JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
25 September 1991 *

In Case T-5/90,

Antonio Marcato, a former official of the Commission of the European Communities, residing in Brussels, represented by Philippe-François Lebrun, and, in the oral procedure, by G. Vandersanden, both of the Brussels Bar, with an address for service in Luxembourg at the Chambers of V. Gillen, 13 Rue Aldringen,

applicant,

v

Commission of the European Communities, represented by Joseph Griesmar, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of two documents, which were neither communicated to the applicant nor placed in his personal file, recording discussions with his superiors in the context of the reporting procedure relating to him and for compensation for the non-material damage allegedly suffered by him,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Fifth Chamber),

composed of: C. P. Briët, President of the Chamber, H. Kirschner and J. Biancarelli, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 27 June 1991,

gives the following

Judgment

Facts of the case

1 The applicant, a Grade B 3 official at the Commission, retired at his own request with effect from 1 May 1990.

2 On 11 July 1988 the Commission's Director-General for Personnel and the Director of the Publications Office, acting in their capacity as the appointing authority, drew up the list of the officials considered the most deserving of promotion to Grade B 2 in 1988. Since the list did not include the applicant, he brought two actions for the annulment of the list which were lodged at the Registry of the Court of Justice on 28 October 1988 and 10 April 1989 (Cases 317/88 and 115/89).

3 The defendant annexed to its rejoinder in Case 317/88 two memoranda drawn up in the course of the reporting procedure relating to the applicant for the period from 1985 to 1987. These consisted of two minutes: the first, dated 10 April 1989, referred to a meeting on 7 April 1989 between the applicant and Mr Lemoine, his head of division, and the second, dated 22 June 1989, related to a discussion on that day between Mr Edsberg, the appeal assessor, and the applicant. In his memorandum, Mr Lemoine, after setting out various statements made by the applicant,

concluded that discussions with the applicant were 'very difficult'. Mr Edsberg, for his part, indicated that the applicant had admitted during their discussion that his relations with his superiors were not 'particularly easy'.

4 By a separate document of 16 August 1989, the applicant applied for the exclusion of those documents from consideration in Case 317/88. He maintained that their submission infringed Article 26 of the Staff Regulations of Officials of the European Communities, since they had never been communicated to him and had not been placed in his personal file. The Commission did not oppose that application.

5 By order of the Court of Justice of 15 November 1989 the two cases were referred to the Court of First Instance, where they were registered as Cases T-47/89 and T-82/89. By order of 6 December 1989 the Court of First Instance ordered the exclusion from consideration of the documents at issue, on the grounds that they referred to events which took place after the decision which was then being challenged, namely that excluding the applicant from the list of officials considered the most deserving of promotion to Grade B 2 in the 1988 promotion procedure, and that they were of no assistance in resolving the dispute.

6 On 4 August 1989 the applicant submitted a 'complaint' pursuant to Article 90(3) of the Staff Regulations, based on an infringement of Article 26 of the Staff Regulations and claiming 'compensation'. The applicant asserted that by creating a second, secret and illegal personal file containing the memoranda referred to above, the Commission had infringed Article 26 of the Staff Regulations. Fearing that his chances of promotion had been compromised by matters contained in that secret file, he applied for retroactive promotion to take account of the wrongful and sustained use of illegal documents, 'without prejudice to any action which may be brought against any party for defamation under Article 24 of the Staff Regulations and any other applicable legislation'.

7 On 13 November 1989 the Commission informed the applicant that his 'complaint' would be dealt with by an interdepartmental group on 21 November 1989. However, having still received no reply by the end of January 1990, the applicant brought this action on 5 February 1990.

8 By a decision of 20 March 1990, forwarded in a letter of 26 March 1990 from the Director-General for Personnel, the Commission stated that it was 'unable to respond favourably to the complaint' by the applicant. It claimed that the two memoranda at issue were held in a personal file relating to the applicant which was kept in Directorate-General (DG) XIX, to which he was assigned at the time, and that the file was not secret. According to the Commission, this was an internal DG XIX file which did not replace the applicant's official personal file. The two memoranda, dating from 1989, could not have influenced the work of the Promotion Committee in the context of the promotion procedure for 1988, which was already the subject-matter of the proceedings in the abovementioned Cases T-47/89 and T-82/89.

