rendered admissible only if special circumstances justify it. This might be the case either if the decision in issue were in the nature of a covert penalty or if it disclosed an intention to discriminate against the official concerned or, again, if it involved misuse of powers.

2. Under the Staff Regulations the essential purpose of a notice of competition is to inform potential candidates as accurately as possible of the nature of the conditions of eligibility for the post in order to enable them to judge whether they should apply for it. However, the information contained in the notice concerning the arrangements for the performance of duties has neither the object nor the effect of requiring the administrative authority to organize the department on a permanent basis exclusively in accordance with the arrangements described after the successful candidates have been recruited.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
24 June 1993 *

In Case T-69/92,

Willy Seghers, official of the Council of the European Communities, residing in Brussels, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

v

Council of the European Communities, represented by Jorge Monteiro, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Xavier Herlin, Manager of the Directorate for Legal Affairs of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: French.

APPLICATION for the annulment of the decision of 28 October 1991 withdrawing the applicant from the rota for providing cover in three shifts and for the annulment of the decision of 19 June 1992 rejecting his complaint,

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

composed of: J. Biancarelli, President, B. Vesterdorf and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 19 May 1993,

gives the following

Judgment

Background to the application

1 The applicant, an official in Grade C4, Step 6, in the security department of the Council of the European Communities (hereinafter 'the Council'), passed Competition D/202, held to recruit officials to carry out duties relating to security, the Notice of Competition for which stated: 'In practice, successful candidates will, on a rota basis, over a 24-hour working period, perform duties concerned with the security of persons and property, in particular the surveillance of entrances, parking lots, offices and other installations on Council premises.' He was assigned to the Council's security department from 1 June 1982 to 15 May 1992. The applicant received the special allowance provided for in Article 56a of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') for providing 24-hour cover or working shifts.

2 From January 1987 to 9 July 1990 the applicant was a member of the Staff Committee to which he was seconded on a half-time basis from 8 December 1989

to 9 July 1990. He also acted as a spokesman on many technical and social matters.

3 By note of 28 October 1991, brought to the attention of the applicant the same day, Mr B., his immediate superior, withdrew him from the rota for shiftwork with effect from 1 November 1991.

4 That note reads as follows:

'The organization of a rota to provide 24-hour cover in three shifts in the security department is heavily dependent on the actual presence of staff during the shifts allocated to them.

Your frequent absences from the department both in 1990 and in 1991 have come to my attention.

The information at my disposal shows that your actual attendance in the department has been as follows:

— in 1990: 104 days

— in 1991 (from 1/1 to 31/9): 52 days.

Accordingly, in the interest of the functioning of the department, I have decided to withdraw you from the rota for shiftwork as from 1 November 1991.'

5 By note of 30 October 1991, the signatory of this decision requested the relevant department of the Council to stop payment to the applicant of the allowance provided for in Article 56a of the Staff Regulations as from 1 November 1991. However, the effects of this note were nullified by a further note, dated 25 November 1991, which restored the payment of the allowance with effect from 1 November 1991.

6 On 11 December 1991 the applicant asked to be 'restored to the rota for shiftwork' and, in the absence of any reply to his request, on 27 January 1992 he submitted a complaint against the above decision of 28 October 1991 pursuant to Article 90(2) of the Staff Regulations.

7 Following the submission of that complaint, by decision of 27 April 1992 with effect from 15 May 1992, the applicant was assigned to the Council's general services department and his allowance for shiftwork was stopped as from that latter date. On 27 July 1992 the applicant submitted a new complaint against that decision, pursuant to Article 90(2) of the Staff Regulations. That complaint was rejected on 27 November 1992. On 26 February 1993 the applicant lodged an application for annulment of the decision of 27 April 1992 (Case T-20/93).

8 The complaint of 27 January 1992 against the decision of 28 October 1991, which is the only one in issue in this case, was expressly rejected by decision of the Secretary-General of the Council dated 19 June 1992. That decision reads as follows:

'Your complaint regarding the decision of 28 October 1991 withdrawing you from the rota for shiftwork as from 1 November 1991 has been given thorough consideration. I now have the following comments to make.

