

- which have influenced the administration in making its assessment, it has remained within reasonable bounds and has not used its power in a manifestly incorrect way. The Court cannot therefore substitute its assessment of the qualifications and merits of the candidates for that of the appointing authority.
2. Where there is an irregularity in the consideration of the comparative merits of the officials eligible for promotion by a promotion committee, whose task it is to prepare the ground for the decisions of the appointing authority, in that the latest staff report on one of those officials is missing from his or her personal file, then if that report has in the meantime been placed on the file, and even if some decisions on promotion have already been taken, the conditions set out in Article 45 of the Staff Regulations are met if that committee undertakes a fresh consideration of the comparative merits of all the officials eligible for promotion, on the basis of the same information on all those concerned as was available to it on the previous occasion.
 3. In order to comply with the first paragraph of Article 45(1) of the Staff Regulations, the criteria to be taken into account in considering applications for promotion are the comparative merits of the officials eligible for promotion and the reports on them. Accordingly, in making the choice which is to serve as a basis for the decision to be taken by the appointing authority under that article, a promotion committee is not bound to rely solely on the staff reports on those concerned but may also base its assessment on other aspects of the merits of the candidates such as information relating to their administrative and personal position, which is such as to qualify an assessment made solely on the basis of their staff reports.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
25 November 1993 *

In Joined Cases T-89/91, T-21/92 and T-89/92,

Mrs X, an official of the Commission of the European Communities, residing in Brussels, represented by Lucas Vogel, of the Brussels Bar, with an address for service at the chambers of Paul Mousel, 8-10 Rue Mathias Hardt,

applicant,

* Language of the case: French.

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, and Ana Maria Alves Vieira, of its Legal Service, acting as Agents, with an address for service at the office of Nicola Anecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment, firstly, of the decision of the promotion committee not to include the applicant's name on the list of officials most deserving of promotion for 1991, secondly, of a memorandum of 17 December 1991 from the Director-General of Personnel and Administration informing the applicant of the re-opening of the promotion procedure in relation to her and, thirdly, of the decisions taken by the Commission promoting officials to Grade B 3 for 1991,

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

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

Registrar: II. Jung,

having regard to the written procedure and further to the hearing on 15 September 1993,

gives the following

Judgment

Facts

1 The applicant is an official in Grade B 4 at the Commission. She was not included on the list published in *Administrative Notices* No 664 of 20 February 1991, which gave the names of the officials 'most deserving of promotion' to Grade B 3 for 1991.

2 On 17 May 1991, the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities (the 'Staff Regulations'), in which she complained that the appointing authority had not included her on that list. She argued, in essence, that, as her staff report for the period from 1 July 1987 to 30 June 1989 was not made available to her until 18 March 1991, it could not have been taken into account properly in the promotion procedure for 1991.

3 Having received no reply to her complaint within the period of four months prescribed in the Staff Regulations, on 18 December 1991 the applicant lodged a first application with the Court of First Instance, registered as Case T-89/91, seeking the annulment of the decision not to include her on the list of officials most deserving of promotion to Grade B 3 for 1991.

4 However, in the meantime, on 17 December 1991, the Director-General of Personnel and Administration had sent a memorandum to the applicant, informing her that the administration had accepted her complaint and that the promotion procedure would be re-opened accordingly, to consider the question of her inclusion on the list of officials most deserving of promotion to Grade B 3 for 1991.

- 5 The matter was reconsidered at a meeting of the promotion committee on 18 December 1991. As a result of that meeting the committee decided not to include the applicant on the list. The Commission informed the applicant of that decision by memorandum of 23 December 1991.
- 6 The minutes of that meeting read as follows:

‘The committee met in Brussels on 22 and 23 January 1991, 8 February and 18 December 1991.

The following were present at the meetings:

Chairman ...

Representatives of the Commission ...

Representatives of the staff ...

Secretaries ...

The chairman and members were supplied with the following documentation:

- print-out of officials eligible for promotion;
- statistics concerning promotions in 1990 (AN 653 of 21.1.1991);

- new procedure for promotion (AN 514 of 10.11.1986) and new career profiles of 29.2.1990;
- minutes of the meeting of the committee dealing with promotions for 1990;
- lists of officials proposed in 1990 by DG or department not chosen by the committee;
- lists of officials found to be most deserving of promotion in 1990 but not promoted;
- proposals for promotion listed by DG or department;
- number of officials eligible for promotion and number of officials proposed by DG or department;
- budget funds available for promotion.

