

conditions of eligibility for the post in order to enable them to judge whether they should apply for it. The vacancy notice thus constitutes the legal framework which the appointing authority imposes on itself so that, if it discovers that the conditions laid down by the vacancy notice are more exacting than the needs of the service demand, it is entitled to re-open the promotion procedure by withdrawing the original vacancy notice and putting an amended one in its place.

3. In order to evaluate the interests of the service and the merits to be taken into account for the purposes of a promotion decision provided for in Article 45 of the Staff Regulations, the appointing

authority is vested with a wide discretion and, in that sphere, the review by the Community judicature is limited to whether, having regard to the various considerations which have influenced the administration in making its assessment, it has remained within reasonable bounds and has not used its authority in a manifestly incorrect manner.

In that regard, the exercise of the discretion vested in the appointing authority calls for careful examination of the files and meticulous regard to the requirements laid down in the vacancy notice, that discretion being moderated by the obligation to examine with care and impartiality all the information relevant to each application.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
11 December 1991 *

In Case T-169/89,

Erik Dan Frederiksen, an official of the European Parliament, residing in Luxembourg, represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

* Language of the case: French.

European Parliament, represented by Jorge Campinos, jurisconsult, assisted by Didier Petersheim, a member of the Parliament's Legal Department, acting as Agents, and Mr Vanderberghe, of the Brussels Bar, with an address for service in Luxembourg at the Secretariat General of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the President of the European Parliament of 3 July 1989 promoting Mrs X to the post of Language Adviser in the Danish Translation Division (Directorate-General for Translation and General Services) and, so far as necessary, the memorandum from the Recruitment Department of 17 July 1989 informing the applicant that his application for that post had been rejected,

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

composed of: R. García Valdecasas, President of the Chamber, D. A. O. Edward and R. Schintgen, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 5 December 1990 and 3 October 1991,

gives the following

Judgment

The facts

- 1 The applicant, Erik Dan Frederiksen, is a principal translator in Grade LA 4 in the Danish Translation Division, in Directorate-General VII, Translation and General Services ('DG VII') of the European Parliament. After teaching French and German in Denmark, as a qualified secondary school teacher, from 1965 onwards, he entered the service of the Parliament on 1 January 1973. He was appointed a translator in Grade LA 7, then made a reviser, and was regularly promoted until attaining the Grade of LA 4 on 1 January 1978. In July 1979, he was transferred to the Terminology Division where he worked until May 1988, when he rejoined the Danish Translation Division. In that division he was responsible, *inter alia*, for organizing French-language course.

- 2 On 9 January 1988, the Parliament published Vacancy Notice No 5809 for a post of Language Adviser in Grade LA 3 in the Danish Translation Division. The relevant terms of that notice were as follows:

'Nature of duties

Language Adviser working under the authority of the Head of Division, assisting in particular in the following areas:

professional training for officials and other staff of the division;

training and monitoring the work of new translators and trainees;

organizing the division's documentation, in particular preparing files of specific documentation to meet the needs of translators, and computerizing documentation and terminological work in the division;

checking the quality of translated texts.

The Language Adviser may be called on to translate and revise difficult texts and special tasks may be entrusted to him in connection with organization of the division.

He will deputize for the Head of Division when the latter is absent.

This work calls for capability for and interest in improving and developing the working methods of a language division, on the one hand, and, on the other, monitoring vocational training.

Qualifications and knowledge required

Education to university level, evidenced by a diploma, or equivalent professional experience;

proven professional experience of translation and revision;

knowledge of data-processing methods in management applications;

knowledge of languages: perfect command of Danish; candidates must also have a thorough knowledge of two other official Community languages and a good knowledge of a fourth; knowledge of a fifth language is desirable and knowledge of other languages . . . will be taken into consideration.'

- 3 In her 'Report on the work of DG VII, 1988' Carmen de Enterría, the Director-General of DG VII, stated as follows:

'Apart from these technical problems, the Translation Directorate is still faced with the difficulties of replacing staff who are absent for various reasons: half-time working, leave on personal grounds, professional training.

As with the Directorate for Publishing, the future development of this Directorate lies in better utilization of human resources and the introduction of modern technologies.

In this connection, the professional training programme prepared specifically for the Directorate has been received very favourably, both by the language staff and the secretaries in the typing pools.'

She concluded that:

'Considerable effort is still needed in the areas of training and the use of new technologies.'

- 4 The applicant and two other members of the Danish Translation Division, Mrs X and Mr Y, submitted applications in response to the abovementioned vacancy notice.

- 5 Mrs X had entered the service of the Parliament on 2 February 1973. She had been promoted to Grade LA 4 on the same date as the applicant. She worked at all times in the Danish Translation Division, first as a translator then as a reviser. For family reasons, she has worked half-time since 1 October 1979, except for the period from 1 April to 1 October 1983.
- 6 Mr Y entered the service of the Commission of the European Communities on 1 February 1976; he was transferred to the Council in 1977 and then to the Parliament in 1979. He was promoted to Grade LA 4 in 1986. In the Parliament, he always worked in the Danish Translation Division. From 1987 to 1988 he was responsible, within that division, for terminological work and liaising with the terminological groups and offices of the other Community institutions.
- 7 In their staff reports for 1983/84, the three candidates had been awarded one assessment of 'excellent' and two of 'good'. For 1985/86, the applicant had been awarded an assessment of 'excellent' (quality of work), two of 'very good' and five of 'good'; Mrs X was awarded one assessment of 'excellent' (knowledge), four of 'very good' and three of 'good'; and Mr Y was awarded two assessments of 'excellent' (knowledge and quality of work), four of 'very good' and two of 'good'. For 1985/86, the applicant's first assessor was his immediate superior in the Terminology division, Mr Minnaert. Mrs X and Mrs Y were reported on by the same assessor in the Danish Translation Division.
- 8 Each staff report contained a statement by the official assessed concerning his knowledge of languages. In his staff report for 1985/86, the applicant had claimed a 'very good' knowledge of German, English and French and 'good' knowledge of Italian and Spanish and 'adequate' knowledge of Dutch; Mrs X claimed 'very good' knowledge of German and English, and 'good' knowledge of Greek and Dutch; Mr Y claimed 'very good' knowledge of four languages other than Danish: Dutch, English, French and German.

