

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
30 November 1993^{*}

In Case T-78/92,

Aristotelis Perakis, an official of the European Parliament, residing at Rameldange, Luxembourg, represented by Charisios Tagaras, of the Thessalonika Bar, with an address for service in Luxembourg at the Chambers of Évelyne Korn, 21 Rue de Nassau,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by Christian Pennera and Jannis Pantalis, of its Legal Service, acting as Agents, with an address for service at the Secretariat of the European Parliament,

defendant,

APPLICATION for the annulment of the European Parliament's decision rejecting the applicant's candidature for the post of Head of the Greek Translation Division, declared vacant on 8 July 1991, and of its decision appointing another candidate to that post,

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

composed of: C. W. Bellamy, President, A. Saggio and C. P. Briët, Judges,

Registrar: J. Palacio González, Administrator,

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

gives the following

^{*} Language of the case: Greek.

Judgment

Facts and procedure

1 The applicant, Aristotelis Perakis, joined the staff of the European Parliament as a translator on 1 January 1981. By decision of 25 February 1985, he was promoted to Grade LA 4 as a reviser. He is attached to the Greek Translation Division, within the Directorate-General for Translation and General Services (DG VII).

2 By Vacancy Notice No 6776 of 8 July 1991, the appointing authority opened the procedure for filling the post of Head of the Greek Translation Division, initially by promotion or transfer. Seven candidatures, including the applicant's, were declared admissible for promotion to the post.

3 The candidatures were examined by Mr Wilson, Director of Translation ('the Director'), who met and spoke with five of the seven candidates, including Mr Perakis. As regards the other two candidates, who were on annual leave, he spoke to them by telephone. Following that comparative consideration, the Director sent an opinion to Ms De Enterria, Director General for Translation and General Services ('the Director General'), in which he suggested that one of those candidates, Mr K., should be appointed to the vacant post. In his opinion, he made the following observation regarding Mr Perakis: 'He was one of the first revisers in the division and played a full management role during the initial years when the division experienced some teething troubles. He has some years' experience in the Minutes Service. Since his return to the division, he has played no part in the allocation of work, nor has he been head of team in Strasbourg, following a disagreement with his head of division. He has sat on several selection boards. He seems to have organizational abilities, even if his more recent interventions in that field have not been particularly appropriate. He would be a controversial candidate at a time when the division needs rather to allay certain past conflicts.' The Director General interviewed four of the seven candidates (Mr K., Mr D., Mr M. and Mr P.). The applicant was not invited to such an interview. Following her examination of the applications, the Director General submitted an opinion to the Director General for

Personnel, Budget and Finance. She analysed the respective merits of the candidates and, in particular, confirmed the Director's assessment of Mr Perakis's candidature: 'Mr Perakis was one of the first revisers in the division and played a full management role during the initial years when the division experienced some teething troubles. He has some years' experience in the Minutes Service. Since his return to the division, he has not taken any part in the allocation of work nor has he acted as head of team in Strasbourg. He has sat on several selection boards. His experience should have given him organizational abilities, but his more recent interventions in that field have not been particularly appropriate and have cast serious doubt on his abilities and his spirit of cooperation.' She suggested, finally, that the candidate proposed by the Director should be appointed to the vacant post. A file containing the Director General's opinion and a list of the assessments contained in all the candidates' periodical reports was sent to the Secretary General of the Parliament, who submitted a proposal to the President of the Parliament, the appointing authority, recommending the appointment of the same candidate. The above file was sent with that proposal. By decision of 5 November 1991, the President promoted Mr K. to the post of Head of the Greek Translation Division. On 27 November 1991, Mr Perakis received a standard form notifying him of the rejection of his candidature and, on 27 January 1992, staff at the Parliament were informed of the decision appointing Mr K. to the post through the noticeboard.

- 4 On 24 February 1992, Mr Perakis lodged a complaint against those two decisions rejecting his candidature and appointing Mr K. His complaint was rejected by decision of the President of the Parliament of 25 June 1992.
- 5 By application lodged at the Registry of the Court of First Instance on 24 September 1992, Mr Perakis sought the annulment of the decisions rejecting his candidature and appointing Mr K. to the post of Head of the Greek Translation Division. Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. The hearing took place on 15 July 1993.

Forms of order sought

- 6 In his application, the applicant claims that the Court should:

- annul the contested decisions of the Parliament;
- order the Parliament to pay him 1 ECU as compensation for non-material damage and, in the alternative (if the contested decisions are not annulled), BFR 200 000;
- order the defendant to pay the costs.

In his reply, regarding his claim for compensation, the applicant claims that the Court should:

- order the European Parliament to pay him BFR 100 000 as compensation for non-material damage and, in the alternative (if the contested decisions are not annulled), BFR 300 000.

The defendant contends that the Court should:

- rule the action unfounded;
- dismiss the claims for compensation for non-material damage;
- rule on costs in accordance with the applicable provisions.