9 By judgment of 20 June 1990, the Court of First Instance dismissed the application in Case T-47/89 as inadmissible ([1990] ECR II-231). In its judgment of 5 December 1990 in Case T-82/89 ([1990] ECR II-735), the Court of First Instance annulled the decision of the appointing authority refusing to include the applicant in the list of the officials considered most deserving of promotion to Grade B 2 in the 1988 promotion procedure. Those two judgments have become final.

Procedure

10 In those circumstances, the applicant brought the present action, lodged at the Registry of the Court of First Instance on 5 February 1990, in which he claims in essence the annulment of the two memoranda dated 10 April and 22 June 1989 referred to above, together with the award of the token sum of one ecu as compensation for the non-material damage which he considers himself to have suffered.

11 The applicant's claim for the annulment of the two documents at issue is based on two submissions relating to Article 26 of the Staff Regulations and the infringement of the 'fundamental principle of the right to a fair hearing'.

12 With regard to the first submission, the applicant asserts that the two documents at issue constitute either documents concerning his administrative status or reports relating to his ability, efficiency or conduct. They should therefore in any event have been placed in his personal file. He criticizes the Commission for not having invited him to submit his comments on those documents and for not having communicated them to him before filing them. He considers it unlawful that such documents should appear in a parallel personal file held in DG XIX which, according to him, has been used in the context of a reporting procedure and the contents of which have consequently influenced his administrative status.

13 With regard to the second submission, the applicant asserts that his right to a fair hearing has been clearly disregarded because he did not learn of the existence of the documents at issue until he received the rejoinder in Case T-47/89. Furthermore, he contests the accuracy of the facts 'as related in a one-sided manner' in the two documents.

14 The Commission disputes those two submissions, contending first of all that the documents in question were procedural documents intended for use in the drawing up of the applicant's staff report (for the period from 1985 to 1987) and that, unlike the report itself, they cannot be classed as reports relating to his ability, efficiency or conduct. Nor do they constitute documents concerning his administrative status. The Commission denies that the documents at issue influenced the course of the applicant's career. It infers from this that it was not under any obligation to place in the applicant's personal file documents recording findings of fact in relation to the drawing up of the revised staff report, given that there is no proof that they influenced the applicant's administrative status or the course of his career. It thus does not consider that Article 26 of the Staff Regulations has been infringed.

15 The Commission contends moreover that the annulment of the two memoranda would infringe the principle of proportionality. It relies in this regard on the wording of Article 26 of the Staff Regulations, which does not provide for the 'invalidity' of the documents referred to in subparagraph (a) as a penalty for failure to communicate them to the person concerned. It maintains moreover that since the irregularity relied on by the applicant occurred after the two documents had been drawn up, it does not affect their intrinsic validity.

16 Lastly, the Commission states that if the Court, in its decision on the substance of the case, were to find that the minutes at issue constituted documents or reports within the meaning of Article 26 of the Staff Regulations, it would ensure that they were placed in the applicant's personal file. It would then be open to him to make any comments on them which he considered appropriate.

17 In support of his claim for compensation, the applicant asserts that the Commission has committed several service-related faults. First, in the course of contentious proceedings, it produced documents reflecting discredit on him. There was a wrongful failure to communicate those documents to him in advance and the Commission, in disregard of Article 26 of the Staff Regulations, omitted to place them immediately in his personal file. The filing of those memoranda in a parallel file was intended to reinforce certain hostile attitudes towards him, as was demonstrated by the intervention by the assistant to the Director-General of DG XIX in the Joint Promotions Committee for 1988. It was thus unlawful. According to the applicant, the very existence of the documents, in a secret file, suffices to show that even if they did not adversely affect his objective claims to promotion, nevertheless that may have been their intended purpose.

18 The applicant further maintains that the documents at issue have adversely affected his reputation and claims the award of the token sum of one ecu as compensation for the non-material damage which he considers himself to have suffered. He takes the view that even if the memoranda in question are not such as to constitute the subject-matter of an application for annulment, nevertheless the fact of their having been drawn up, the purpose for which this was done and the context in which they were written may together constitute wrongful conduct rendering the Commission liable and warranting an order that it pay to him the token sum of one ecu. Lastly, the applicant asserts that the Commission did not reply to his complaint until seven and a half months after it was submitted.