- 9 The applicant had attended five training courses in data-processing organized by the Parliament (Introduction to data-processing I and II (3 days each), MS-DOS (two days), dBase III (4 days) and Open Access (5 days). In a memorandum attached to his application, he stated that, in addition to the knowledge he had acquired through those courses, he used training programs (in particular Word-Perfect) and the Epoque, Celex, APC and Eurodicautom databases; that he was the owner and user of a Commodore PC 10-III computer (with a 32 mb hard disk and two disk drives, 1 of 5.25 and 1 of 3.5, and an NEC P2200 dot-matrix printer), with GW-Basic and MS-DOS software; that he possessed other programs and tools such as dBase III Plus and PC Tools; and, finally, that he worked with the Open Access software recently installed on one of the new M240 computers in the Danish Translation Division. Between February and April 1989, he had attended two additional training courses for Open Access II (5 days) and Open Access II Advanced (5 days). Mrs X, for her part, had attended two seminars conducted by Mr Y, providing an introduction to the use of the Eurodicautom and Epoque databases; she had been given some information on the use of both those databases and a guide for the application of Epoque. She also used a slave printer terminal in order to consult those databases for her work as a translator and reviser. For the purposes of the measures of inquiry ordered by the Court, the Parliament asked that account be taken of the fact that Mrs X had stated that she had had access to a Commodore 128 computer at her home since 1988. In the case of Mr Y, whose data-processing knowledge was not described in detail, it appears from the documents before the Court that he had conducted the seminars mentioned above for linguists in the Danish Translation Division; that he had prepared a guide for use of the Epoque database and that, from 1987 to 1988, he had attended training courses on the use of Open Access software (5 days) and the Celex database.
- 10 By memorandum of 2 February 1989, addressed to Mrs De Enterría, John Hargreaves, the Director of Translation and Terminology, commented on the three applicants for the post of Language Adviser in the following terms:

“Three applications have been submitted in response to the publication of the vacancy notice.

As regards seniority in grade, that of two candidates, Mr Frederiksen and Mrs X, is identical — moreover, their seniority as officials is substantially the same.

The seniority in grade and as an official of the third candidate, Mr Y, is considerably less.

As regards their staff reports, that of Mr Y is by far the best, followed, in order of merit, by that of Mrs X and Mr Frederiksen. It should be noted that those reports mainly concern work as reviser or principal translator.

All three candidates have wide-ranging knowledge of languages.

Mrs X is a translator/reviser whose professional qualities in the division need no further proof. She has attended language courses but has not acquired other knowledge conducive to preparing her for the training, documentation and data-processing work mentioned in the description of duties.

In addition to his duties as translator/reviser, Mr Y has undertaken terminological and documentation work which has been highly regarded in the division and he has worked in liaison with the "Council Danish terminology group". He has also organized training courses designed to familiarize linguists in the division with certain databases.

Mr Frederiksen is also a translator/reviser whose qualities are highly regarded in the division. For several years he worked in the Terminology Division where he acquired extremely useful experience of documentation and data processing, in which areas his capability is remarkable. Before entering the European Parliament he acquired teaching experience which would be particularly useful for the training and monitoring work mentioned in the vacancy notice.

In view of the candidates' profiles, the choice should be between Mr Y and Mr Frederiksen.

Because Mr Frederiksen is senior in grade and is also considerably older than Mr Y I propose that Mr Frederiksen be promoted.

His appointment would be such as to ensure that the Danish division continues to function excellently: he meets all the requirements for the post and, furthermore, enjoys the respect of his colleagues by virtue of his personal qualities and his well-established experience in all the requisite areas.'

- 11 By memorandum of 10 March 1989, Mrs De Enterria submitted a proposal to the Director-General of Administration, Personnel and Finance, that Mrs X should be promoted to the post of Language Adviser 'for the reasons set out in the attached memorandum'. That memorandum stated as follows:

'It is apparent from the three applications submitted in response to the vacancy notice that:

as regards seniority in the service, Mrs X comes first, followed by Mr Frederiksen and Mr Y in that order;

as regards seniority in grade, Mrs X and Mr Frederiksen are at the same level and Mr Y falls far behind;

as regards staff reports, of the two more senior candidates, Mrs X has assessments of "excellent" under headings 1 (general and professional knowledge needed for her duties) and 4 (organization — attitude and method) whereas Mr Frederiksen has only "very good". The remainder of the report must be regarded as equivalent.

Two of the candidates, Mrs X and Mr Y, have always worked in the Danish Translation Division whereas Mr Frederiksen worked in the Terminology Division from July 1979 to May 1988.

The three candidates have a wide-ranging knowledge of languages, but only Mrs X knows Greek, her knowledge of that language being to revision standard.

After comparing the qualifications of the three candidates and taking account, on the one hand, of the situation concerning supervisory posts in the Translation Directorate (of 21 LA 3 posts only three are held by women) and, on the other, of the programme of action undertaken by this institution regarding equality of opportunity for men and women, I propose that *Mrs X* be promoted to the post of Language Adviser, even though that candidate finds it necessary, for the time being, to work half-time for family reasons (young children)'.

12 That proposal to appoint Mrs X gave rise to a protest sent to Mr Hargreaves by 27 translators and six secretaries in the Danish Translation Division on the ground that Mr Hargreaves's recommendation had been disregarded 'even though it had been based strictly and solely on the vacancy notice approved by the appointing authority'.

13 By memorandum of 14 March 1989 Mr Hargreaves asked Mrs De Enterria to re-examine her proposal on the ground, in particular, that Mrs X's profile was less well suited to the requirements of the post to be filled and that half-time work was not compatible with the duties of Language Adviser in the Parliament since the work involved in that post was directly linked with the progress of parliamentary activities. On 22 March 1989 Mrs De Enterria replied that the matters to which her attention had been drawn had not caused her to change her views.

14 On 26 April 1989, Mrs De Enterria sent a memorandum to Hans Drangsfeldt, the Head of the Danish Translation Division, asking him to confirm that 'the appointment of Mrs X as Language Adviser would not be in any way incompatible with the functioning of your Division'. A copy of that memorandum was sent to Mr Hargreaves. On the same day, Mr Hargreaves wrote to Mrs De Enterria informing her that if she wished to impose her choice she would have to take full responsibility for it 'without asking Mr Drangsfeldt or me to confirm a decision taken by you, and you alone'.