The claim for annulment

7 In support of his claim for annulment, the applicant puts forward four pleas in law: breach of the principle of equal treatment for officials in relation to the right to be heard, infringement of the right to a fair hearing and of Article 26 of the Staff Regulations of Officials of the European Communities concerning officials' personal

files, non-compliance with Article 45 of the Staff Regulations requiring consideration of the comparative merits of officials for the purposes of promotion and, finally, an inadequate statement of reasons.

Breach of the principle of equal treatment for officials in relation to the right to be heard

Arguments of the parties

- 8 In his first plea, the applicant maintains that the fact that, unlike other candidates, he did not have a discussion with the Director General ‘deprived him of the opportunity to put forward his merits and abilities and to defend his candidature before the person best qualified to take a decision regarding the promotion in issue’.
- 9 That failure on the part of the administration constitutes, in the applicant’s view, a breach of the principle of equal treatment in relation to the right to be heard and an infringement of the right to be heard itself. The applicant cites Case T-52/90 *Volger v Parliament* [1992] ECR II-121, in which the Court held that the fact that a candidate was excluded from interviews with the head of the service concerned, stipulated by the appointing authority in the context of a transfer/promotion procedure, had denied him ‘the guarantee of a comparative consideration of his candidature by the appointing authority’ (paragraph 29).
- 10 In the present case, the applicant alleges that the decisive stage in the selection procedure took place before the Director General. That was the highest hierarchical level at which it was possible to determine whether the principle of equal treatment and the right to be heard were respected, since the Secretary General did not interview any of the candidates. Furthermore, both the Secretary General when he submitted his proposal to the President and the President himself when he adopted the promotion decision relied to a very large extent on the opinion of the Director General. In the alternative, the applicant claims that even on the assumption, which he challenges, that the interviews with the Director also formed part of the

procedure, the administration still disregarded the principle of equal treatment by excluding him from the interviews with the Director General, on the very basis of the opinion put forward by the Director in what he considers to have been irregular circumstances, since two of the candidates had been interviewed only by telephone. Furthermore, the applicant stated at the hearing, without being contradicted by the Parliament, that candidates whose staff reports were less favourable than his own had an interview with the Director General.

- 11 The Parliament contends that this first plea is ill founded. In the course of the selection procedure, it claims, all the candidates were heard by the competent hierarchical authority. The Director gave each of the candidates an interview, even contacting by telephone two of them who belonged to his administrative unit and were at the time on leave outside Luxembourg. The Parliament states that candidates' merits are assessed in the first place within the service concerned and that all the hierarchical superiors whose views are required take part in the promotion procedure, their service grade being irrelevant to the validity of their discussions with the candidates. It points out, moreover, that the choice of one or another of the candidates could have changed at each step in the comparative consideration of the candidatures, even before the appointing authority.

- 12 The Parliament further argued at the hearing that even if the applicant was apparently treated differently from those candidates who were invited an interview with the Director General, he has not shown that he could have put forward on such an occasion any specific additional points which might have changed the assessment of his candidature.

Findings of the Court

- 13 The first subparagraph of Article 45(1) of the Staff Regulations provides that promotion 'shall be exclusively by selection from among officials who have completed a minimum period in their grade, after consideration of the comparative merits of the officials eligible for promotion and of the reports on them'.

- 14 It is thus clear from that provision that in a promotion procedure or, by analogy, a transfer procedure, the appointing authority must take into consideration the periodical reports and the respective merits of the candidates eligible for promotion. It is settled law that for that purpose it has the power under the Staff Regulations to undertake that comparative consideration in the manner it considers most appropriate (see, in particular, Case 62/75 *De Wind v Commission* [1976] ECR 1167, paragraph 17, and Case T-53/91 *Mergen v Commission* [1992] ECR II-2041, paragraph 30).
- 15 In particular, both the appointing authority and the various hierarchical superiors consulted in the course of the promotion or transfer procedure in question must consider at each stage in the examination of the candidatures whether it is necessary to obtain further information or form further assessments through interviews with all the candidates or only with some of them, in order to be able to reach a decision in full knowledge of the facts. That discretion was recognized by the Court of Justice in Case 111/83 *Picciolo v Commission* [1984] ECR 2323, paragraphs 10 to 13, in the context of a recruitment or transfer procedure and the administration must *a fortiori* be allowed such a discretion in a promotion or transfer procedure where, as in the present case, the candidates are already in the service of, and known to, the institution concerned. In principle, candidates cannot therefore claim an automatic right to an interview. It is only where the appointing authority has specifically decided to make its choice following, *inter alia*, interviews held with all the candidates by a senior official in the service where the post is vacant that it must ensure that each candidate has such an interview during the course of the procedure, so that it can examine each candidature effectively in the light of all the factors on which it intended to base its choice, as is clear from the judgment in *Volger*, paragraphs 27 and 29.
- 16 However, the discretion thus allowed to the administration is circumscribed by the need to undertake a comparative consideration of candidatures with care and impartiality, in the interest of the service and in accordance with the principle of equal treatment for officials, expressed in general terms in Article 5(3) of the Staff Regulations: 'Identical conditions of recruitment and service career shall apply to all officials belonging to the same category or the same service'. In practice,

consideration of the comparative merits of candidates must therefore be undertaken on a basis of equality, using comparable sources of information, as the Court of Justice held in Case 97/63 *De Pascale v Commission* [1964] ECR 515, at p. 527.