Meeting of 18 December 1991

Continuation of the meeting of the B promotions committee to consider an individual file concerning promotion to Grade B 3:

Mrs X.

Having chosen to reconsider this file, the Committee, after hearing the assistant for DG I and after deliberation, decided to include the following *statement* in the minutes:

“Having chosen to reconsider Mrs X’s file under the procedure for promotion to Grade B 3 in the light of new information which has become available (staff report for 1987-1989 on the official concerned and her complaint No R/103/91 of 17 May 1991), the Committee concludes, on the basis of the file as a whole, that it should not add Mrs X to the list of officials found to be most deserving of promotion to Grade B 3 for 1991.

However, the Committee notes with satisfaction the undertaking by DG I to include Mrs X on the list of officials *proposed* for promotion to Grade B 3 for 1992.

The Committee agrees, moreover, to pay particular attention to this file in the promotions procedure between career brackets for 1992.”

7 By a document lodged with the Court Registry on 21 January 1992 in accordance with Article 114(1) of the Rules of Procedure, the defendant raised a plea of inadmissibility against application T-89/91 alleging that the applicant had no legal interest in bringing proceedings since her complaint had been accepted.

8 On 16 March 1992 the applicant lodged her observations on that plea of inadmissibility.

9 On the same date she lodged a second application, registered as Case T-21/92, seeking annulment of the decision contained in the note of 17 December 1991. The defendant also raised a plea of inadmissibility against that application.

- 10 By letter of 16 March 1992, registered at the Secretariat-General of the Commission on 23 March 1992, the applicant lodged a complaint under Article 90(2) of the Staff Regulations disputing the decision to promote each of the persons included on the list of officials promoted to Grade B 3 for 1991, published in *Administrative Notices* No 107 of 6 January 1992.
- 11 The applicant took the view that the decisions promoting those officials had not been taken lawfully, as her name did not appear on the list of officials considered most deserving of promotion to Grade B 3, whereas her last staff report relating to the period 1987-1989 was not made available to her until after publication of that list. That delay, she argued, prevented an objective comparison of her merits with those of the officials who were promoted to Grade B 3.
- 12 As the applicant's complaint had been implicitly rejected on 23 July 1992, she lodged a third application on 22 October 1992, registered as Case T-89/92, seeking annulment of that rejection.

Procedure

- 13 By order of 16 July 1993, the Court of First Instance (Third Chamber) joined Cases T-89/91, T-21/92 and T-89/92 for the purposes of the oral procedure and, at the hearing held on 15 September 1993, having heard the parties, the Court decided to join those cases for the purposes of the judgment. Upon hearing the report of the Judge-Rapporteur, the Court put certain questions to the parties in writing concerning the course of the procedure before the promotion committee. The parties complied with the request within the time limit stipulated. By order of 10 August 1993, the Court decided to call Mr Petit-Laurent, chairman of the promotions committee, as a witness. His evidence was heard at the hearing.

Forms of order sought

Case T-89/91

14 The applicant claims that the Court should:

- annul the implied decision of the Commission to reject the complaint made by the applicant on 17 May 1991 against the decision not to include her on the list of officials most deserving of promotion to Grade B 3 in 1991;
- order the defendant to pay the costs.

15 The defendant contends that the Court should:

- dismiss the application as inadmissible;
- make an appropriate order as to costs.

16 As to the plea of inadmissibility raised by the Commission the applicant claims that the Court should:

- declare the application admissible.

Case T-21/92

17 The applicant claims that the Court should:

- annul the decision contained in the memorandum of 17 December 1991 sent to the applicant by the Director-General for Personnel and Administration;

— order the defendant to pay the costs.

18 The defendant contends that the Court should:

— declare the application inadmissible;

— make an appropriate order as to costs.

19 As to the plea of inadmissibility raised by the Commission, the applicant claims that the Court should:

— dismiss the plea of inadmissibility as unfounded.

Case T-89/92

The applicant claims that the Court should:

— annul the implied decision taken on 23 July 1992 rejecting the complaint lodged by the applicant on 23 March 1992 with the appointing authority against the promotions to Grade B 3 decided for 1991;

— order the defendant to pay the costs.