15 On 16 May 1989, after a discussion with Mrs De Enterria, Mr Drangsfeldt wrote to her informing her 'that in the long term the appointment of a candidate who certainly does not fulfil the formal qualifications laid down in the vacancy notice is liable adversely to affect the attitude of officials in the division to the institution'. In a further memorandum of 31 May 1989, Mr Drangsfeldt stated emphatically:

'One of the formal qualifications indicated in the vacancy notice is "knowledge of data-processing methods in management applications". Mrs X does not possess that formal qualification, which is absolutely essential not only for accomplishment of the tasks listed under the heading "Nature of duties" but also for the medium and long-term rationalization of the division.'

16 In a memorandum of 7 June 1989 to the Secretary-General of the European Parliament, Mrs De Enterria maintained her position; she stated:

'As regards the qualifications relating to "knowledge of information (*sic*) methods in management applications" which, in the opinion of the Head of the Division concerned, is, if lacking, liable "in the long term . . . adversely to affect the attitude of officials in the division to the institution", there is no reason for me to prejudge the intellectual capacity in that regard of the candidate proposed. It is true that the personal file of the other candidate contains three certificates for "Open Access" and "WordPerfect" courses organized by this institution. The lack of demanding work in the Terminology Division in which that candidate worked from 19 July

1979 to 1 May 1988 certainly allowed him to take advantage of such vocational training facilities.

As regards the candidate proposed by the Directorate-General, I have been able to establish that she uses the data-processing facilities of the division for basic operations such as searches for documentation and precedents: in fact, in recent years basic data-processing training has been given to Danish revisers by colleagues in the Division. Additional training can be obtained in a few days, the courses being the same as those attended by the officials of this institution, regardless of category . . .

For all the foregoing reasons and by virtue of the arguments set out in my proposal of 10 March (seniority, qualifications, sense of responsibility) I request your signature in order to finalize the appointment of Mrs X . . . '.

17 On 3 July 1989 the appointing authority promoted Mrs X to the post of Language Adviser in Grade LA 3 with effect from 1 June 1989.

18 On 12 July 1989, the applicant lodged a complaint against the decision appointing Mrs X.

19 On 17 July 1989, the applicant received a letter from the Recruitment Department rejecting his application.

20 The appointment of Mrs X gave rise on 2 August 1989 to a protest from the Parliament's Linguists' Delegation on the ground, *inter alia*, that a Language Adviser cannot properly work half-time.

- 21 On 31 August 1989, Mrs De Enterria, in response to an invitation from the Parliament's Legal Department, commented on the applicant's complaint in the following terms:

'Having examined the files of the three candidates . . . I found the application from Mrs X to be the most meritorious; nevertheless, she has been excluded from the proposal made by her immediate superiors.

For my part, only the administrative situation of Mrs X, that is to say her half-time working, caused me to hesitate. I established that her situation derives exclusively from family circumstances, which are not permanent. For that reason, in the statement of the grounds on which my proposal for filling the post was based, I associated myself with efforts made by our institution to observe the principle of equality of opportunity for men and women (positive action in that regard might prove necessary).'

- 22 On 3 October 1983, having been requested to give details of 'the basis on which it might be considered that Mrs X's knowledge concerning "data-processing methods in management applications" was sufficient, Mrs De Enterria replied to the Legal Department in the following terms:

'As regards in particular the data-processing knowledge of the candidate selected, I would remind you that in the "comparative examination of merits" which prompted me to propose the promotion of Mrs X, I also determined, on the basis of objective information confirmed to me by Mr Y, a reviser with special knowledge of data processing who organized the continuing "internal" training of Danish revisers, that:

- (1) Mrs X had completed the two periods of vocational training (in groups of two or three officials) provided in the Danish Translation Division;
- (2) she made regular use, without "technical" assistance, of the shared facilities of the Danish Translation Division for searches regarding documentation and for liaising with the terminology office.

I concluded from this that her knowledge was sufficient for the "management tasks" referred to in the vacancy notice (for the filling of a post of Language Adviser)'.

23 On 16 October 1989, Mrs De Enterría sent a second memorandum to the Legal Department in the following terms:

'Since the duties of a Language Adviser cannot in any way be assimilated to those of a data-processing expert, I must again point out that the job description contained in Vacancy Notice No 5809 is exactly the same as that contained in the vacancy notice for the filling of the same post in the Spanish and Portuguese divisions.

Having been a member of the Selection Board in those competitions, I would inform you, with the prior authorization of Mr Quemener, its Chairman, that when the criteria were laid down for examination of the candidates' files, their knowledge of data-processing methods was excluded from the assessment of qualifications in view of the secondary importance which the members of the Selection Board attributed to such knowledge.

Therefore, if it proves desirable, or even necessary, that the supervisory staff of a translation division should be able to use data-processing facilities, I would consider it extravagant for the choice of a candidate to be dependent on the level of knowledge acquired in that area. Although, in the present dispute, the candidate proposed, (as) you will see, possessed the minimum standard needed in order to cope with the demands of the work in question'.

24 The notices to which Mrs De Enterría referred in her memorandum of 16 October 1989 related to Open Competitions Nos PE/126/LA and PE/127/LA, organized by the Parliament with a view to filling a post Spanish Language Adviser and one of Portuguese Language Adviser respectively (Official Journal 1988 C 114, p. 19 of the Spanish edition and p. 17 of the Portuguese edition). Under the heading 'Qualifications, diplomas and experience required', that notice stated:

'Candidates must possess:

education to university level . . . ;

substantial relevant experience in the sphere of translation and revision.

In addition, (Spanish text) it is desirable for the candidate to be familiar with data-processing methods in management applications/(Portuguese text) knowledge of data-processing methods in management applications is desirable'.

25 In the meantime, the staff reports for the three candidates had been drawn up for the period 1987/88. Mr Y had obtained three assessments of 'excellent' (knowledge, organizational ability and quality of work), three 'very good' and two 'good'; Mrs X, two assessments of 'excellent' (knowledge and quality of work), three 'very good' and three 'good'; and the applicant, three 'excellent' (knowledge, organizational ability and quality of work), four 'very good' and one 'good'. The applicant's report for that most recent period contained the following appraisal:

'He is exceptionally well qualified for the performance of his duties. Thanks to his comprehensive knowledge of data processing, teaching and terminology, he makes a much appreciated contribution to the work of the division as a whole'.