19 The Commission denies any wrongful conduct on its part. It contends that the meeting of the Joint Promotions Committee in June 1988 to which the applicant refers took place prior to the date when the documents at issue were drawn up. They were not referred to at the meeting of that committee in 1989. The production of the documents in court proceedings did not prejudice the applicant, since they were excluded from consideration. The Commission maintains that it

has not conducted itself unlawfully; it contends that the application for annulment and the claim for compensation should therefore both be dismissed, since conduct which is held to be lawful in the context of proceedings for annulment cannot at the same time be termed wrongful and give rise to a right to compensation.

20 In its rejoinder, moreover, the Commission contended that the applicant did not suffer any non-material damage as a result of the documents at issue. It stated in the alternative that if the Court considered that the memoranda should have been placed in the applicant's personal file, it would immediately do so, and the applicant would then be entirely at liberty to add to them and to append his own comments in such a way as to ensure adequate reparation for the non-material damage allegedly suffered by him. There would consequently be no justification for further compensation, even just one ecu. If, on the other hand, the memoranda at issue were annulled, this would compensate the applicant adequately for the non-material damage pleaded by him.

21 In the proceedings before the Court of First Instance the Commission raised, pursuant to Article 91 of the Rules of Procedure of the Court of Justice, which at that time applied *mutatis mutandis* to proceedings before the Court of First Instance, an objection of inadmissibility the decision on which was, by order of the Court of First Instance of 12 July 1990, reserved for the final judgment.

22 The applicant did not lodge his reply within the period laid down by the President of the Chamber, and the written procedure accordingly closed on 15 November 1990. However, by order of 24 January 1991 the Court of First Instance acceded to the applicant's request for the reopening of the written procedure, which then followed the normal course and concluded with the lodging of the rejoinder.

23 In his application the applicant had requested the joinder of this case with Cases T-47/89 and T-82/89. Since the oral argument in those cases had in the meantime been heard by the Court, the applicant withdrew that application.

24 The parties presented oral argument at the hearing on 27 June 1991. In reply to questions put by the Court, the parties set out in particular their respective positions on the legal nature of the document entitled 'complaint' which the applicant sent to the appointing authority on 4 August 1989. The President declared the oral procedure closed at the conclusion of the hearing.

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

(1) declare the action admissible and well founded;

(2) annul the documents of whose existence he first became aware when they were appended as annexes II and V to the Commission's rejoinder in Case T-47/89;

(3) award him compensation for the non-material damage suffered by him, in the token sum of one ecu;

(4) order the defendant to pay the whole of the costs.

In its objection of inadmissibility, the Commission contends that the Court of First Instance should:

(1) dismiss the application as inadmissible;

(2) make an appropriate order as to costs.

In its defence, the Commission contends that the Court of First Instance should:

(1) dismiss the application as unfounded;

(2) make an appropriate order as to costs.

With regard to the objection of inadmissibility raised by the Commission, the applicant claims that the Court of First Instance should:

(1) reject the plea of inadmissibility put forward by the Commission;

(2) order the continuance of the proceedings on the substance of the case;

(3) order the defendant to pay the whole of the costs.

Admissibility

The claim for annulment

26 The Commission relies upon four submissions to contest the admissibility of this head of claim.

27 First, it contends that the subject-matter of the form of order sought, namely the annulment of the two minutes, is different from that of the 'complaint', in which the applicant requested retroactive promotion.

28 Secondly, the Commission denies that there has been any act adversely affecting the applicant within the meaning of Article 90(2) of the Staff Regulations. In this regard, it contends first of all that the 'non-communication' to the applicant of the two memoranda and the fact of their having been placed in a second, allegedly secret, file are merely acts of a factual nature and not legal acts in the nature of decisions. The memoranda themselves were merely minutes not having any of the characteristics of decisions. An action for annulment does not lie against mere acts of a factual nature having no legal effect.