20 The Commission contends that the Court should:

— declare the application unfounded;

— make an appropriate order as to costs.

Cases T-89/91 and T-21/92

- 21 At the hearing, in reply to a question put by the Court, the applicant said that she considered the forms of order sought in Cases T-89/91 and T-21/92 to have been ‘absorbed’ by those sought in Case T-89/92.
- 22 There is accordingly no need for the Court to rule on Cases T-89/91 and T-21/92 as they have become devoid of purpose.

Case T-89/92

Pleas in law and arguments of the parties

- 23 In support of her application the applicant relies on only one plea, which falls into two parts, alleging, firstly, a breach of Article 45 of the Staff Regulations and the ‘implementing provisions contained in the decision of the Commission of 21 December 1970, amended by the decision of 14 July 1991’, in that the defendant refused to consider the comparative merits of the officials eligible for promotion and, secondly, a manifest error of assessment.
- 24 The applicant argues that the fact that her staff report was not sent to her until after the list of officials most deserving of promotion for 1991 had been drawn up renders that list unlawful. On that point, she refers to Case 24/79 *Oberthür v Commission* [1980] ECR 1743 and Case T-82/89 *Marcato v Commission* [1990] ECR II-735. She further argues that the decision not to include her on the list of officials most deserving of promotion constitutes a manifest error in the assessment of her merits in view, in particular, of the excellent staff report she received.

- 25 According to the applicant, the fact that the Commission decided to reopen the promotion procedure solely to reconsider the question of her inclusion on the list of officials most deserving of promotion does not alter the fact that the promotions procedure for 1991 was vitiated by irregularity. In the view of the applicant, such irregularity can only be corrected by reconsidering all the files of all the officials concerned, so that, in compliance with Article 45(1) of the Staff Regulations, a 'consideration of the comparative merits of the officials eligible for promotion and of the reports on them' can be undertaken, during which procedure the applicant would be on an equal footing with the other candidates.
- 26 She argues that it is doubtful whether, in the circumstances of this case, a consideration of her comparative merits and those of the other candidates can have taken place, even after the event. On that point, she explains that, at a meeting of the interdepartmental committee on 1 July 1992, her counsel pointed out that the promotion committee based its decision not only on objective criteria but also on expediency. For example, she claims that it was said both that if a division is favoured one year fewer promotions are allowed the following year and that the average age of the officials working in a particular division is a factor which is also taken into account in the decision of the promotion committee. She further points out that it became clear at that meeting of the interdepartmental committee that most of the decisions on promotion to Grade B 3 for 1991 had already been taken in March or April 1991.
- 27 She concludes that the defendant did not allow her to participate in the promotions procedure for 1991 on an equal footing with the other officials included on the list of those most worthy and did not compare their respective merits with hers.
- 28 The applicant argues that the failure to consider her comparative merits or her staff report, in breach of the rules laid down in Article 45 of the Staff Regulations, invalidates not only the individual decisions taken about her but also the decisions on promotion to grade B 3 for 1991 concerning other officials. She alleges that those

decisions affect her adversely because the promotion of the officials concerned definitively prevents any consideration of her merits with those of all the officials eligible for promotion to Grade B 3 for 1991 under conditions of strict equality of opportunity for all the officials concerned.

29 The Commission argues in reply, firstly, that the decision of 17 December 1991 did in fact correct the irregularity which vitiated the promotion procedure relating to the applicant. It argues that it quite properly 're-opened' the promotion procedure so that the promotion committee, this time with the benefit of the latest report on the applicant, could reach a decision on her inclusion on the list of officials most deserving of promotion. The promotion committee was thus in a position to assess the merits of the applicant properly. The defendant considers that it was perfectly possible to make an assessment of the comparative merits of the officials already on the list and of the applicant after the event. The task of the promotion committee was to assess the merits of the applicant in comparison with those of the officials already on the list.

30 The Commission also argues, in reply to a question put by the Court, that if the promotion committee had decided to include the applicant's name on the list and the appointing authority had decided to promote her, the fact that that decision had been taken after the other decisions on promotion would not have given rise to any obstacle in relation to the posts available under the budget for promotion to Grade B 3 for 1991. The fact that the other decisions on promotion had, at the time, already been taken did not in any way deprive the applicant of the possibility of actually being promoted.