The decision of 28 October 1991 was taken in the interest of the service, given that your frequent absences created problems in relation to the organization of continuous cover. It is self-evident that this cannot be done in a rational and satisfactory manner if the staff called upon to work under this system are required to work overtime for long periods to cover for absent colleagues.

The decision not to stop the allowance for shiftwork provided for in Article 56*a* of the Staff Regulations as from the same date was taken so that you would not be deprived of the allowance from one day to the next. However, as the decision of 28 October 1991 was not explicitly revoked, the continued payment of the allowance was not equivalent to restoration to the rota.

I must confirm that the interest of the service, in particular the obligations resulting from a faultless operation of a system of permanent cover prevent me from revoking the decision of 28 October 1991.

In the light of these observations, I regret that I cannot give a favourable response to your complaint.'

9 Accordingly, by application lodged at the Court Registry on 18 September 1992, the applicant sought the annulment of the decision of 28 October 1991 and the decision of 19 June 1992 rejecting his complaint.

Forms of order sought

10 The applicant claims that the Court should:

— declare the application admissible and well founded;

— accordingly, annul the decision of the appointing authority of 28 October 1991 and, as far as necessary, the decision of the appointing authority of 19 June 1992 rejecting the applicant's complaint.

11 The Council contends that the Court should:

— dismiss the application as unfounded;

— order the opposite party to pay such costs as are not borne by the Council under Article 88 of the Rules of Procedure.

12 In a separate document, lodged at the Court Registry on 4 February 1993, the applicant requested that Mr O., staff representative and official in the security department of the Council, be examined as a witness, pursuant to Article 68 of the Rules of Procedure.

13 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry. However it called on the parties to 'concentrate, in their oral argument, on the question whether, in the light of the Council's reasoning on page 5 of its rejoinder, the application is admissible and/or still has any purpose, and whether the act in issue had had any legal or financial consequences at the date on which the proceedings were initiated'.

14 The parties presented oral argument and replied to the question put by the Court at the hearing on 19 May 1993.

The claims for annulment

Arguments of the parties

Admissibility

15 The applicant argues that the application is admissible as he has been deprived of the right to carry out the duties which he was recruited to perform in accordance with the arrangements and the time-table described in the notice of competition. He adds that the defendant's contention that the contested decision has not adversely affected him is irrelevant because, although it is undisputed that an official may be posted to many different departments during his career, those postings must fit into the framework set out in the notice of competition.

16 At the hearing the applicant argued that the contested act did have an adverse effect on him, firstly because it led to a progressive downgrading of the content of his duties; secondly because, under the circumstances, it cannot be viewed merely as a temporary organizational measure; thirdly, because it is liable to produce effects

should the decision of 27 April 1992 be annulled; fourthly, because the allowance for shiftwork ought, as a matter of principle, to have been stopped, and, finally, because the change which the decision of 27 April 1992 brought about in the legal position of the applicant leaves in place all or some of the rights adversely affected by the contested decision.

17 While it does not formally dispute the admissibility of the application, the Council in its defence, points out that the contested decision affects the applicant adversely only inasmuch as it necessarily entails the withdrawal of the allowance for work in three shifts. However, the Council takes the view that the fact that the arrangements for performance of his duties are different from those described in the notice of competition does not affect him adversely. In its rejoinder the Council states that it is clear from events following the lodging of the application that the contested decision was only an 'interim measure' which did not entail the immediate withdrawal of the allowance for shiftwork. It argues that the applicant's position was finally settled by the decision of 27 April 1992 which placed him at the disposal of the Council's general services department as from 15 May 1992 and withdrew the allowance for shiftwork. The Council points out that the applicant submitted a complaint against that decision which was rejected on 27 November 1992 and an application to the Court for its annulment. It takes the view that, given these new developments since the submission of its defence, the case is now 'entirely pointless'. The decisions which affect the applicant's position immediately and directly and which, therefore, may be considered as affecting him adversely as defined in case-law (see the order of the Court of First Instance in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235) are those of 27 April 1992 and 27 November 1992 which are the subject of his application in Case T-20/93. Accordingly, the Council leaves to the Court's discretion the question whether 'this application should be dismissed as devoid of purpose.'