29 In such factual circumstances, where an official considers himself to have suffered damage, he should submit to the appointing authority a request within the

meaning of Article 90(1) of the Staff Regulations. The applicant should thus have submitted to the appointing authority a request that it take a decision ordering the documents at issue to be placed in his personal file or requiring them to be destroyed or amended. The Commission refers in this regard to the judgment of the Court of Justice in Case 200/87 *Giordani* v *Commission* [1989] ECR 1877, paragraph 22, in which it was held that it is only against a decision rejecting such a request that an official may submit a complaint to the administration in accordance with Article 90(2) of the Staff Regulations. It points out that it was in accordance with those principles that the pre-litigation procedure took place, and was held to have been correctly followed in the judgment of the Court of Justice in Case 180/87 *Hamill* v *Commission* ([1988] ECR 6141, p. 6143).

30 The Commission further contends that the minutes at issue were merely interim measures the purpose of which was the preparation of the applicant's staff report for the period from 1985 to 1987. Such acts do not constitute acts which may be independently challenged.

31 In its defence, the Commission went on to state that there is no proof that those minutes had any influence on the applicant's administrative status or the course of his career. The applicant's assertion that in October 1989 the assistant to the Director-General of DG XIX opposed the applicant's promotion in the 1989 procedure on the basis of those two minutes is said by the Commission to be gratuitous and unfounded. That assertion by the applicant is contradicted by the record of the meeting of the Joint Promotions Committee on 16 and 17 October 1989, which has been produced by the Commission.

32 Thirdly, the Commission in its rejoinder questions the applicant's legal interest in bringing proceedings. It considers that he is unable to prove his legal interest in applying for the annulment of the documents at issue, on the ground that on the date when his application was lodged, namely 5 February 1990, he was 'in a position to assert his claims to promotion'. According to the Commission, a distinction should be drawn between the different promotion procedures. As regards the 1988 promotion procedure, the Commission points out that the two previous actions in Cases T-47/89 and T-82/89 related to that period, whereas this action concerns the situation thereafter. It considers that the reason why the Court of First Instance, in its aforementioned judgment of 5 December 1990,

annulled the decision excluding the applicant's name from the list of officials considered most deserving of promotion in 1988 without joining this action to the previous action was that the circumstances at issue in the previous action, namely the 1988 promotion procedure, had no connection with the subject-matter of the present dispute. As regards the 1989 promotion procedure, the Commission observes that the applicant has not challenged any of the decisions relating to the promotions made for the 1989 financial year. He would thus no longer be able to rely on his eligibility for promotion in 1989, even if his name were to be included retroactively in the list of officials considered most deserving of promotion in the 1988 procedure. Indeed, paragraph 9 of the General provisions for implementing the procedure for promotion within career brackets provides that officials included in such a list who are not promoted during the corresponding period are not automatically entitled to be included in subsequent lists. As regards the 1990 promotion procedure, the Commission points out that the applicant does not claim to be eligible for promotion in that period, in the course of which he retired.

33 At the hearing the Commission relied on a fourth plea of inadmissibility, on the ground that this head of claim seeks the annulment of the memoranda at issue rather than a declaration that they cannot be relied upon against the applicant. In support of that submission, it repeated the argument, already expounded in the course of the written procedure, regarding the merits of the claim for annulment, to the effect that the only sanction applicable under the Staff Regulations in the event of non-observance of Article 26 is that the documents in question cannot be used against the official, whereas there is no provision for their annulment.

34 The applicant disputes the Commission's first submission and asserts that the 'ultimate' aim of his complaint of 4 August 1989 was the restoration of his lawful administrative status with a view to obtaining promotion. That aim could be achieved only by means of the disappearance — that is to say, the annulment — of the two memoranda used by the assistant to the Director-General of DG XIX in October 1989 in steadfastly opposing, before the Joint Promotions Committee, the applicant's inclusion in the list of officials considered most deserving of promotion to Grade B 2. The 'primary' object of the complaint was thus the annulment of those two memoranda. The applicant goes on to state that, as is demonstrated by consistent case-law, the Court of Justice does not apply very strict rules to the wording of complaints. It is sufficient that the defendant institution was in a position to know the claims of the person concerned. In this case, the Commission was in a position to know the 'primary' object of the complaint, and there was consequently no disparity between the subject-matter of the pre-litigation procedure and that of the action.