31 On that point the Commission emphasizes the difference between the procedure for appointments and that for promotions and the distinct practical and legal requirements in each case. In the case of the procedure for appointment to a vacant post, the filling of that post obviously precludes the appointment to that post of any other employee who has applied for it, thus causing him irreparable damage. Accordingly, where there is an irregularity, annulment is the only means of

protecting the rights of the injured party. On the other hand, in the case of a promotion procedure, where an irregularity is discovered on its conclusion and where an additional promotion proves possible, as in this case, the appointing authority has the option of making good any damage suffered by the person wrongly excluded from the procedure.

- 32 Furthermore the defendant takes the view that the decisions of both the Court of Justice and the Court of First Instance, in particular in *Oberthür v Commission*, cited above, and in Case T-68/91 *Barbi v Commission* [1992] ECR II-2127, paragraph 36, preclude granting the applicant's request for the annulment of the promotions of all the officials promoted to Grade B 3 for 1991. The Commission argues that *Oberthür* lays down a principle directly contrary to the applicant's claims, namely that the annulment of an entire promotion procedure is disproportionate to the damage suffered by the victim of an irregularity.
- 33 Finally, the defendant disputes the applicant's allegations concerning the statements made at the meeting of the interdepartmental committee on 1 July 1992 to consider her complaint. The representatives of the administration confined themselves to giving a general outline of the principles governing all promotion procedures, which are based on both objective criteria such as age or seniority in grade and subjective criteria relating particularly to an assessment of the comparative merits of the officials eligible for promotion.

Findings of the Court

- 34 Both the Court of Justice and the Court of First Instance have consistently held that the appointing authority has a wide discretion in assessing the merits to take into consideration in a decision on promotion under Article 45 of the Staff Regulations and that, in this area, the review of the Community judicature is confined to determining 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 power in a manifestly incorrect way. The Court cannot thus substitute its assessment of the qualifications and merits of the

candidates for that of the appointing authority (Case 26/85 *Vaysse v Commission* [1986] ECR 3131, Case 324/85 *Bouteiller v Commission* [1987] ECR 529, Case T-25/90 *Schönherr v ESC* [1992] ECR II-63 and Case T-11/91 *Schlob v Council* [1992] ECR II-203).

35 It is clear from the statement by the Commission, which is not disputed by the applicant, that at the material time it had posts available for promotion to Grade B 3 for 1991, so that, had the promotion committee decided to include the applicant on the list of officials most deserving of promotion, there would have been no obstacle under the budget to a later decision on promotion. Accordingly, the applicant's claims for annulment are, in any event, not well founded in so far as they concern the procedure as a whole and seek the annulment of all the decisions on promotion already made which did not pose an obstacle to the promotion of the applicant.

36 As to the applicant's argument that the promotion committee was not, as a matter of course, in a position to undertake after the event the consideration of the comparative merits of all the candidates in question in accordance with the conditions laid down in Article 45 of the Staff Regulations, there is nothing to suggest that the committee was not, as a matter of course, in a position to undertake such a consideration after the event. Since, firstly, the applicant's file had been put in order in the meantime — as it had — and, secondly, the committee had available to it at its meeting on 18 December 1991 the same information on the other candidates as it had had at its previous meetings, there was nothing to prevent the committee from undertaking a proper and thorough consideration of the comparative merits of the applicant and of the other candidates whose files had already been considered.

37 It falls to the Court to consider whether this latter condition was met in this case.

38 As the applicant has argued that the committee did not properly consider her merits as required by Article 45 of the Staff Regulations at the meeting on 18 December 1991, the Court must decide whether that claim is true. With this end in view and pursuant to Article 68 of the Rules of Procedure, the Court ordered Mr Petit-Laurent, chairman of the promotion committee at the material time, to attend the hearing as a witness.

39 It is clear from his evidence that the meeting of 18 December 1991 followed the usual pattern of meetings of the promotion committee. In particular, the committee heard evidence from a representative of the Director-General for External Relations, under whose authority the applicant was working.

