with Article 90(2) of the Staff Regulations, is intended on the one hand to provide the person concerned with sufficient information to determine whether the rejection of his candidature was well-founded and whether it is appropriate to bring proceedings before the Court, and on the other to enable the Court to review the legality of the rejection. The commencement of proceedings accordingly puts an end to the possibility of the appointing authority's regularizing its decision by a reasoned reply rejecting the complaint.

4. The annulment of an act of the administration which is contested by an official itself constitutes adequate and, in principle, sufficient compensation for any non-material damage which he may have suffered.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
12 February 1992 *

In Case T-52/90,

Cornelis Volger, an official of the European Parliament, residing at Heffingen (Luxembourg), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, Manfred Peter and Christian Pennera, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for the annulment of the decision to reject the applicant's candidature for a transfer to vacant post No 6084, submitted by him pursuant to Article 29(1)(a) of the Staff Regulations of Officials of the European Communities,

THE COURT (Third Chamber),

composed of: A. Saggio, President of the Chamber, C. Yeraris and J. Biancarelli, Judges,

Registrar: H. Jung,

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

gives the following

Judgment

Facts and procedure

1 The applicant, Mr Volger, an official in Grade A6 at the European Parliament, has been assigned to the Directorate-General for Information and Public Relations (DG III) since 1 October 1981.

2 In the present action, he is requesting the Court to annul the decision of the Parliament rejecting his candidature for the post of administrator at the European Parliament's Information Office in The Hague declared vacant by Vacancy Notice No 6084.

3 The background to the procedure for filling the vacant post in issue in this case is as follows. A principal administrator's post became vacant on 1 July 1988 at the European Parliament's Information Office in The Hague, and was the subject of an internal vacancy notice on 19 September 1988. Since the Parliament considered that neither of the two candidates for that post had the required qualifications, the post was reallocated within DG III. A new vacancy notice for the office in The

Hague, this time for an administrator's post, was published on 28 November 1988. Again, since in the Parliament's view none of the candidatures received was suitable, a second vacancy notice for an administrator's post at the Information Office in The Hague was published on 2 October 1989, under No 6084. That notice required, as well as the qualifications and knowledge referred to in the preceding vacancy notice, a thorough knowledge of the media and parliamentary systems in the Netherlands and of the structure and activities of the Community. The contested decision was taken as part of the procedure for filling the post referred to in Vacancy Notice No 6084.

In the meantime, the post at the Information Office in The Hague declared vacant by the abovementioned notices has been filled successively by three temporary staff from 1 October 1988 to the present.

4 In the abovementioned Vacancy Notice No 6084, the Parliament stated that 'the appointing authority [had] decided to open the procedure for filling this post, in accordance with the provisions of the Staff Regulations, first by internal transfer. In the event that this post cannot be filled at that stage, the possibilities afforded by the other procedures laid down in the Staff Regulations will be considered'.

Concurrently with Vacancy Notice No 6084 opening the procedure for filling the post by transfer, the Parliament published, on the same day, for the same post at the Information Office in The Hague, Vacancy Notice No PE/A/136, pursuant to Article 29(1)(c) of the Staff Regulations, concerning inter-institutional transfers. That notice provided that 'candidatures submitted in response to this notice will be considered only if the internal recruitment procedure is unsuccessful'.

5 In addition, the Parliament decided to organize an open competition with a view to drawing up a reserve list for the recruitment of Dutch-speaking administrators in career bracket A7/A6, and for this purpose published Notice of Competition No PE/49/A (Official Journal 1990 C 141, p. 24). At its meeting on 25 June 1990, the Staff Committee appointed the applicant as member of the Selection Board for Open Competition No PE/49/A.

6 As regards in particular the facts of this case, on 3 October 1989 in response to Vacancy Notice No 6084 Mr Volger submitted his candidature for transfer to the post of administrator in the Hague office. He was informed that his candidature had been rejected on 4 July 1990, by a standard form sent to him by the Recruitment Service which referred to the appointing authority's decision to hold Open Competition No PE/49/A.