18 At the hearing the Council added that the act in issue never had any financial effect whatsoever as the allowance for shiftwork continued to be paid. Moreover, since that act never had any legal effect, the judgment of the Court on the legality of the decision of 27 April 1992 would not alter the actual position of the applicant in any respect. Furthermore, the Council pointed out that, of the roughly 50 employees in its security department, about 15 work outside the shift system on a permanent basis, as did the applicant temporarily without any alteration or downgrading

whatsoever of the nature of his duties. Finally, the Council argued that if the Court were to annul the decision of 27 April 1992 the applicant would be reinstated in his post in the security department outside the shift system but retaining the allowance for shiftwork, even though, in this last respect, his position would have to be covered by an appropriate arrangement.

Substance

19 In support of his application for annulment of the contested decision, the applicant puts forward four pleas in law. The first alleges breach of Article 1 of Annex II to the Staff Regulations concerning the Staff Committee and a manifest error of assessment by the administrative authority; the second alleges breach of the principle of non-discrimination and the existence of a manifest error in the assessment of the circumstances of the case; the third alleges an error in the reasoning of the contested decision; finally, the fourth alleges misuse of powers by the defendant institution.

20 As to the first plea alleging infringement of Article 1 of Annex II to the Staff Regulations and a manifest error in the assessment of the number of days of attendance, the applicant disputes the allegation that he was present on only 104 days in 1990 and on only 52 days during the period from 1 January to 30 September 1991. He maintains that the calculation of the number of days of attendance in 1990 could only have been made on the basis of two errors by the administration. Firstly, the administration overlooked the fact that, in view of the particular arrangements for the organization of work in the security department, the work effectively carried out by a member of staff can only be measured by the number of hours worked and, secondly, it failed to take into account the time spent by the applicant on his duties as a member of the Staff Committee. Pursuant to Article 1 of Annex II to the Staff Regulations, that time should count as time spent in the department. The applicant asked the Court to order the production of the attendance lists to establish the truth of his allegations.

21 The defendant institution contends that this plea must be rejected because it is not supported by any evidence. It adds that, while the applicant tried to establish that the contested decision was a covert penalty, the decision must, in fact, be viewed

against the background of the wide discretion which the administrative authority has in organizing its departments and assigning its staff in order to carry out their tasks. It is settled case-law of the Court of Justice that this power to organize departments entails an obligation on an official to accept any assignment to a post in his category and the right of the Community institutions to reassign officials to different posts without their consent. That case-law, developed in connection with redeployment, must with greater reason apply to the facts of this case, in which the decision in issue merely alters the arrangements for the performance of duties. In view of the applicant's absences, this measure, taken solely as a result of the applicant's frequent and unpredictable absences, as witnessed by the reference to the need for 'the actual presence of staff during the shifts allocated to them', was necessary for the organization of a department where the 'interdependence' of staff is particularly marked. In those circumstances, the Council considers that there is no need to go to the lengths of verifying the exact number of days the applicant was absent during the period from 1 January 1990 to 30 September 1991.

22 As to the second plea alleging breach of the principle of non-discrimination and a manifest error of assessment, the applicant claims that the decision in issue, as supplemented by the decision rejecting his complaint, was taken on the ground of his alleged absences. The reasoning of the decision is that his absences were so frequent that it was necessary to withdraw him from the three-shift system in the interest of the service. The applicant maintains his absences were no more frequent than those of his colleagues and that, in any event, he was not the most frequently absent member of staff. He claims that the number of days he was absent in 1990 was in fact 64; for the first nine months of 1991 the figure was 92, a total of 156 days for the period from 1 January 1990 to 30 September 1991. He maintains that some of his colleagues clocked up 170 days of absence. Accordingly, the applicant alleges that the action taken against him was discriminatory and vitiated by a manifest error of assessment. The applicant requests the Court to undertake a measure of inquiry to verify the truth of his statements.

23 The defendant takes the view that the applicant's interpretation of the principle of non-discrimination is incompatible with the principle of the proper organization of the department. The comparisons which the applicant makes between his own absences and those of his colleagues are, it argues, not relevant, firstly because the

contested decision was not a disciplinary measure and, secondly, because a lengthy scheduled absence would cause fewer difficulties for the organization of the department than a shorter but unscheduled absence. Moreover, a decision of the type in issue, in no way a disciplinary measure and taken for the purpose of organizing the department, cannot, as a matter of principle, be discriminatory in nature.

