *Second plea*

#### Arguments of the parties

- 28 The applicant points out that at the time when her candidature was being considered, her personal file did not contain any periodical report, even though she had been established in 1986 and Article 43 of the Staff Regulations provides that a periodical report must be drawn up every two years for each official. In the absence of any periodical report it was therefore impossible for the appointing authority objectively to take into consideration her qualifications in relation to the post to be filled.
- 29 The ESC points out that the absence of periodical reports did not, in any event, have a bearing on the decision adopted and cannot therefore justify the annulment of the contested decision.

- 30 As has been consistently held, it is not enough in order to annul a decision on promotion that, during the comparative assessment of the merits of the candidates, the personal file of one of them was irregular or incomplete by reason in particular of the absence of a periodical report, except where it is shown that that fact could have had a decisive influence on the promotion procedure (see, for example, the judgment of the Court of First Instance in Case T-68/91 *Barbi v Commission* [1992] ECR II-2127, paragraph 26). Thus, the absence of a periodical report is not determinative where the appointing authority has at its disposal the very widest powers to obtain all the information necessary to undertake a comparative examination of the merits of those eligible (judgment of the Court of Justice in Case 86/77 *Dittrich v Commission* [1978] ECR 1855, paragraphs 18, 19 and 20).
- 31 In this case, the one and only reason for which the applicant was not chosen for the post in dispute was that she did not have a sufficient command of a 'germanic' language. Mr Catling, an English speaker, considered that the applicant did not have a satisfactory knowledge of English. During the interview, she showed great difficulties both in speaking and understanding English.
- 32 As an annex to its defence, the ESC produced two copies of periodical reports dated 1 September 1988 and 14 September 1990, in which the sections relating to the applicant's knowledge of languages were not filled in. As an annex to its rejoinder, the ESC produced two extracts from those periodical reports. The first, from the 1988 report, contained details of the applicant's knowledge of English, whilst the other did not contain any particulars of her knowledge of languages.
- 33 The ESC points out that those periodical reports only indicate, among the particulars of the applicant's knowledge of languages, that her mother tongue is Spanish and that at the material time she was working in French. As regards the first of the two reports, the applicant stated in the section dealing with knowledge of languages that she had an 'average' understanding of English and a basic ability to speak and write English. She indicated a basic knowledge of German. In the second report she left the language section completely blank. Furthermore, in general the reports were far from glowing, so that, regardless of the question of languages, cognizance

of those reports would quite manifestly not have furthered her cause with the appointing authority.

34 As regards more specifically the applicant's knowledge of English, the ESC further asserts in its rejoinder that the applicant was enrolled for three consecutive years (from 1987/1988 to 1989/1990) on English courses of the same level. It adds that in the meantime she passed, with the grade 'good', a level 4 course; although it makes clear that there are six levels.

35 In her reply the applicant refers to various certificates of attendance of language courses and points out that, if the only reason for rejecting her candidature was that she did not have the basic knowledge of languages required, the underlying finding is not only erroneous but also shows that there was no consideration of comparative merits laid down in Article 45 of the Staff Regulations. That error is particularly serious because periodical reports contain a section headed 'knowledge of languages' which has to be filled in by the official in question. If those reports had been communicated within the prescribed period, the error of assessment made with regard to her knowledge of languages could have been avoided and the final decision taken would probably have been different.

36 In her reply the applicant also argues that Mr Catling's memorandum of 21 October 1991 contains certain errors of assessment in relation to her knowledge of languages and her occupational abilities, since in reality she 'satisfies the relevant linguistic requirements': apart from Spanish, which is her mother tongue, she has a sound knowledge of French, Italian and English. Thus, in accordance with the linguistic selection criteria, she has a command of one romance and one germanic language. In addition, she has a knowledge of data processing. The gaps in Mr Catling's memorandum are due chiefly to the fact that because her periodical reports were submitted late, it was impossible to make a valid comparative consideration of the respective merits of the candidates.