According to the information provided by the parties, before Vacancy Notice No 6084 had even been published on 2 October 1989 Mr Volger had had a discussion in June 1989 with the Head of Division of the office in The Hague concerning his possible assignment to that office.

7 On 18 July 1990, Mr Volger lodged a complaint against the decision rejecting his candidature and the decision to hold Open Competition No PE/49/A. According to the information provided by the parties, the Parliament informed the Staff Committee of this complaint, since it concerned *inter alia* the Notice of Open Competition No PE/49/A.

8 Having received no explicit reply to his complaint from the European Parliament within the period of four months laid down in the second subparagraph of Article 90(2) of the Staff Regulations, the applicant submitted an application to the Court of First Instance of the European Communities on 18 December 1990 seeking the annulment of, first, the decision rejecting his candidature for the post declared vacant by Notice No 6084 and, secondly, the 'decision of the Parliament to open the procedure of Open Competition PE/49/A to fill this post'.

9 By letter of 20 December 1990, the President of the European Parliament, as appointing authority, sent Mr Volger a decision expressly rejecting his complaint.

10 In the light of the explanations provided in the letter from the President of the Parliament, which are reproduced in the defence filed with the Court, according to which Open Competition No PE/49/A was not intended to fill the post declared vacant by Notice No 6084, the applicant in his reply withdrew his claim for annulment of the Notice of Open Competition No PE/49/A.

1 In the present action for annulment of the decision rejecting the applicant's candidature for the post in question, the written procedure was completed on 30 August 1991. Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. At the Court's request, the Parliament produced at the hearing the vacancy notice of 28 November 1988 and notes of 5 and 27 September 1990 concerning Mr Volger's complaint which were sent to the Parliament's Legal Service by the senior staff of the Directorate-General for Personnel, Budget and Finance and of DG III who had been consulted as to that complaint.

Forms of order sought

2 The applicant claims that the Court should:

(i) take notice of the 'withdrawal' of his request for annulment of the procedure for Competition No PE/49/A;

(ii) annul the decision of the Parliament rejecting his candidature for the post declared vacant by Notice No 6084;

(iii) order the Parliament to pay him the sum of one ecu, as compensation for the non-material damage he has suffered;

(iv) order the Parliament to bear the costs.

The defendant contends that the Court should:

(i) declare the action unfounded;

(ii) make an appropriate order as to costs.

The claim for annulment

3 It is appropriate to take formal notice at the outset of the fact that the applicant has expressly withdrawn his claim for annulment of the decision to hold Open Competition No PE/49/A.

As far as concerns the claim for annulment of the decision rejecting his candidature, the applicant puts forward five pleas. The first is based on the breach of Article 29(1)(a) of the Staff Regulations. The second relates to the failure to give proper consideration to the comparative merits of the applicant's candidature and to the disregard of the principle of equality of treatment of officials and of the right to a fair hearing. The third plea concerns the infringement of the second paragraph of Article 25 of the Staff Regulations. Finally, the last two pleas are based on abuse of power and procedure and on breach of the duty to have regard for the welfare of officials and the duty of good management.

Infringement of Article 29(1)(a) of the Staff Regulations

14 The first plea is based on the alleged disregard of the order of priority laid down in Article 29(1) of the Staff Regulations in so far as the Parliament simultaneously published an internal vacancy notice and a notice of inter-institutional transfer for the post in issue.

Arguments of the parties

15 In this plea, the applicant claims that the Parliament infringed Article 29 of the Staff Regulations by failing to examine the possibilities of promoting and transferring its officials, and subsequently the possibility of organizing an internal competition, before publishing inter-institutional Vacancy Notice No PE/A/136. He pleads that, by simultaneously publishing Vacancy Notice No 6084 and inter-institutional Transfer Notice No PE/A/136, the Parliament could not actually have examined the candidatures for internal transfer and promotion, and in particular the applicant's candidature, before moving to the subsequent stage in the recruitment procedure, as required by Article 29.

The applicant complains in particular that the Parliament did not adduce any proof that the candidatures for internal transfer were examined, in this case, before those for inter-institutional transfer. Similarly, the Parliament has not established that it examined the possibility of organizing an internal competition.