24 As to the third plea alleging an error of reasoning, the applicant maintains that, according to the defence, the decision in issue was not based, as its statement of grounds purports, on a clearly defined number of days' absence, but on the frequency of his 'unscheduled' absences. The applicant questions whether it is possible for the statement of reasons in the decisions in issue to be replaced by a new statement. The real reasons for the contested decision were only revealed when the defence was lodged. This new statement of reasons replaced the initial statement, as the defendant itself admits, with the result that the institution was in breach of Article 25 of the Staff Regulations and did not enable the applicant to defend his rights without restriction and in full knowledge of the case against him.

25 The Council admits that the reference to the applicant's total number of days' absence, which appears in the third paragraph of the decision of 28 October 1991, is open to various interpretations. However, it considers that the main points in the reasoning of the appointing authority's decision are clearly set out: the applicant was withdrawn from the rota for shiftwork in the interest of the service and his withdrawal was essential because of the need for 'the actual presence of staff during the shifts allocated to them'. This requirement can only be read as a reference to unscheduled absences. In any event, the decision rejecting the complaint makes no reference to numbers of days of absence and sets out very clearly the grounds, in the interests of the service, on which it is based. Even if it were to be conceded that the decision of 28 October 1991 was expressed somewhat unclearly, the decision rejecting the complaint would dispel any doubt.

26 Finally, as to the plea alleging misuse of powers, the applicant argues that the contested decision stems from the personal animosity of its author towards

the applicant rather than the requirements imposed by the interest of the service.

27 The Council contends that this plea is not substantiated by a single fact. Nor does the contested decision have anything to do with the applicant's activities as a member of the joint group on 'adaptation of premises' or his absence on Staff Committee business.

Findings of the Court

Admissibility

28 It is settled case-law that an application made under Article 91 of the Staff Regulations is only admissible if it concerns an act adversely affecting an official, that is to say, an act directly and immediately affecting the legal position of the official concerned (Case 129/75 *Hirschberg* v *Commission* [1976] ECR 1259 and Case 204/85 *Stroghili* v *Court of Auditors* [1987] ECR 389 and the orders of the Court of First Instance in *Weyrich* v *Commission*, cited above, and Case T-34/91 *Whitehead* v *Commission* [1992] ECR II-1723).

29 It is also settled case-law that the administrative authority has a wide discretion in determining the arrangements for the performance of the duties of officials and other servants in the interest of the Community civil service. It follows that purely internal acts cannot be the subject of an application to the Court as they do not affect the legal or material position of the official affected by the organizational measure in question (Case 32/68 *Grasselli* v *Commission* [1969] ECR 505 and in Joined Cases 66/83 to 68/83 and 136/83 to 140/83 *Hattet and others* v *Commission* [1985] ECR 2459). An act against which 'the grievances expressed ... concern the position of the applicant [official] under the Staff Regulations, but exclusively internal relationships within the service and more particularly, questions of administrative and working organization' does not constitute an act adversely affecting an official which, as such, can be the subject of an action before the Court (*Hirschberg*, cited above).

32 In this connection it should be pointed out that the reassignment of an official is, strictly speaking, a matter for the internal organization of the department and can be the subject of a legal action only if the particular circumstances justify it (Case 17/68 *Reinarz* v *Commission* [1969] ECR 61 and of the Court of First Instance in Case T-50/92 *Fiorani* v *Parliament* [1993] ECR II-555). Moreover, the Court of Justice has held that a decision assigning to a post in a personal capacity an official already assigned in that capacity to another post in the same grade does not alter the position of that official under the Staff Regulations and, therefore, does not affect him adversely (Case 189/81 *Bosmans* v *Commission* [1982] ECR 2681). Finally, the Court of First Instance has held that, for a reorganizational measure within a department to prejudice the rights of an official under the Staff Regulations, and consequently, for it to be able to be the subject of any action before the Court, it is not sufficient for it to entail a change in, or even any diminution of, his responsibilities; it is necessary that, taken together, the residual responsibilities should fall clearly short of those corresponding to his grade and post, taking account of their importance and scope (Case T-46/89 *Pitrone* v *Commission* [1990] ECR II-577).