As regards knowledge of languages, Mrs X claimed newly acquired knowledge of Spanish to an 'adequate' level and the applicant claimed newly acquired knowledge of Portuguese to a 'good' level. During the period covered by the reports, the applicant had attended Spanish courses in levels 3 to 5. The three reports were signed, respectively, by Mr Drangsfeldt, as first assessor, on 21 July 1989, and by Mr Hargreaves, as final assessor, on 26 July 1989, by the applicant on 31 July 1989, by Mr Y on 2 August 1989 and by Mrs X on 19 September 1989.

26 By letter of 29 November 1989, the President of the Parliament informed the applicant that his complaint had been dismissed on the following grounds:

'... on the basis of a comparative analysis of the qualifications, merits and staff reports of the various candidates, it became apparent that Mrs X's application met to the greatest extent the requirements of the abovementioned vacancy notice, by virtue in particular of the fact that she had wider knowledge of languages, a better staff report for 1985/86 and greater seniority in the service than the other candidates. Moreover, contrary to your assertions, it does not appear that Mrs X, who has undertaken training in the sphere of data-processing practice in relation to documentation and terminology, has inadequate knowledge in that area, having regard to the vacancy notice ...

I would add, finally, that half-time working does not in any way detract from an official's eligibility for promotion. Promotion may only be objected to in the case of continuing half-time working when such working proves incompatible with the interests of the service'.

27 Following her appointment, Mrs X applied for and obtained permission to continue working half time until 30 September 1990. In response to a question put by the Court, the Parliament stated, on 29 March 1990, that Mrs X was, amongst the officials of the Parliament in Grade A 3, LA 3 or a higher grade, the only one who had been granted leave to work half time over the previous five years.

Procedure

28 By application lodged at the Registry of the Court of First Instance of 27 December 1989, the applicant brought the present action for annulment of the decision by virtue of which Mrs X was promoted to the post of Language Adviser.

- 29 At the Court's request, on 29 March 1990 the defendant produced certain documents concerning the comparative examination of the merits of the candidates for the post to be filled, production of which has been asked for the in application or to which reference had been made in the defence.
- 30 On 27 April 1990, Soren Anker Christensen, Vibeke Emborg, Elke Flatterich, Ebbe Tørring Jensen, Jorn Kofoed-Nielsen, Lennart Bach Nielsen, Nini Pedersen, Hanne Riisberg and Leif Winther lodged an application for leave to intervene in support of the applicant. By order of 13 June 1990 that application was dismissed.
- 31 On 17 July 1990, the written procedure was declared closed.
- 32 On 20 September 1990, the applicant reiterated the request contained in his reply that certain additional documents should be produced by the Parliament. The Parliament expressed its views on that request by letter of 10 October 1990.
- 33 On 25 October 1990, upon hearing the report of the Judge-Rapporteur, the Court of First Instance asked the Parliament to produce all the documents mentioned by the applicant, to the extent to which those documents were in the Parliaments files and had not yet been produced, any also all documents relating to the drafting of the vacancy notice at issue. On the same day, the Court opened the oral procedure.
- 34 In response to the Court's request, the Parliament produced a number of additional documents. The Parliament stated that it had no other document relating to the decision to appoint Mrs X, the decision rejecting the applicant's complaint or the reasons on which those decisions were based. The Parliament also stated that no document had been kept which related to the drafting of the vacancy notice, except the final text.

35 The hearing took place on 5 December 1990. The representatives of the parties presented oral argument and gave their answers to the questions put to them by the Court. On conclusion of the hearing, the President gave notice that the Court would order an additional measure of inquiry of which details would be given to the parties in due course.

36 By order of 7 December 1990, the Parliament was called on to produce additional information and documents in order to enable the Court to establish as a matter of fact, first, the nature of Mrs X's knowledge of data-processing methods and, secondly, the information and recommendations forming the basis of the decisions of the President of the Parliament of 3 July 1989 to promote Mrs X, and of 29 November 1989 dismissing the applicant's complaint. By letter of 28 January 1991, the Parliament answered the questions put to it by the Court, giving details in particular of the internal procedure followed by its officials in preparing a proposal for promotion addressed to the President of the Parliament as appointing authority. On the same date, the Parliament produced a number of additional documents. Those documents included, in particular, a written statement in Danish from Mr Y concerning the content and duration of the courses provided by him and attended by Mrs X, and a copy of all the files forwarded to the President of the Parliament, on the basis of which, as appointing authority, he had taken the decisions of 3 July and 29 November 1989.

37 By letter of 21 February 1991, in reply to a question put to it by the Court, the Parliament explained that certain of the handwritten notes in the file forwarded to the President of the Parliament with the proposal for the appointment to the post of Language Adviser had been made by the Secretary-General of the Parliament personally.

38 Having regard to the information and the documents obtained, the Court decided that it was appropriate to obtain an expert's report in order to establish, first, the criteria to be applied in assessing a candidate's knowledge concerning 'data-processing methods in management applications' and, secondly, the extent to which those criteria were satisfied by candidates who had, respectively, the knowledge of the applicant and that of Mrs X. The Court therefore invited the

parties, by letter from its Registrar dated 27 February 1991, to present their proposals, if possible by agreement between them, as to the choice of an expert and any observations that they might wish to make concerning the questions which the Court intended putting to him.

39 By fax of 7 March 1991, a copy of which was forwarded to the Court of First Instance, the applicant suggested the names of two people to the defendant. By letter of 14 March 1991, the applicant submitted to the Court his observations on the proposed questions. By letter of 14 March 1991, the defendant, whilst submitting its observations on the proposed questions, expressed the view that the Court's intention to obtain an expert's report was inappropriate and unjustified. It neither made any proposal as to the appointment of an expert nor responded to the proposals submitted by the applicant. When invited once more, by letter from the Registrar of the Court of 21 March 1991, to give its views on the appointment of an expert, the defendant, by letter of 12 April 1991, repeated its objections in law to the appointment of an expert and, for the rest, deferred to the judgment of the Court.

40 In those circumstances, the Court decided of its own motion to appoint an expert pursuant to Article 49(1) of the Rules of Procedure of the Court of Justice which at that time applied, *mutatis mutandis*, to procedure before the Court of First Instance. By order of 23 April 1991, Hélène Bauer Bernet, an Honorary Director and formerly an adviser to the Legal Service of the Commission of the European Communities on legal data processing, was appointed as expert.

41 The expert lodged her report on 11 June 1991. The parties submitted their observations on the expert's report within the period appointed for that purpose.