6 The applicant bases his argument on the judgment in Joined Cases 20/83 and 21/83 *Vlachos* v *Court of Justice* [1984] ECR 4149, at paragraph 19, in which the Court held: 'According to Article 29 of the Staff Regulations, when the appointing authority intends to fill a vacant post, it must first consider whether the post can be filled by promotion or transfer within the institution and then whether to hold competitions internal to the institution. The order of preference thus established is the very expression of the principle that recruited officials are entitled to reasonable career prospects'.

7 The Parliament maintains for its part that the order of preference laid down by Article 29 was scrupulously respected in the present case. As far as concerns the complaint relating to the simultaneous publication, for the same vacant post, of Vacancy Notice No 6084 for promotion or internal transfer and Vacancy Notice No PE/A/136 for inter-institutional transfer, the Parliament claims that it follows clearly from the notices themselves that it was solely in the event that the post in issue could not be filled by internal transfer that the possibility of resorting to other procedures envisaged by the Staff Regulations, and in particular the procedure for inter-institutional transfer, would be considered. The publication of the two types of notice together was due solely to a concern for good administration, to save time and avoid disparities in wording. It accordingly in no way prejudiced the decision to be taken as to the candidatures for promotion or transfer submitted by the institution's officials.

8 In the alternative, the Parliament claims that, even if the procedure followed in this case were irregular — which it disputes — the applicant suffered no loss by virtue of the simultaneous publication of Vacancy Notice No 6084 and the notice seeking candidatures for transfer, in that the Parliament received no request for transfer to the post in issue from an official of another Community institution.

Legal assessment

9 It should be noted that Article 29(1)(a) of the Staff Regulations requires the appointing authority to consider as a priority the possibilities of promotion and transfer within the institution, before proceeding to one of the subsequent stages laid down by that article, that is to say, in order, consideration of the possibility of organizing an internal competition, reviewing requests for inter-institutional transfer and, if necessary, organizing an open competition. Accordingly, the

appointing authority may only consider requests for transfer by officials of other institutions if it is of the opinion, following a proper review of candidatures for promotion or internal transfer, that none of them fits the requirements of the vacant post, and it has considered the possibility of organizing an internal competition (see the judgments in Case 7/86 *Vincent* v *Parliament* [1987] ECR 2473, at paragraphs 16 and 17, in Case 24/79 *Oberthür* v *Commission* [1980] ECR 1743, at paragraphs 8 to 11, and in Case 46/69 *Reinarz* v *Commission* [1970] ECR 275, at paragraph 7).

20 The Court observes that the simultaneous publication of Internal Vacancy Notice No 6084 and Vacancy Notice No PE/A/136 concerning inter-institutional transfers in no way precludes compliance with the order of priority set out in Article 29(1) of the Staff Regulations. The abovementioned notices expressly refer to the order of priority set out in Article 29(1). In particular, Notice No PE/A/136 specifies that 'candidatures submitted in response to this notice will be considered only if the internal procedures are unsuccessful'. Moreover, even without such an express provision, the simultaneous publication of the two vacancy notices would not of itself have been such as to prevent consideration being given first to candidatures for promotion or internal transfer, and then to the possibility of organizing an internal competition, before a review of any requests for transfer submitted by officials of other institutions, in accordance with Article 29(1).

21 Accordingly the first plea must be rejected as unfounded.

The failure properly to consider the applicant's comparative merits and the disregard of the principle of equality of treatment and of the right to a fair hearing

Arguments of the parties

22 In his second plea, the applicant maintains that his candidature was rejected without his having had, in the context of the procedure for filling the post in issue and unlike the other candidates, a discussion with the head of the Information Office in The Hague. The discussion he did have with the Head of Division of the Hague office occurred before publication of the vacancy notice. In those circumstances, the fact that the applicant was not given an opportunity to be heard in the course of the procedure for filling the post in issue amounts to a breach of the

principle of equality of treatment of candidates. Furthermore, the applicant points out that, in the course of that procedure, he had no opportunity to comment on the opinion of the Head of Division of the Hague office, on which the Parliament based its rejection of his candidature, as is shown by the express reply to his complaint dated 20 December 1990. The procedure followed was accordingly contrary to the case-law of the Court, which in the judgment in Case 294/84 *Adams* v *Commission* [1986] ECR 977, at paragraph 24, affirmed the right of competition candidates to state their views on the opinions expressed on them by their superiors. The applicant concludes from this that 'consideration of the comparative merits of the candidates for internal transfer either did not occur or occurred in breach of the right to a fair hearing and the principle of equal treatment of candidates'.