31 Moreover, in its assessment of the effects of the contested act, the Community judicature takes account not only of the legal effects in the narrow sense but also of the material and financial effects. Thus, a departmental circular informing an official that an allowance he has been receiving is to be withdrawn is an act adversely affecting him and, as such, may be the subject of an action (Case 56/72 *Goeth-Van der Schueren* v *Commission* [1973] ECR 181).

32 It falls to the Court to consider whether, in the light of all those decided cases, the contested decision affects the legal position of the applicant directly and immediately, that is to say, whether it was such as to have legal, material or financial effects liable to affect substantially the applicant's situation or his position under the Staff Regulations.

33 In this case, the Court points out, firstly, that the contested decision, which retains the applicant in the Council's security department, does not alter in any respect the range of the duties he carries out in the department, but merely alters the

conditions for carrying out those duties in that it does no more than replace the arrangement whereby the applicant provided cover on a rota basis in three shifts with a normal working day. The argument that there was a change in the performance of applicant's duties, outlined for the first time during the hearing, even though in the written procedure the Council had clearly stated that the duties carried out by the applicant had remained unchanged, is in any case not substantiated in any respect by the documents before the Court, as indeed counsel for the applicant expressly conceded. Accordingly, in itself, the contested act, which is a less radical measure than reassignment, does not alter the legal position of the applicant in such a way that it could be characterized as an act adversely affecting an official.

34 Secondly, the Court rejects the applicant's argument that the Community institution is bound by the information in provisions in the notice of competition, that candidates' duties would be performed on a rota basis and that, accordingly, the contested decision had altered the legal position of the applicant. The Court of Justice has held that '[A] ccording to the Staff Regulations, the basic function of the notice of competition is precisely to give those interested the most accurate information possible about the conditions of eligibility for the post to enable them to judge whether they should apply for it' (Case 255/78 *Anselme and Constant* v *Commission* [1979] ECR 2323 and in Case 67/81 *Ruske* v *Commission* [1982] ECR 661). In this case, pursuant to Article 1(1) of Annex II to the Staff Regulations under which the notice of competition 'must specify ... (c) the type of duties and tasks involved in the post to be filled', candidates were admittedly informed of the fact that the department was organized on a rota basis. However the information thus given to the candidates and intended to enable them to apply for the post in full knowledge of the circumstances had neither the object or effect of requiring the administrative authority, if it was not to act unlawfully, to organize the department on a permanent basis exclusively as described in the notice after the successful candidates in the competition had been recruited. To endow a notice of competition with such an effect would amount to nullifying the wide discretion which the administrative authority has in organizing its departments to the best advantage. Accordingly, the applicant may not rely on the information contained in the notice of competition in order to maintain that the contested decision has produced legal effects with respect to him or has altered his position under the Staff Regulations.

35 Thirdly, on the question of the material and financial effects of the contested decision, it should be pointed out that, while initially it did theoretically result in the stopping, as from 1 November 1991, of the allowance for shiftwork paid to the applicant, this allowance was then restored and backdated to 1 November 1991 by the memorandum of 25 November 1991. Thus the allowance was restored with effect from the date of the contested decision. It was the decision of 27 April 1992 assigning the applicant to a different post which stopped the payment of the allowance to him. Consequently, at the date on which he brought the present action, the contested decision had had no legal or material effect and could no longer produce such effects because the decision of 27 April 1992 had by then been taken.

36 Finally, and contrary to the applicant's assertions at the hearing, only the decision of 27 April 1992, which, before the action was brought, assigned the applicant to the Council's general services department and stopped the payment to him of the allowance provided for in Article 56a of the Staff Regulations, can affect him adversely. Following the rejection by the administrative authority of the complaint made that that decision is moreover, the subject of a separate action currently pending before the Court. In the — purely contingent — event, invoked by the applicant, that the Court should allow his claim in Case T-20/93 (see paragraph 7, above), the annulment of the decision of 27 April 1992 would serve only to restore the applicant to the position he was in before the annulled decision was taken, that is to say, the applicant would, as the Council admitted at the hearing, pursuant to Article 176 of the EEC Treaty, have to be reinstated in the security department outside the three-shift system but without detriment to his previous financial position, subject to a decision to be taken regarding the continuance of the payment to him of the shiftwork allowance. Such an annulment would thus, in itself and in any event, have no effect on the admissibility of the present action, a matter which must be assessed as at the date on which the action was brought.