42 In her report, the expert answered the Court's question concerning the criteria for appraisal of the candidates' knowledge concerning 'data-processing methods in management applications' as follows:

'The criteria are, in my opinion, as follows:

- sufficiently in-depth and comprehensive knowledge of an operating system, facilitating management applications and capable of supporting multi-station configurations, for example MS-DOS, Unix or Novell;
- sufficient practical data-processing experience to detect and resolve minor problems independently;
- experience of a real application of multi-function management, if possible in an administrative context.'

43 The expert then examined the qualifications of Mrs X and the applicant, as described above in paragraph 9, which had been communicated to her without disclosure of the candidates' identities. She concluded:

'(a) Training

The first candidate (Mrs X) has received training as an informed user or "data-processing correspondent". Such training, however long, does not of itself impart the technical knowledge needed for the purpose of computerizing management tasks; the difference is of a qualitative nature, (the candidate's insistence on the importance of this training could be interpreted as an indication of lack of awareness of the other aspects of data processing).

(b) Equipment

The operating system of a home computer such as the Commodore 128 is not as complex and does not possess the functions of the operating system of a genuine

management micro-computer. The management applications of a computer of that kind (using, for example, Superbase software) are marginal. Moreover, the candidate makes no reference to any use of such software’.

With regard to the applicant’s knowledge, the expert concluded:

‘A candidate who has attended five data-processing training courses, totalling 17 days . . . , although not thereby classifiable as a data-processing expert, has nevertheless shown the capability of assimilating a minimum of theoretical knowledge of appropriate content and level.

As regards the practical aspect: a candidate who has the following equipment . . . and several relevant programs, including dBase III, and who has experience with Open Access installed in the translation division concerned can be regarded as having a certain degree of practical experience’.

44 The views of the expert were heard at the sitting on 3 October 1991, when she answered the questions put to her by the Court and by the applicant’s representative. The Parliament’s agent declined to put any questions to the expert.

45 The expert was asked to expound upon the criteria which she had set out in her written report, and she explained that the application of data-processing techniques to management tasks involves the ability to

‘determine the relationship between, on the one hand, the problem in the terms in which it is capable of being formalized and related to a model and, on the other, the products available on the market, which today are standard programs . . . (to identify) the connections needed to bring what exists into line with what is sought . . . It is necessary to be familiar with the programming structure of data

processing... (and) ... be able to perceive the constraints and possibilities of... software... (The) person mentioned in the description has no interest in becoming a programmer and there is no point in asking him to do so. (That person) does not even have any interest in being an analyst-programmer... but must have a state of mind and knowledge that will make it possible to cooperate with someone like an analyst-programmer... it is necessary not just to have a good understanding of the problem and also to be able to formulate it in such a way that it is oriented towards data processing, however defined. To do so requires a very rigorous approach and knowledge of the machine's possibilities regarding "management".

- 46 When called on to give details of a 'user's' knowledge, the expert explained that training for that purpose:

'could be very long, very advanced, and very good to the point where it becomes possible to transmit information to numerous people... That does not mean of course that a person who is a trainer and a user cannot become an operator, but such training is not the same as that of an operator... it is possible to be a good user of a database such as Eurodicautom and yet know absolutely nothing of the existence of an operating system'.

- 47 When questioned concerning the knowledge of the two candidates, the expert expressed the view that, in order to meet the requirements of the vacancy notice, a candidate should have as a minimum the knowledge possessed by the applicant, the knowledge possessed by Mrs X being of a different kind and insufficient in itself to meet the requirements of the vacancy notice.

- 48 After the views of the expert were heard, the parties' representatives put forward their observations and conclusions, whereupon the President declared the oral procedure closed.

49 The applicant claims that the Court should:

declare his application admissible and well founded;

consequently, annul the decision of the President of the European Parliament of 3 July 1989 appointing Mrs X to the post of Language Adviser in the Danish Translation Division and, so far as necessary, the memorandum from the Recruitment Department of 17 July 1989;

in any event, order the defendant to pay the costs in their entirety.

50 The defendant contends that the Court should:

declare the application inadmissible or else unfounded;

dismiss the same;

find that the decision of 29 November 1989 rejecting the applicant's complaint expressly set out the reasons for the rejection of his application;

consequently, make an order as to costs in accordance with the applicable provisions.

Admissibility

51 The Parliament pleads that the application is inadmissible on the ground that the applicant has no interest in bringing an action. According to the Parliament, it is

not clear that, in the event of Mrs X's promotion being annulled, the applicant would be promoted in her place. The Parliament observes that the third candidate, Mr Y, was excluded only on the grounds of his age and his seniority in grade, which were in both cases less than those of the applicant and that, in any event, if the vacancy notice was to be interpreted as meaning that the post declared vacant called for detailed knowledge of data processing, the general data-processing courses followed by the applicant would likewise not be sufficient for him to meet that requirement.

52 According to the applicant, the concept of interest in bringing an action is closely linked with that of a measure having an adverse effect. The contested measure certainly affects him adversely in that it awarded the promotion for which he applied to a candidate other than himself. The degree of individualization which must characterize an interest in bringing an action does not make it necessary for the applicant necessarily to be the only person who might benefit from the proceedings brought by him.

53 Whilst it is true that an official has no legitimate interest in securing annulment of the appointment of another candidate for a vacant post for which he cannot validly claim to be eligible (judgment of the Court of Justice in Case 111/83 *Picciolo v European Parliament* [1984] ECR 2323), it must nevertheless be pointed out in the present case that, both during the procedure prior to the adoption of the decision appointing Mrs X and during the administrative procedure following the complaint lodged by the applicant against that decision, the applicant's knowledge of data processing was never called in question. Similarly, throughout the proceedings before the Court, the Parliament never expressly stated that the applicant could not validly claim to be eligible for the post to be filled, the objection of inadmissibility being raised solely in the alternative. In any event, the expert considered in her report and confirmed at the hearing that the applicant's knowledge was qualitatively superior to that of Mrs X and that it satisfied the requirements of the vacancy notice.

54 The objection of inadmissibility must therefore be dismissed.

Substance

55 In support of his claims, the applicant makes two pleas in law alleging, first, that the statement of the reasons on which the contested measure was incorrect and, secondly, infringement of Article 45 of the Staff Regulations of Officials of the European Communities. As the arguments on which the two pleas are based are closely connected, it is appropriate to consider both pleas together.