- 37 At the hearing the applicant produced other certificates of attendance of language courses and a copy of the sections, duly filled in, dealing with knowledge of languages which form part of her two periodical reports. She explained the late submission of those reports by the fact that she had appealed against the periodical reports which she had been given in April 1992 and added that she had not filled in the sections in question until November 1992, that is to say, after the decision rejecting her candidature. In those sections, each of which are dated '18. XI.1992' and bear the remark 'Observations made on 12 November 1992 — The Appeal Assessor', the applicant described herself as having a 'good' understanding of English, a 'good' ability to speak that language and an 'fair' ability to write it, while leaving the boxes provided for German blank.
- 38 Furthermore, the applicant disputed the ESC's assertion that she had been enrolled for three consecutive years on English courses of the same level. She stated in this regard that her knowledge of English had, on the contrary, gradually improved, since she had started in 1987/1988 at Level 1 and finished in 1991 at Level 4.

### *Findings of the Court*

- 39 Since the second plea put forward by the applicant alleges disregard of the interests of the service and infringement of the principle of good management and sound administration, it must be held that its scope is too general. Accordingly, the Court considers that it is appropriate to examine, in the interest of precise assessment of the various aspects of the case, two separate pleas.
- 40 It is appropriate to consider first a plea based on the late submission of the applicant's periodical reports, which constitutes, in her view, an infringement of Article 29(1)(a), Article 43 and Article 45(1) of the Staff Regulations. In the context of that plea the Court will have to determine whether the appointing authority actually carried out in this instance a proper consideration of the comparative merits of the applicant's application for the post in question. As the Court of Justice held in *Bonino v Commission* (at paragraph 5), with regard to a decision concerning the assignment of an official to a new post, the appointing authority must assess, in the context of such a decision, the interests of the service and the suitability of the candidates for the post in question. Furthermore, this court held in

the judgment in *Volger v Parliament* (at paragraph 24) that, when faced with applications for internal transfer or promotion under Article 29(1)(a) of the Staff Regulations, the appointing authority must consider the comparative merits of the officials concerned as provided for by Article 45 of the Staff Regulations in the case of promotions.

41 Next, it is appropriate to consider a plea alleging an error in assessing the applicant's knowledge of languages. In considering that plea the Court of First Instance will have to ascertain the merits of the applicant's claims that the consideration of the candidatures carried out by the appointing authority was vitiated by an error of fact.

— The plea alleging infringement of Article 29(1)(a) and Article 43 of the Staff Regulations

42 It should be noted that, under Article 43 of the Staff Regulations, the ability, efficiency and conduct in the service of each official are to be the subject of a periodical report made at least once every two years. However, as far as the applicant was concerned, that time-limit was not complied with by the ESC, which, in contrast, substantially exceeded it, since no definitive periodical report had been drawn up at the time when she applied for the post in question.

43 As the Court of Justice has consistently held, the periodical report constitutes an indispensable criterion of assessment each time the official's career is taken into consideration by the administration. A promotion procedure is tainted with illegality in so far as the appointing authority has not been able to consider the comparative merits of the candidates because there has been a substantial delay on the part of the administration in drawing up the periodical reports of one or more of them (see, most recently, the judgment of the Court of Justice in Case C-68/91 P *Moritz v Commission* [1992] ECR I-6849, paragraph 16).

44 However, the Court of Justice also held that in exceptional circumstances the absence of a periodical report may be compensated for by the existence of other

information on an official's merits (judgment in *Moritz v Commission*, paragraph 18). Accordingly, the Court of Justice held, in the context of a promotion procedure, that the fact that an official's personal file was incomplete in that it lacked two periodical reports could not be held to support a finding that the promotion list in question was irregular in relation to Article 45 of the Staff Regulations, when, even without those periodical reports, the members of the various committees had at their disposal the very widest powers to obtain all the information necessary to undertake a comparative examination of the merits of those eligible (judgment in *Ditterich v Commission*, paragraphs 18 and 19).

45 It should be added that the absence of the periodical reports — albeit deplorable and inexcusable from the point of view of the good management and the sound administration of staff — must not paralyse promotion or transfer procedures, which are necessary to the interests of the service. Consequently, when confronted with such a situation, the appointing authority is not obliged to postpone its promotion or transfer decisions, but may seek appropriate alternative methods capable of compensating for the absence of the periodical reports.