35 With regard to the question of the act adversely affecting him, the applicant maintains that the contested memoranda were 'conceived' solely in order to exert an unfavourable influence on the procedure for reporting on him. Whilst not in themselves in the nature of a decision, those memoranda were closely connected with the promotion procedure and were inextricably linked to the decision to exclude the applicant from the list of officials considered most deserving of promotion to Grade B 2 in 1989. Because of this, they must be capable of forming the subject-matter of an application for annulment.

36 With regard to the Commission's third submission, the applicant maintains that his legal interest in bringing proceedings did not cease to exist upon his retirement. The annulment of the contested memoranda would operate retroactively and could lead to a 'review' of his case, affecting the calculation of the amount of his pension. The applicant further asserts that he did not 'accept' the results of the promotion procedure for 1989. If it were recognized that his name should be included in the list of officials considered most deserving of promotion to Grade B 2 in 1988, he considers that it would follow automatically that his name was wrongly not included in the list for the 1989 procedure.

37 Lastly, with regard to the Commission's fourth plea of inadmissibility, the applicant replies that the documents at issue were in fact used against him by the assistant to the Director-General in the context of the promotion procedure and that they were produced by the Commission in the context of an earlier dispute between the same parties. He asserts moreover that the prohibition of the use of documents against an official does not of itself resolve the main issue in the action, namely the suppression of the parallel files maintained by the assistants to directors-general.

38 In the Court's view, the first point to be considered is the question whether the two minutes whose annulment is sought by the applicant constitute acts adversely affecting him within the meaning of Article 91(1) of the Staff Regulations. It should be noted in that regard that only measures capable of directly affecting the legal position of an official may be regarded as having an adverse effect (see, for example, the judgment of the Court of Justice in Case 32/68 *Grasselli* v *Commission* [1969] ECR 505, at p. 511).

39 In the two contested 'notes for the file', the applicant's two superiors committed to writing their versions of the course and contents of two discussions which they had with him in relation to the drawing up of his staff report for the period from 1985 to 1987. Those minutes merely set out certain facts. Furthermore, they refer solely to internal departmental relations, and more especially to the applicant's personal relations with his superiors. Since, therefore, they are not in the nature of a decision, they can have no present or future legal effect in relation to the applicant (see the order of the Court of First Instance in Case T-119/89 *Teissonnière* v *Commission* [1990] ECR II-7).

40 It is true that those two memoranda were meant to be brought to the knowledge of a restricted number of the applicant's other superiors, and that they were drawn up in the context of a staff assessment procedure expressly intended to result in a report having legal effects for the applicant. The question whether those memoranda were also used in the context of the 1989 promotion procedure, in support of the negative attitude of DG XIX to the promotion of the applicant, is a matter of controversy between the parties. At all events, such minutes are merely items of a factual nature which may be taken into account, rightly or wrongly, in the formulation of decisions regarding the applicant which may themselves have legal effects. In such circumstances, only those final decisions would affect the applicant's legal position. It follows that the two contested memoranda do not constitute acts adversely affecting the applicant within the meaning of Article 91(1) of the Staff Regulations.

41 In those circumstances, however regrettable the practice of opening secret parallel files on Community officials may be, and without there being any need to consider the other submissions as to inadmissibility put forward by the Commission, the claim for the annulment of the memoranda must be dismissed as inadmissible.

The claim for compensation

42 According to the Commission, the claim for compensation for non-material damage is also inadmissible, since the inadmissibility of an application for annulment entails that of a claim for compensation which is closely linked to it

(see the judgment of the Court of Justice in Case 4/67 *Collignon* v *Commission* [1967] ECR 365, p. 373). If this were not the case, officials could easily circumvent the obstacle formed by the inadmissibility of the application for annulment by bringing an action for compensation.

43 Furthermore, the applicant failed even to submit to the appointing authority a preliminary request, under Article 90(1) of the Staff Regulations, that it take a decision relating to him on the matters of which he complains. According to the Commission, the applicant can hardly rely, in his claim for compensation, on alleged misconduct on the part of the defendant regarding which the appointing authority has not been requested to take a decision.

44 In reply to a question put by the Court, the Commission nevertheless stated that it was able to accept that the document entitled 'complaint', lodged by the applicant on 4 August 1989, could be interpreted as a 'hybrid' document, containing first a complaint about the two contested minutes and secondly a request for retroactive promotion. If and to the extent that that document was to be understood in part as constituting a request, the applicant nevertheless failed in any event to submit a complaint to the appointing authority within three months from the implied rejection of that request.