The parties' arguments

56 The applicant claims that the contested decision is vitiated by errors concerning, first, the appraisal of the candidates' knowledge of data processing; secondly, the appraisal of the candidates' other knowledge; thirdly, the application of the principle of equality of opportunity for men and women; and, fourthly, the possibility of performing the duties of the post at issue on a half-time basis.

57 In the first place, the applicant, relying on the judgment of the Court of Justice in Case 188/73 *Grassi v Council* [1974] ECR 1099 according to which the appointing authority is required to remain within the terms which it has itself laid down in the vacancy notice, claims that the candidate appointed did not satisfy in one respect the requirements as to qualifications and essential knowledge laid down by the vacancy notice concerned and, more specifically, that she did not possess the 'knowledge of data-processing methods in management applications' required by that notice. Mrs X's knowledge in that area was, in his view, 'extremely slight or indeed non-existent', her purported data-processing training being limited to introductory training for beginners to enable them to consult databases — a task usually undertaken by secretaries. In response to Parliament's reference to written information in the form of guides or other documentation given to Mrs X, the applicant states that he could have produced hundreds of pages relating to the courses which he had followed. As regards his own knowledge, the applicant claims that even though his knowledge was, essentially, acquired in the course of his work in the Terminology Division, it related directly to data processing and management tasks corresponding to those referred to in the vacancy notice. He adds that that training, which is intended to enable non-specialists independently to create and manage their own databases, was acquired through the use of software employed in the Parliament's departments and mentions specifically, in that regard, that an adequate knowledge of the

MS-DOS system is essential to enable a person to use the computers installed at the Parliament and for computerization work.

58 Secondly, the applicant maintains that his other qualifications were at least equivalent to those of Mrs X. As regards knowledge of languages, he observes that both worked from all the official languages of the Community except one, Portuguese in Mrs X's case and Greek in his own case. As regards their staff reports, the applicant claims that, if the reports for the period 1985/86 had been compiled by the same assessor and not by two different Heads of Divisions, it is more than probable that his knowledge of languages would have merited a second assessment of 'excellent', as was the case in his staff report for 1987/88. The applicant draws the attention of the Court to certain errors made by Mrs De Enterria in her memorandum of 10 March 1989 regarding the content of the staff reports, and to the fact that his staff reports show a constant improvement. He considers that the appointing authority should have taken account of the reports for 1987/88, which were not only the most recent but furthermore, by contrast with the earlier reports, had all been drawn up in the same division and by the same assessors, namely Mr Drangsfeldt and Mr Hargreaves. Referring to the fact that the examination of staff reports is intended to ensure that the appointing authority exercises its discretion in full knowledge of the facts (judgment of the Court of Justice in Case 29/74 *De Dapper v Parliament* [1974] ECR 35), the applicant observes that in the present case the reports were drawn up late and, in any event, were not sent to the persons concerned until after the decision was taken to appoint Mrs X, a situation criticized by the Court of Justice in previous decisions (Case 61/76 *Geist v Commission* [1977] ECR 1419; Cases 156/79 and 51/80 *Gatreau v Commission* [1980] ECR 3943 and [1981] ECR 3139). He adds that those reports were at least available — and should therefore have been taken into consideration — when his complaint was examined (judgment of the Court of Justice in Case 26/85 *Vaysse v Commission* [1986] ECR 3131). As regards seniority in the service, the applicant claims that since Mrs X took up her duties only six months before he did and has worked half-time since 1979, she cannot claim to be better qualified in that respect.

59 In the third place, the applicant maintains that the contested decision was principally motivated by the fact that there are, within the Parliament, many fewer women than men occupying senior posts. He points out that, as the Court of

Justice has held, the principle of equal treatment of men and women requires that neutrality be ensured and no right of preference can be recognized (judgments of the Court of Justice in Case 111/86 *Delauche v Commission* [1987] ECR 5345 and Case 233/85 *Bonino v Commission* [1987] ECR 739).

- 60 In the fourth place, the applicant considers that for a Language Adviser responsible for assisting the Head of Division, half-time work is not compatible with the interests of the service.
- 61 With respect of the plea of infringement of Article 45 of the staff report, the applicant claims that 'the consideration of the comparative merits of the officials eligible for promotion and of the reports on them' provided for in that article must be carried out objectively but that Mrs De Enterria departed from that requirement of objectivity by seeking to favour Mrs X, contrary to the interests of the service and to the interests of the officials in the Danish Translation Division. That attitude was confirmed, in the applicant's view, by the decision to extend the authorization granted to Mrs X to work half-time despite the adverse opinions of Mr Drangsfeldt and Mr Hargreaves and the protestations of the Linguists' Delegation. In the applicant's view, it is significant that that decision, of 4 December 1989, was taken 'Having regard to the memorandum from Mrs Carmen G. De Enterria of 28 August 1989' and not, as is usual, 'Having regard to the favourable opinion of the Directorate-General concerned'. According to the applicant, it is exceptional for a promotion decision to be taken against the concurring opinions of the immediate superiors of the person concerned and for it to give rise to a vigorous protest by the members of the same department.
- 62 In response to those arguments, the Parliament examines, first, the terms used in the Danish version of the vacancy notice to define the qualifications and knowledge required of the candidates. It observes that the relevant terms ('kendskab til administrativ anvendelse af edb (elektronisk databehandling)') require only a 'knowledge of the administrative application of data processing'. It draws attention to the wording, in the French version of the vacancy notice, under the heading 'Nature of duties', in which all that is required is 'informatisation du travail de documentation et du travail terminologique de la division' ('computerizing documentation and terminological work in the division'). The level of

aptitude required must be analysed in the context of the 'Report on the work of DG VII' drawn up by Mrs De Enterra (see paragraph 3 above). The only valid interpretation of the vacancy notice is, in its view, that given to it by the appointing authority when approving the terms of the notice. The 'computerizing documentation and terminological work in the division' referred to in the vacancy notice is only one of the eight tasks attributed to the Language Adviser and cannot alone determine which candidate is most suitable to undertake all the duties involved in that post. What is involved is not the 'computerization' of data but rather verification and coordination of the proper progress of computerization of terminological and translation work. The tasks of programming and updating are not performed by A-grade officials but by those in Category B or C. From this the Parliament concludes that, provided that the candidates for the post of Language Adviser had sufficient knowledge to consult the various databases and verify that they were properly up to date, their qualifications met the requirements of the vacancy notice. As regards the knowledge of Mrs X and the applicant respectively regarding data processing and languages, the Parliament essentially endorses the evaluation made by Mrs De Enterra and also states that it is the responsibility of the appointing authority alone to assess the abilities of candidates (judgments of the Court of Justice in Case 10/55 *Mirossevich v High Authority* [1956] ECR 333 and Case 35/72 *Kley v Commission* [1973] ECR 679).