37 It follows that the application, which is directed against a decision which altered neither the legal nor the material situation of the applicant and, consequently, does not affect him adversely, is, in principle, inadmissible.

38 At this stage in its hearing, the Court considers it appropriate, in the light of the case-law cited above, and, in particular, the judgment in *Reinarz*, to consider whether, as the applicant argues, the contested act may be the subject of an action because of the particular circumstances underlying it. On that point, the Court takes the view that the contested decision could be considered to affect the applicant adversely only if it were apparent either that it is in the nature of a covert penalty or that it discloses an intention to discriminate against the applicant or, again, that it is vitiated by a misuse of powers, three pleas which were in fact expressly put forward by the applicant.

39 On the first question, namely whether the contested decision is in the nature of a covert penalty, this has in no way been shown to be the case. In fact, as has already been pointed out, (see above, paragraph 33), the plea alleging the progressive reduction in the content of the applicant's duties is not supported in any respect by the documents before the Court. Moreover, the applicant continued to receive the allowance for shiftwork.

40 Furthermore, the Court points out, by reference solely to the number of days on which the applicant was absent, as expressly admitted by him in the written procedure, in particular on pages 5 and 10 of his application, that the administrative authority was not guilty of any manifest error of assessment in taking the view that such absences, which do not include the applicant's absences justified by his other obligations within the institution, namely 156 days during the period from 1 January 1990 to 30 September 1991, were incompatible with the operation of a shift service, particularly in the case of duties in the security department of an institution, whatever the merits of the reasons put forward to justify them. That finding, which is based solely on the statements made by the applicant, cannot be called in question because of possible clerical errors made by the administrative authority in calculating those absences.

41 On the second question, namely whether the contested decision infringes the principle of non-discrimination, the Court considers that that principle cannot be interpreted as meaning that the administrative authority, which must take into account

the means at its disposal in adopting the arrangements for the organization of the department, is obliged to adopt strictly identical measures with respect to any employee who, through absenteeism, puts himself in a position comparable to the applicant's. In such circumstances the administrative authority retains its discretion to ensure the best possible continuity in the department, at least where, as in this case, the measures adopted are not tainted by any manifest error of assessment and do not constitute a covert penalty.

42 On the third question, namely the applicant's allegation that the contested decision is vitiated by misuse of powers, there is no evidence whatsoever to suggest this, as, moreover, counsel for the applicant expressly conceded at the hearing by acknowledging that it was based on no more than a 'feeling'. In particular, there is absolutely no evidence on the file to suggest that the contested decision had any connection with the duties carried out by the applicant as a member of the Staff Committee or with his various representational activities on technical or social matters.

43 It follows from the foregoing considerations that the application is inadmissible.

44 Furthermore, to dispose fully of the applicant's case, the Court considers that he has no grounds for claiming that the written procedure revealed that the contested decision was issued in breach of the obligation, under Article 25 of the Staff Regulations, to state the reasons on which it was based. Notwithstanding the light in which the defendant institution may successively have presented the applicant's absences, which are sufficiently proven by the measure of inquiry, and in particular by the applicant's own admissions, that decision is clearly based on the incompatibility between those absences and the obligations and constraints necessary to ensure continuity of shiftwork cover. It follows, moreover, from all the foregoing considerations that, contrary to his assertions, the applicant has in no way been prevented from invoking his rights with respect to that decision and the Court has not been prevented from exercising its jurisdiction.

45 It follows from all the foregoing considerations that the application is inadmissible and, in any event, unfounded. It can, therefore, only be rejected, without any necessity for the Court to order the measures of inquiry sought.

Costs

46 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.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the parties to bear their own costs.

Biancarelli Vesterdorf García-Valdecasas

Delivered in open court in Luxembourg on 24 June 1993.

H. Jung J. Biancarelli

Registrar President