The Parliament disputes the complaint that the applicant had no opportunity to be heard in the course of the recruitment procedure under Vacancy Notice No 6084. It relies on two arguments.

First, neither the Staff Regulations nor the case-law require the appointing authority to hear candidates for internal transfer. According to the Parliament, it is sufficient to consider the official's personal file. The judgment in *Adams*, relied on by the applicant in this respect, is not relevant to the present case in so far as it concerns a competition procedure, not an internal transfer. Furthermore, as to the applicant's conversation in June 1989 with the Head of Division of the Hague office, before Vacancy Notice No 6084 was published on 2 October 1989, the Parliament points out first that the Head of Division simply expressed an opinion as to appointments and secondly that the conversation in question concerned the possible appointment of Mr Volger to that post, the vacancy being common knowledge and having moreover been indicated to staff on two occasions, by the vacancy notices of 19 September and 28 November 1988 which had not resulted in an appointment (see paragraph 3 above).

The Parliament claims, secondly, that the decision not to accept the applicant's candidature was taken with full knowledge of the facts since he was well known to the senior staff of the Directorate-General for Information, where he has been in post for nearly ten years. In that respect, Mr Volger suffered no disadvantage by comparison with the other two candidates who were not assigned to that Directorate-General and therefore had a discussion with the senior staff there.

Legal assessment

24 As far as concerns the second plea, it should be noted at the outset that consideration of the candidatures for internal transfer or promotion under Article 29(1)(a) of the Staff Regulations must comply with Article 45 of the Staff Regulations, which expressly provides for the 'consideration of the comparative merits of the officials eligible for promotion and of the reports on them'.

The requirement for consideration of the comparative merits is an embodiment of both the principle of equal treatment of officials and the principle that they are entitled to reasonable career prospects, recognized by the Court in the judgment in Joined Cases 20/83 and 21/83 in *Vlachos* v *Court of Justice* [1984] ECR 4149, at paragraph 19.

25 The Court must accordingly ascertain whether the defendant in fact considered the relative merits of the applicant's candidature for the post declared vacant by Notice No 6084 in the exercise of its discretion.

26 It should be noted that, as the Court of Justice held in Case C-269/90 *Hauptzollamt München-Mitte* v *Technische Universität München* [1991] ECR I-5469, 'where the Community institutions have such a power of assessment, compliance with the safeguards laid down by the Community legal order in administrative procedures is all the more important. Those safeguards include in particular the requirement that the competent institution consider, carefully and impartially, everything relevant to the particular case, the right of the person concerned to put forward his point of view and to have sufficient reasons given for the decision. Only then can the Court ascertain whether the factual and legal requirements for the exercise of the power of assessment have been satisfied'.

27 In the present case, it is apparent from all the documents before the Court that the appointing authority intended to assess the respective merits of the candidates on the basis in particular of a discussion between each one and the Head of Division responsible for the Hague office, Mr Janssen.

In his express reply of 20 December 1990 to the applicant's complaint, the President of the Parliament stated that 'the administration has considered in detail the possibilities of internal transfer'. In support of this statement, he maintained that the applicant 'had a discussion in this connection with the Head of Division of the Hague office'. The latter, he continued in the same letter, 'carefully considered . . . [the applicant's] candidature in the light of the qualifications and knowledge required by the vacancy notice'. Similarly, the notes of 5 and 27 September 1990 — which were produced at the hearing and had been sent to the Legal Service, following the applicant's complaint, by the Directorate-General for Personnel, Budget and Finances and by the Directorate-General for Information and Public Relations respectively — show that the appointing authority had decided to undertake its consideration of the comparative merits of the candidatures for the post in question on the basis in particular of a discussion which each candidate had with the Head of Division of the Hague office. In the words of the note of 5 September 1990, 'the Directorate-General concerned indicated [to the Directorate-General for Personnel, Budget and Finances] that a discussion had been arranged with the candidates'. The note of 27 September 1990 stated that 'Mr Janssen, Head of the Hague office, reviewed the files of the three candidates and had a discussion with each of them'.