40 It is also clear from that evidence that the members of the committee had direct access to the personal files of each of the 413 staff eligible for promotion including those of the 85 staff who had already been promoted. Furthermore, the committee had at its disposal the same background documentation as had been available to it at its meetings in January and February 1991.

41 With respect to the documentation available to the committee at its meeting of 18 December 1991, Mr Petit-Laurent stated:

‘There was also more detailed documentation. There was the file as it had developed in the meantime, including staff reports, the report for 1985-1987 on Mrs X and the new report for 1987-1989. At the request of the committee, there were the five staff reports on the five officials proposed by the Directorate-General for External Relations and, at my request, there was a systematic analysis, drawn up by the secretarial staff of the committee, of the objective, quantitative data in the staff reports on the 85 staff promoted for that year. Thus, a relatively solid body of documentation, which, in any event, included the same basic components as were available for the earlier discussions of the committee for 1991.’

42 In reply to the Court's question whether the committee really did consider the comparative merits in the files at its meeting on 18 December, the witness said:

'For practical reasons the committee did not examine the 413 files of all those eligible for promotion. It concentrated ... on the 85 files of those already promoted and on the five files proposed by DG I, which were felt to be the most important. In terms of comparative merits, Mrs (X) must be assessed in the whole context of the rest of the officials eligible for promotion.

The committee drew preliminary conclusions from this exercise, which, in its opinion, pointed to the conclusions to be drawn from a comparison with all those eligible for promotion, since those promoted, who were, in theory, the best, were taken into consideration as a matter of priority throughout this exercise of comparison.

...

I was, of course, also aware of the information in the staff report on Mrs (X), who had nine assessments of "excellent" and five of "very good". I was thus perfectly able, along with my colleagues on the promotion committee, to assess Mrs (X)'s performance in relation to the performance of the other eligible officials who were proposed and of those promoted ...'

43 On the subject of the evidence given by the representative of the Directorate-General for External Relations, the witness said:

'The committee took care to assess the comparative merits of Mrs (X) and her other colleagues on the basis of two sources of information. The first source of information, which has just been mentioned, was the comparative analysis of the staff report on Mrs (X) and those on her colleagues. But there was another source of information which had to be taken into account, in view of what I would call, and I use the term advisedly, Mrs (X)'s very unusual administrative position. That

aspect was the main focus of the committee's discussions and of the discussion with the Director-General's assistant.'

- 44 In this connection the witness said that the promotion committee had a systematic policy of hearing the representatives of the Directorates-General which proposed promotions.
- 45 In reply to a question regarding the criteria on the basis of which the committee took its decision not to include the applicant on the list of officials most worthy of promotion, the witness said:

'The committee made every effort to compare the respective merits of Mrs (X) and her colleagues eligible for promotion for 1991 on the basis of two main considerations.

The first was the comparison, on the basis of staff reports, of the most easily comparable objective data in those reports, concentrating ... on the position of the 85 promoted officials already chosen and singled out and the position of the five officials proposed. This first aspect was considered and led the committee to take the view that, overall, the relative position of Mrs (X) was rather good, indeed very good, compared to that of the 85 promoted and the five proposed.

The committee found that only eight of the 85 promoted had a score equal to or higher than that of Mrs (X) and that, of the five proposed by DG I, only two had a higher score, and, of the two promoted, only one had a higher score. Therefore, consideration of the purely quantitative aspects of the staff report led the committee to favour her inclusion on the list of those most deserving of promotion. Obviously, no committee makes a decision solely on the basis of mathematical data, nor did this one in this case or in any other case... It has to note, first of all, that 411 people eligible for promotion are not assessed by a single individual. Consequently the committee has to make a judgment across the board going beyond the results of a purely mechanical or mathematical approach.

The committee therefore felt it appropriate to take a further set of data into account. These relate to what I called a moment ago, using the term advisedly, a “very unusual” situation. I emphasize the words “the very unusual administrative position of Mrs (X)”, a position set in a context which is quite unique in psychological, human and, indeed, medical terms, which determines the atypical nature of her relations with her institution.

Consideration of this aspect dominated the discussions on the case of Mrs (X). Following lengthy deliberations resulting in unanimity — I would stress that the committee is a joint body — the committee reached conclusions on the basis of these two aspects considered together: the favourable outcome of a quantitative analysis of the staff reports and the doubts over the psychological, medical, human and social background.