45 The applicant points out that the issue of compensation is independent of the issue of legality. He asserts that it is not conditional upon the prior annulment of an administrative act. Consequently, the admissibility of an application for compensation is to be assessed independently, save where it is in fact being used to circumvent procedural requirements and the applicant is seeking, by means of an application for compensation, to obtain the same result as he would have obtained by means of an application for annulment.

46 According to the applicant, the application for compensation for the non-material damage suffered by him is quite conceivable even without the annulment of the two memoranda at issue. Consequently, there is no question here of an abuse of process.

47 The applicant adds that in his complaint he expressly referred to the fact that he reserved the right to apply for compensation from the originators of the two memoranda for the damage suffered by him. He says that the Commission was thus in a position to infer from this that he would apply for compensation for that damage in the event that proceedings were brought before the Court. There was thus conformity as regards this aspect of the subject-matter between the complaint and the subsequent proceedings.

48 In reply to a question put by the Court, the applicant's representative acknowledged that the document described as a 'complaint', submitted by the applicant on 4 August 1989, was not very clearly formulated, with the result that its wording did not preclude an interpretation leaving open some possibility of its being a 'request'. He asserted, however, that he had construed it not as a request but as a complaint, subsequent to which this action was brought.

49 The Court considers that a distinction must be drawn between two hypotheses where the admissibility of an application for compensation falls to be determined. The first — which remains open to debate in the absence of any act adversely affecting an official — is where the claim for compensation is closely linked to an application for annulment. If this is the case, as the Commission maintains, the inadmissibility of the application for annulment entails that of the application for compensation (see, for example, the judgments of the Court of Justice in Case 129/75 *Hirschberg* v *Commission* [1976] ECR 1259, paragraph 22, and Case 33/80 *Albini* v *Council and Commission* [1981] ECR 2141, paragraph 18). The second hypothesis is that there is no such close link between the two applications. In that case, as the applicant maintains, the admissibility of the claim for compensation must be determined independently of that of the application for annulment. It should be noted in this regard that the admissibility of such an application is conditional upon the prior administrative procedure following the normal course, as laid down in Articles 90 and 91 of the Staff Regulations.

50 Where, as in this case, the application is for the making good of damage allegedly caused by conduct which, having no legal effect, cannot be termed an act having an adverse effect on the official concerned, the administrative procedure must commence, pursuant to Article 90(1) of the Staff Regulations, with the submission of a request by the person concerned to the appointing authority for such damage to be made good. It is only against the decision rejecting such a request that the person concerned may submit a complaint to the administration, pursuant to Article 90(2).

51 In this case, the administrative procedure did not follow that normal course, which is mandatory under the Staff Regulations. The applicant did not submit to the appointing authority a request for the alleged damage to be made good. As the applicant's representative confirmed at the hearing, it was not the applicant's intention, upon lodging the document entitled 'complaint' on 4 August 1989, to submit such a request to the appointing authority, despite the fact that that document envisaged *inter alia* the 'compensation' of the applicant. Consequently, pre-litigation proceedings were not conducted in accordance with Articles 90 and 91 of the Staff Regulations.

52 It may be added, as a subsidiary point, that in any event the position would be no different even if the document in question, the heading of which mentioned the 'compensation' of the applicant, could be termed a 'request' for indemnification within the meaning of Article 90(1) of the Staff Regulations, notwithstanding that the applicant himself and the Commission, in its letter of 13 November 1989 and its decision of 20 March 1990, treated it as a complaint. If that document was a request, there would be no complaint within the meaning of Article 90(2) against the implied rejection of the request.

53 In those circumstances, and without there being any need to decide on the question whether the claim for compensation in this case is closely linked to the application for the annulment of the two minutes at issue, it must be held that, in any event, the claim for compensation for non-material damage is inadmissible.

Costs

54 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. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the parties to bear their own costs.

Briët Kirschner Biancarelli

Delivered in open court in Luxembourg on 25 September 1991.

H. Jung
Registrar

C. P. Briët
President of the Chamber