63 As regards the staff reports for 1987/88, the Parliament contends that, when the contested promotion decision was taken, they were not yet at its disposal. The appointing authority therefore relied on the earlier reports and, in any event, the principle of legal certainty does not allow account to be taken of information post-dating that decision. The Parliament adds that a delay of eight months in preparing the reports is not excessive. The Parliament also calls in question the credibility of the report on the applicant for 1987/88 on the ground that it was prepared by the people who supported his candidature for the post of Language Adviser and that, statistically, the assessments contained in that report do not correspond to those entered in the reports of other officials in the Danish Translation Division. As regards the calculation of seniority in the service, the Parliament states that the rights and obligations of officials working half-time, except as regards remuneration and working hours, are the same as those of officials working full time.

- 64 With respect to the positive discrimination allegedly practised in favour of Mrs X, the Parliament states that that ground was not relied on by Mrs De Enterra until 'after comparison of the qualifications of the three candidates'. In any event, according to the Parliament, the appointing authority did not rely, when taking its decision, on the principle of equality of opportunity so as to afford any preference to the candidate appointed. Even if it were assumed that the terms of certain documents forwarded to the appointing authority in the course of the promotion procedure might have misled it, the appointing authority nevertheless confirmed its decision and gave a legally acceptable statement of the reasons on which it was based when, in full knowledge of the corrected details, it rejected the complaint lodged by the applicant.
- 65 As regards the fact that Mrs X worked half time, the Parliament considers that the applicant has not proved how that might have affected the service. It adds that it cannot constitute a ground for annulment of the contested promotion decision since the only legal consequence of any incompatibility with the interests of the service would be cancellation of the authorization granted to her to work half time.

The Court's assessment

- 66 The Court considers that it is first necessary to distinguish the two aspects of the pleas in law and arguments put forward by the applicant. In the first place, it is necessary to establish whether Mrs X met one of the requirements of the vacancy notice, namely that relating to 'knowledge of data-processing methods in management applications'. Secondly, it is necessary to examine the manner in which the appointing authority carried out the comparative examination of the merits of the candidates required by Article 45 of the Staff Regulations.
- 67 As regards the first question, it must be observed that the Court of Justice has held that the essential function of the vacancy notice is 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. The vacancy notice thus constitutes the legal framework which it imposes on itself. However, if it discovers that the conditions laid down by the vacancy notice are more exacting than the needs of the service demand, it is entitled to re-open the promotion procedure

after withdrawing the original vacancy notice and putting an amended one in its place (judgments in *Grassi*, above, and Case C-343/87 *Culin v Commission* [1990] ECR I-225).

68 It is therefore incumbent upon the Court to establish whether Mrs X's qualifications were objectively in conformity with the text of the vacancy notice. There is no need to examine the applicant's qualifications in order to answer this question.

69 On the other hand, to answer the second question it will be necessary for the Court to examine the documents relating to the merits both of the applicant and of Mrs X. However, that examination does not imply that the Court may conduct an examination of the candidates' merits independently and still less that it could substitute its own assessment of those merits for that of the appointing authority. In order to evaluate the interests of the service and the merits to be taken into account for the purposes of the promotion decision provided for in Article 45 of the Staff Regulations, the appointing authority is vested with a wide discretion and, in that sphere, the review by the Community judicature is limited to whether, having regard to the various considerations which have influenced the administration in making its assessment, it has remained within reasonable bounds and has not used its authority in a manifestly incorrect manner (judgment in *Vaysse*, above). It must also be pointed out that the exercise of the discretion vested in the appointing authority calls for careful examination of the files and meticulous regard to the requirements laid down in the vacancy notice (judgment in *Grassi*, above), that discretion being moderated by the obligation to examine with care and impartiality all the information relevant to the case (judgment of the Court of Justice in Case C-269/90 *Technische Universität München v Hauptzollamt München* [1991] ECR I-5469).

70 It follows that the Court of First Instance must do no more than verify the objectivity and accuracy of the comparative examination of merits provided for in Article 45 of the Staff Regulations, as it should have been carried out in this case by the appointing authority having regard to the terms of the vacancy notice.

- 71 It must be emphasized with regard to the first issue, namely the extent to which the qualifications presented by Mrs X corresponded to those called for in the vacancy notice, that the notice in question, published in 1989, stated as a requirement 'knowledge of data-processing methods in management applications', whereas the vacancy notices for Language Advisers for the Spanish and Portuguese languages, published in 1988, to which Mrs De Enterria referred in her memorandum of 16 October 1988 (see paragraph 23 et seq. above), merely stated that such knowledge was desirable. Whilst it is true, as the Parliament contends, that 'computerizing documentation and terminological work in the division' was only one of the eight tasks required of the Language Adviser, the fact nevertheless remains that the change made between 1988 and 1989 — regarding the requirements laid down in the vacancy notices mentioned above, on the one hand, and, on the other, those laid down in the vacancy notice at issue here, regarding the knowledge of data processing required of the candidates — must be regarded as significant. That significance is apparent in particular from what Mrs De Enterria herself wrote in her 'Report on the work of DG VII', mentioned above, relied on by the Parliament itself as necessarily providing the framework within which it is appropriate to analyse the vacancy notice in question. In fact, that 'Report' emphasized the need, for the future, to use new technologies in order to cope with the problems of the Translation Directorate. The importance of data processing for the work of the Danish Translation Division was also emphasized in the memoranda from Mr Hargreaves of 2 February 1989 and Mr Drangsfeldt of 31 May 1989.
- 72 In those circumstances, the Court finds that, contrary to the Parliament's contention, the requirement laid down in the vacancy notice of 'knowledge of data-processing methods in management applications' reflected a genuine need on the part of the appointing authority regarding the organization of its departments and that that requirement, as defined by the administration itself, cannot be treated as being of secondary importance. A condition of that kind, even if expressed in technical terms, must be presumed to have an objective meaning whereby it is possible to identify specific criteria which define the bounds within which the appointing authority's discretion must be exercised, and the definition of those bounds cannot be left open to discretionary interpretation by the appointing authority.
- 73 It is apparent from the expert's report obtained by the Court that the requirement of 'knowledge of data-processing methods in management applications' laid down

in the vacancy notice must be interpreted as requiring of the candidates knowledge that is qualitatively different, on the one hand, from that of a person using or consulting databases and, on the other, from that of a programmer or analyst-programmer. It is also apparent from that report that only knowledge conforming to the description of an 'operator' given by the expert specifically corresponded to the 'Nature of duties' detailed in the vacancy notice, namely 'computerizing documentation and terminological work in the division'.