The Court finds that the procedure for considering the comparative merits of the candidatures laid down in this case by the appointing authority was not observed with respect to the applicant. Unlike the other candidates, he did not have a discussion with the Head of Division of the Hague office after he had submitted his candidature for the post declared vacant by Notice No 6084.

The Court notes that the informal conversation which the applicant had with Mr Janssen in June 1988 occurred before Vacancy Notice No 6084 was published and was unconnected to any earlier procedure for filling the post in question. It is clear that, in those circumstances, that conversation between Mr Janssen and the applicant — even if it might have concerned the possibility of the applicant's being assigned to the vacant post in the Hague office — could not have enabled the applicant to demonstrate his merits with regard to the knowledge and qualifications required in Vacancy Notice No 6084, which was not published until later, on 2 October 1989. This analysis is corroborated by the fact that Notice No 6084 imposed additional conditions on candidatures for the post in issue which were more rigorous than those specified in the earlier vacancy notice, published on 28 November 1988. Accordingly Mr Janssen could not have acquainted himself with the applicant's point of view or evaluated his merits and qualifications in the light of the requirements of Vacancy Notice No 6084.

29 In the light of those circumstances, the Court considers that the failure to comply, with respect to the applicant, with the procedure for considering candidatures which the appointing authority had laid down for filling the post declared vacant by Notice No 6084 was such as to injure the applicant's interests and, accordingly, to vitiate the decision being challenged (see the judgment in Joined Cases 44/85, 77/85, 294/85 and 295/85 *Hochbaum and Rawes* v *Commission* [1987] ECR 3259, at paragraph 19). In view of the disregard of the principle of equal treatment and the right of officials to a fair hearing, that irregularity in the procedure for considering candidatures denied the applicant the guarantee of a comparative consideration of his candidature by the appointing authority.

30 It follows that the second plea is well founded.

Breach of the second paragraph of Article 25 of the Staff Regulations

Arguments of the parties

31 In his third plea, the applicant claims that the decision to reject his candidature is vitiated because no reasons at all were given. It accordingly failed to satisfy the second paragraph of Article 25 of the Staff Regulations, which provides that 'any decision adversely affecting an official shall state the grounds on which it is based'.

The applicant points out, first, that his lack of information as to why his candidature had been rejected results in particular from the fact that he was not heard by the Director-General or a member of the directorate to which the post declared vacant is attached. He further states that he was notified of the decision to reject his candidature by a general and impersonal standard form which did not give reasons for the rejection. In reality it amounted to nothing more than confirmation of the publication of Notice of Open Competition No PE/49/A, which, according to the applicant, is tantamount to an implied rejection of his candidature for transfer.

In those circumstances, the applicant asserts that the Parliament can no longer remedy the illegality deriving from the lack of a statement of reasons by explanations provided after the commencement of this action, in particular in its letter of 20 December 1990 expressly rejecting the applicant's complaint.

In support of his argument, the applicant states that, by failing to give an express reply to his complaint about the rejection of his candidature before the commencement of this action, the Parliament deliberately refused to indicate to him the reasons for that rejection, which would have enabled him to determine whether it was appropriate to bring an action before the Court. That deliberate refusal constituted misconduct which was all the more serious in that the applicant had duly informed the Parliament, by letter of 3 December 1990, of his intention to commence an action on 18 December 1990 for the annulment of the decision rejecting his candidature, if there was no reply to his complaint.