46 In this regard, it should be recalled that the contested decision was taken because the applicant did not satisfy the 'basic linguistic requirements', including command of a 'germanic' language, required for the vacant post. That decision was preceded by an interview conducted by an English-speaking official with each of the five candidates for the post in question, which resulted in a report being drawn up and sent to the appointing authority. What is therefore involved here is information obtained by the appointing authority by means of a direct, personal assessment of the knowledge of languages of the candidates, including the applicant. The Court considers that that information was, in this case, capable of compensating for the absence of the periodical reports from the applicant's personal file, since the appointing authority had the necessary knowledge to undertake a proper examination of the comparative merits of those eligible.

47 In those circumstances, the fact that the applicant's definitive periodical reports were not drawn up within the time-limit laid down in the Staff Regulations and could not, therefore, be consulted at the time when the candidatures for the post in question were considered, did not prevent an examination of the comparative merits of the candidates from taking place and did not, therefore, have a decisive effect upon the procedure for filling that post (see the judgment of the Court of Justice in Case 7/86 *Vincent v Parliament* [1987] ECR 2473, paragraph 18).

48 That conclusion is not invalidated either by the certificates which the applicant produced at the hearing attesting to the fact that she attended English language courses or by the periodical reports drawn up after the procedure for filling the post. The value of such certificates is less than that of the five comparative interviews which took place with the candidates. Similarly, the linguistic assessments which the applicant herself made after the contested decision do not call in question the results of the preceding comparative examination. Consequently, the plea must be rejected as unfounded.

— The plea alleging an error of assessment

49 In so far as the applicant takes issue with the justification of the assessment of her knowledge of languages made during the procedure for filling the post in question, it should be recalled that when faced with applications for internal transfer or promotion under Article 29(1)(a) of the Staff Regulations, the appointing authority must consider the comparative merits of the officials eligible for promotion, as provided for under Article 45 of the Staff Regulations for promotions (judgment in *Volger v Parliament*, paragraph 24). It has been consistently held that the appointing authority enjoys a wide discretion as far as that consideration is concerned and that the review by the Court must therefore be restricted to the question whether the appointing authority exercised its power in a manifestly erroneous manner (judgment of the Court of Justice in Case C-107/90 P *Hochbaum v Commission* [1992] ECR I-157, paragraph 8).

50 However, by organizing personal interviews with the various candidates, as described above, which were followed by a report thereon, the appointing authority undertook a valid comparative examination of the applicant's knowledge of languages — the only aspect at issue in this case. During his interview with the applicant, Mr Catling, an English-speaking official of the ESC, found that the applicant's practical knowledge of English was not sufficient to meet the requirements of the vacancy. The applicant has not taken issue with the way in which that interview proceeded. The applicant's reference, in that context, to the various language courses which she has taken and to the assessments appearing in the section of her periodical reports relating to her knowledge of languages is not, for the reasons

referred to above, such as to call in question the result of that comparative examination. That conclusion also applies to the fact that the fact that the applicant's knowledge of English has probably improved, as she claims, over the years, since it was assessed by Mr Catling at the interview as inadequate.

51 Consequently, the applicant has not sufficiently substantiated her assertion that the appointing authority made a manifest error of assessment. That plea cannot, therefore, be upheld either.

52 It follows from the foregoing that the application must be dismissed in its entirety.

### Costs

53 Under Article 87(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings; but under Article 88 of the Rules of Procedure, in proceedings brought between the Communities and their servants, the institutions are to bear their own costs.

54 In this instance the ESC itself considers that, in view of the delay for which it was responsible in producing the applicant's periodical reports, it would not be fair for the applicant to bear her own costs.

55 The absence of the periodical reports may have played a role in the action's having been brought. In accordance with the ESC's submissions and in view of the initially inadequate notification by the ESC of the reasons for the contested decision, the ESC must be ordered to pay the applicant's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- 1. Dismisses the application;**
- 2. Orders the Economic and Social Committee to pay the whole of the costs, including those of the applicant.**

Bellamy

Kirschner

Saggio

Delivered in open court in Luxembourg on 3 March 1993.

H. Jung

C. W. Bellamy

Registrar

President