74 As regards Mrs X's knowledge, it is apparent from the written statement from Mr Y concerning the seminars that he conducted and in which Mrs X took part (see paragraph 35 above) that 'one of the main purposes was . . . specifically to familiarize participants without any knowledge of data-processing equipment with the purely technical handling of a computer terminal'. In the light of the information furnished by the expert, the Court finds that neither such training nor the subsequent use of a terminal to seek documentation and precedents can suffice to provide knowledge of data-processing methods in management applications which meets the qualitative requirements described above. In that regard, the Court attaches particular significance to the observation in the expert's written report that 'the candidate's insistence on the importance of this training could be interpreted as an indication of lack of awareness of the other aspects of data processing'. The Court also noted, when taking evidence from the expert, that she stated positively that knowledge such as that attributed to Mrs X was not sufficient to meet the criteria indicated by her according to which the candidate's knowledge in the sphere in question could be evaluated.

75 In those circumstances, the Court finds that Mrs X's knowledge did not satisfy the requirements laid down in the vacancy notice, as they should be objectively interpreted. It follows that, in considering that Mrs X fulfilled conditions laid down in the vacancy notice as published, the appointing authority exceeded the bounds which it had itself imposed on the exercise of its choice and within which it was obliged to remain, both when the decision to promote Mrs X was adopted and when the decision was taken to dismiss the applicant's complaint. The appointing authority, not having withdrawn the original vacancy notice and replaced it with one whose terms had been expressly changed, had no option but to reject Mrs X's application.

76 In any event, it must be pointed out that the Parliament did not produce evidence that the appointing authority actually assessed, with the requisite objectivity and exactitude, the extent to which Mrs X's knowledge met the requirements of the vacancy notice. It is apparent from the statements made by the Parliament that the file forwarded to the President of the Parliament, as appointing authority, with a view to his taking a decision on the appointment to the post of Language Adviser in the Danish Translation Division contained no information whatsoever such as to enable him to make such an assessment, the vacancy notice and the statement attached by the applicant to his application being, amongst those forwarded to the President, the only ones which related to knowledge of data processing. Similarly, having regard to the assessments made by the authorities at a lower level in the course of preparation of the contested appointment decision and in the course of the procedure followed before the applicant's complaint was rejected, it must inevitably be concluded that the assessments made by Mrs De Enterria in her memoranda of 7 June, 3 October and 16 October 1989 were vitiated by an error in that they were wrongly based — as is clearly apparent from the last memorandum, of 16 October 1989 — on the assumption that the requirements laid down in the vacancy notice were the same as those contained in the competition notices for the posts of Spanish and Portuguese Language Advisers published the previous year. It must also be stated that the assessment made by the Parliament's Legal Department, which was sent to the President for the purposes of the decision on the applicant's complaint, was also vitiated by an error in that it was expressly based on the assessment previously made by Mrs De Enterria and merely stated that 'that assessment is a matter within the discretion of the appointing authority, which shared the opinion of its Director-General'.

77 As regards the second question concerning the comparative examination of the merits of the candidates provided for in Article 45 of the Staff Regulations, the Court considers that the findings already made are in themselves sufficient to establish that that examination lacked the requisite objectivity and exactitude. It must also be stated that the only comparative assessment brought to the attention of the President of the Parliament as appointing authority for the purposes of the appointment decision required of him, namely the assessment made by Mrs De Enterria in her memorandum of 10 March 1989, was incomplete and vitiated by manifest errors of fact and law.

78 The Court observes that the memorandum of 2 February 1989 sent by Mr Hargreaves to Mrs De Enterria contains a comparison of the merits of the three candidates by reference, first, to the nature of the functions involved in the post declared vacant and, secondly, the qualifications and knowledge required in the vacancy notice. The memorandum from Mrs De Enterria of 10 March 1989, on the other hand, makes no mention of the various aspects dealt with by Mr Hargreaves, particularly with regard to Mr Y's experience relating to terminology, the applicant's teaching experience and, above all, the knowledge and experience of data processing of all three candidates. It also contains a serious error in its evaluation of the staff reports: Mrs X and the applicant — contrary to what is stated in the memorandum — both had the same number of assessments of 'excellent'. Finally, it mentions the concern to ensure equality of opportunity for men and women, if not as a decisive consideration at least as one of equal importance to the others in relation to the comparative examination of merits, whereas the Parliament, both in its pleadings and at the hearing, placed emphasis on the fact that that consideration was entirely irrelevant and, moreover, had not been taken into account by the appointing authority.

79 The Court considers that such a lack of objectivity and exactitude cannot be compensated for, as contended by the Parliament, either by the fact that the file sent to the President contained a table on which the Secretary-General of the Parliament had jotted a correct evaluation of the staff reports — but without correcting the one from Mrs De Enterria — or by the fact that that opinion prepared by the Parliament's Legal Department for the purpose of dealing with the applicant's complaint noted, parenthetically on page 13, the error made by Mrs De Enterria in that respect.

80 It follows from all the foregoing considerations that by adopting the contested decision the appointing authority exceeded the legal limits which it had imposed on itself by the vacancy notice and also that its assessment was vitiated by a manifest error regarding both the fulfilment by the candidate appointed of the conditions laid down in the vacancy notice and the comparison of the respective merits of the candidates. It follows that both the pleas in law relied on by the applicant must be upheld and, therefore, that the decision of the President of the Parliament appointing Mrs X to the post of Danish Language Adviser must be annulled.

Costs

81 Pursuant to 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 are asked for in the successful party's pleadings. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- 1. Annuls the decision of the President of the European Parliament of 3 July 1989 promoting Mrs X to the post of Language Adviser in the Danish Translation Division (Directorate-General for Translation and General Services) following the publication of Vacancy Notice No 5809 (PE 128908);**
- 2. Orders the defendant to pay the costs.**

García-Valdecasas

Edward

Schintgen

Delivered in open court in Luxembourg on 11 December 1991.

H. Jung

Registrar

R. García-Valdecasas

President