The Parliament, for its part, maintains that the decision rejecting the applicant's candidature was communicated to him properly and promptly by means of the standard form, used for years for internal procedures for filling vacant posts. As to the reasons for that decision, the Parliament acknowledges that inadvertently the abovementioned form suggested a link between the rejection of the applicant's candidature and the decision to organize Open Competition No PE/49/A which, it stresses, was an independent matter and was intended to provide a reserve list of Dutch-speaking administrators in all sectors of the institution. However, that error did not vitiate the decision being challenged since, as the Court has consistently held, 'Article 25 does not require the appointing authority to give reasons for a decision assigning an official to a new post, either to the official appointed, who cannot be adversely affected by the decision, or to unsuccessful candidates, who might be harmed by such a statement of reasons' (judgments in Case 233/85 *Bonino* v *Commission* [1987] ECR 739, at paragraph 4, and Case 104/88 *Brus* v *Commission* [1989] ECR 1873, summary publication).

The Parliament admits, however, that at the complaint stage a more explicit statement of reasons is necessary to provide the official with any information which might be lacking and to enable him to decide whether or not it is appropriate to bring an action. It points out further that, in its express reply to the complaint, on 20 December 1990, the appointing authority gave the following reasons for rejecting the applicant's candidature: 'It appeared to those in charge of the Directorate-General concerned that you satisfied neither the condition "of experience in public relations and/or information", nor those concerning "a thorough knowledge of the functioning of the media and parliamentary systems in the Netherlands". Moreover, they have concluded in the light of your last staff reports that your professional abilities do not fit you for a transfer to the vacant post in question. Your request for transfer has accordingly been answered in the negative'.

35 In those circumstances, the Parliament disputes the head of claim alleging that there is no statement of reasons at all, resulting, according to the applicant, from the lack of any express reply to the complaint within the period laid down by the Staff Regulations of four months after the lodging of the complaint. It maintains that in such cases Articles 90 and 91 of the Staff Regulations explicitly envisage the right of the institution concerned to give an express reply to a complaint after the expiry of that period. It notes in particular that the second subparagraph of Article 91(3) of the Staff Regulations provides for the possibility of an express decision rejecting a complaint after the implied decision of rejection, but before the period for lodging an appeal has expired.

Furthermore, the Parliament observes that, following the implied rejection of the applicant's complaint, the period for lodging an appeal ran until 18 February 1991. The present action was begun on 18 December 1990, that is two months before the expiry of that period. The Parliament maintains that the express reply to the complaint, given on 20 December 1990, was communicated to the applicant independently of the present action, which had been started two days before and which was not notified to the defendant institution until 8 January 1991, as evidenced by the acknowledgment of receipt. Contrary to the applicant's allegations, the delay in giving that express reply was not intended to deprive him of information necessary for understanding the reasons for the decision in issue. It resulted on the contrary from the fact that the complaint could not be considered until two months after it was lodged on 18 July 1990, as the necessary consultations were held up by the summer holidays.

Legal assessment

36 It should be noted at the outset 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 give a 'reasoned decision' in reply to a complaint. As promotions and transfers involve choices, it suffices, according to the Court of Justice, 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.

37 In this case, the Court notes that no reasoned reply rejecting his complaint was sent to the applicant before he started his action. Mr Volger started these proceedings following the silence of the appointing authority, which after four

months is deemed to constitute an implied decision rejecting the complaint. It was only after the action had been started before the Court that the Parliament sent the applicant, during the period of three months for lodging an appeal against the implied decision rejecting his complaint, a duly reasoned decision of rejection.

Furthermore, the failure to state reasons entailed by the implied rejection of the complaint is not remedied by any information that may have been volunteered in the actual decision being challenged.

The standard form by which the appointing authority informed each candidate of the outcome of his candidature had three sections: the first informing a candidate that his candidature had been successful; the second informing him that the appointing authority 'could not accept his candidature for the post referred to in the vacancy notice (No 6084)'; and the third informing him of the decision to 'hold Open Competition PE/49/A'. As far as concerns the applicant, the box against the third section was ticked instead of the second in the standard form which was sent to him on 4 July 1990. In this connection, the defendant institution admitted at the outset, in its written observations, that 'the form used in response to the applicant's candidature is unfortunate', in so far as 'it reads as if, following [his] candidature, it was decided to open the procedure for Open Competition No PE/49/A'.