Its conclusions were twofold. Firstly, it decided to qualify the favourable effect of the staff report which in other circumstances would have led the committee to propose the inclusion of Mrs (X) on the list of those most deserving of promotion. It was qualified by delaying its effect in that the committee proposed not to include Mrs (X) on the list of those most deserving of promotion for 1991 but took note of, and insisted on, the Directorate-General’s commitment to propose her for the following year. This commitment was followed up over the next two budgetary years with the result that Mrs (X) was promoted this year under the procedure for 1993.

...

In other words, the committee felt it had to reconcile its duty to treat Mrs (X) and all others eligible for promotion fairly with its duty to have regard for the welfare of officials when faced with a fairly dramatic case in human terms. It thus reconciled the formal requirements of the Staff Regulations with a human situation which it could not but take into consideration.’

The witness added that in his opinion 'the current administrative position of Mrs (X) in 1993, being, on the one hand, promoted, but, on the other hand, on compulsory sick leave as of 17 March, explains .. the difficult balance which the B promotion committee endeavoured to reach and achieve in its deliberations in December 1991'.

- 46 In reply to a question concerning the objective data available to the promotion committee regarding the applicant's personal situation, Mr Petit-Laurent said that '... Mrs (X)'s situation was well known to the administration, her superiors, the medical service and the Staff Ombudsman ... I should add that Mrs (X), on her own initiative and on several occasions, manifestly wished to make her colleagues and superiors, from President Delors downwards, aware of her particular position. She did so in very lengthy open letters, reading which, I think, sufficiently illuminates her unusual position'.
- 47 On the basis of this evidence, which is not contradicted by the other documents before it, the Court takes the view that it has been sufficiently proven that the consideration undertaken by the promotion committee at its meeting on 18 December 1991 was carried out with the diligence required by Article 45 of the Staff Regulations and by the principle of sound administration.
- 48 In order to comply with the first subparagraph of Article 45(1) of the Staff Regulations, the criteria to be taken into account in considering applications for promotion are 'the comparative merits of the officials eligible for promotion and ... the reports on them'.
- 49 Accordingly, in making the choice which is to serve as a basis for the decision to be taken by the appointing authority under that article, the promotion committee is not bound to rely solely on the staff reports of those concerned but may also base its assessment on other aspects of the merits of the candidates.

50 In this case, it is clear from the evidence cited above that in its assessment the promotion committee took account not only of the staff reports on the candidates but also of other information relating to the administrative and personal position of the applicant, which qualified the assessment made solely on the basis of the staff reports.

51 In the light of all these factors, in particular the evidence of Mr Petit-Laurent, the Court finds that nothing in the documents before it suggests a breach of Article 45 of the Staff Regulations or a manifest error of assessment on the part of the promotion committee — whose conclusions were the basis for the decision of the appointing authority.

52 In the light of the foregoing, the application in Case T-89/92 must be dismissed.

Costs

Cases T-89/91 and T-21/92

53 Under Article 87(6) of the Rules of Procedure, costs are at the discretion of the Court where a case does not proceed to judgment. In Case T-89/91, it is clear from the file that the application was lodged as a result of the Commission's delay in forwarding the staff report on the applicant for 1987-1989 to the promotion committee and its delay in responding to the applicant's complaint. In those circumstances, the Court takes the view that the Commission should pay all the costs relating to that application.

54 In Case T-21/89, the applicant contested the measure by which the administration informed her of its decision to reopen the promotion procedure to remedy the defect with which it was tainted. As the Commission had thereby accepted the applicant's complaint, that decision could in no way affect her adversely. The Court

therefore takes the view that the applicant should pay her own costs. Accordingly, the parties must each pay their own costs in this case, in accordance with Articles 87(3) and 88 of the Rules of Procedure.

Case T-89/92

55 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. Accordingly the parties must be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Declares that there is no need to give a decision in Cases T-89/91 and T-21/92;
2. Dismisses application T-89/92;
3. Orders the Commission to pay all the costs in Case T-89/91;
4. Orders the parties to bear their own costs in Cases T-21/92 and T-89/92.

García-Valdecasas

Vesterdorf

Biancarelli

Delivered in open court in Luxembourg on 25 November 1993.

H. Jung

R. García Valdecasas

Registrar

President