In those circumstances, it is appropriate to ascertain whether the total absence of a statement of reasons for the rejection of the applicant's candidature could be remedied, after the present action was started, by the Parliament's express reply to the complaint.

The Court considers that the total absence of a statement of reasons for a decision cannot be remedied by explanations provided by the appointing authority after an action has been started. At that stage, such explanations no longer fulfil their function. The obligation to give reasons, laid down by the second paragraph of Article 25 in conjunction with Article 90(2) of the Staff Regulations, is intended on the one hand to provide the person concerned with sufficient information to determine whether the rejection of his candidature was well-founded and whether

it is appropriate to bring proceedings before the Court, and on the other to enable the Court to review the legality of the rejection (see the judgments in Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, at paragraph 22, and Case C-343/87 *Culin* v *Commission* [1990] ECR I-225, at paragraph 15).

The commencement of proceedings accordingly puts an end to the possibility of the appointing authority's regularizing its decision by a reasoned reply rejecting the complaint. As the official concerned has the right to bring proceedings at the time he considers most appropriate within the three-month period prescribed by Article 91(3) of the Staff Regulations, the appointing authority has in principle four months to take a reasoned decision rejecting the complaint; that period may be extended to up to seven months only in so far as the party concerned has not started an action.

41 In this respect, it is appropriate to reject the Parliament's argument, based in particular on the second subparagraph of Article 91(3) of the Staff Regulations, which explicitly envisages the possibility of an express reply to a complaint after the expiry of the period of four months laid down for this purpose by the third subparagraph of Article 90(2) of the Staff Regulations. The only purpose of that provision is to start a new period for bringing proceedings running in favour of officials when an express decision rejecting a complaint follows an implied decision. The possibility thus expressly afforded to the appointing authority of remedying a total absence of a statement of reasons by an express reply to the complaint is thus inseparably linked to the possibility of an action being brought. A reasoned reply after the start of proceedings would no longer fulfil its function, which is to enable the party concerned to determine whether it is appropriate to bring an action and to enable the court to review the correctness of the statement of reasons.

The Parliament's argument must also be rejected in so far as the possibility of regularizing the total absence of a statement of reasons after an action has been started might prejudice the applicant's right to a fair hearing. He would only have the reply in which to set out his pleas contesting the reasons which he would not know until after he had lodged his application. The principle of equality of the parties before the Community courts would accordingly be affected.

2 It follows that the Parliament's reply of 20 December 1990 expressly rejecting the complaint cannot be taken into consideration. The third plea based on the absence of a statement of reasons for the rejection of the applicant's candidature is accordingly well founded.

3 In those circumstances, the contested decision must be annulled, without its being necessary to consider the two other pleas relied on by the applicant.

The claim for compensation

4 The applicant requests that the Parliament be ordered to pay one ecu as symbolic compensation for the non-material damage he has suffered from the series of errors and illegal acts it has allegedly committed.

5 The Parliament maintains that the applicant has not adduced any definite or specific information to show how its behaviour caused him any non-material damage.

6 It should be noted in this connection that the applicant has not alleged any damage from the contested decision which cannot be adequately compensated for by the annulment of that decision. It follows that the claim for compensation must be rejected (see the judgments in *Hochbaum and Rawes* v *Commission*, cited above, at paragraph 22, and Case T-158/89 *Van Hecken* v *Economic and Social Committee* [1991] ECR II-1341).

47 It follows from the foregoing that the claim for annulment of the decision rejecting the applicant's candidature should be allowed and the claim for compensation should be dismissed.

Costs

48 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. Since the Parliament has failed in all essential respects, it must, in view of the applicant's pleadings, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Annuls the decision of the Parliament of 4 July 1990 rejecting the applicant's candidature for the post declared vacant by Notice No 6084;

2. Dismisses the remainder of the application;

3. Orders the Parliament to pay the costs.

Saggio Yeraris Biancarelli

Delivered in open court in Luxembourg on 12 February 1992.

H. Jung
Registrar

B. Vesterdorf
President of the Third Chamber