17 In the present case, therefore, it must be determined whether, in the light of those principles, the examination of the applicant's candidature was vitiated, as he contends, by the fact that, unlike four of the six other eligible candidates, including the candidate finally promoted, he did not have an interview with the Director General. It must thus first be established whether the appointing authority intended each candidate to have an interview with the Director General, as part of the procedure which it had defined for the comparative consideration of the candidatures. If not, it must still be determined whether the applicant's candidature was examined by the Director General in a non-discriminatory manner, that is to say on the basis of information and assessment criteria comparable to those on which she based her assessment of the four candidates whom she interviewed.

18 First, as to whether the procedure laid down by the appointing authority for examining candidatures was properly followed in the applicant's case, there is nothing in the documents before the Court to warrant an assumption that the appointing authority intended to base its assessment of the comparative merits of the candidates in particular on interviews held with each of them by the Director General. In that regard, the facts here differ from those in *Volger*, on which the applicant relies. In the present instance, it is clear from the decision of the President of the Parliament of 25 June 1992 rejecting the complaint that the appointing authority took the contested decisions in accordance with the procedure which it intended to follow, that is to say following a proposal submitted by the Secretary General after consulting the officials in charge of the service in which the post was to be filled, namely the Director of Translation and the Director General of Translation and General Services. In that same decision, the appointing authority specifically stresses that the Director heard all the candidates in the course of the procedure in question. So, quite conversely, it is clear that the absence of any reference, in the reply to the complaint, to a discussion with the Director General confirms that the appointing authority had not intended all those concerned to be interviewed by her. It was therefore for the Director General alone to decide whether it would be useful to interview any particular candidate in order to obtain further information for assessment.

19 Secondly, therefore, it must be determined whether the applicant's candidature was examined by the Director General on the basis of information comparable to that which she had on the candidates whom she did interview, such as Mr K., the candidate finally promoted. It is clear from the documents before the Court that she was able to base her assessment on the opinion expressed by the Director after interviews with all the candidates, including the applicant, and, where appropriate, on a comparative consideration of their periodical reports or personal files, which were available to her. On the basis of that evidence, she was able to judge whether it was necessary to interview certain candidates in order to obtain fuller information or, as the Parliament expresses it in the defence 'to determine more specifically the Director's proposal'. In accordance with the principles set out above, the Director General enjoyed a discretion in taking that decision and was not obliged to base her views exclusively on the assessments in the candidates' periodical reports, as is explicitly clear from the wording of Article 45(1) of the Staff Regulations. Thus, contrary to the applicant's argument, the Director General could legitimately consider that certain candidates who had received assessments less favourable than his own should be interviewed. She could also consider, without overstepping the bounds of her discretion, that she had sufficient information concerning the applicant.

20 In the light of the principles inherent in the operation of any hierarchical administrative structure and of the administration's autonomy as to the organization and operation of its services, the Director General was normally justified in basing her view in particular on the Director's opinion as regards the candidature of the applicant, who was on the staff of his directorate and for whom he was the appeal assessor. The Director General cannot in any event be criticized for having taken that — non-binding — opinion into consideration and having undertaken her comparative consideration of the candidatures on that basis. Nor can the applicant's alternative argument, that the Director General could not exclude him from interviews on the basis of the Director's opinion because the Director's interviews of two of the candidates had taken place over the telephone, be accepted; the applicant, who had himself had a meeting with the Director, has no interest in arguing that other candidates did not have such a meeting, since that circumstance could in no way have been to his detriment or, consequently, influenced the contested decisions.

- 21 The argument underlying the applicant's contention that an interview with the Director General would have enabled him not only to support his candidature but also to put right certain decisive points which, he claims, were wrongly presented in the Director's opinion and reiterated by the Director General in her own opinion overlaps with the second plea, alleging infringement of the right to a fair hearing and of Article 26 of the Staff Regulations, and will therefore be examined together with that second plea.
- 22 Consequently, it cannot be held that, because the applicant did not have an interview with the Director General, his candidature was examined in a manner which discriminated against him in relation to the candidates who were invited to such an interview. The first plea, alleging breach of the principle of equal treatment of officials in relation to the right to be heard, must therefore be dismissed as unfounded.

Infringement of the right to a fair hearing and of Article 26 of the Staff Regulations

Arguments of the parties

- 23 In support of his second plea, the applicant maintains, in the application, that he was not invited to an interview with the Director General because of certain unfavourable assessments of his professional ability. Not knowing the sources or evidence on which those assessments were based, he was unable to refute them. The contested decisions should therefore be annulled because they were adopted in infringement of his right to a fair hearing.
- 24 In his reply, the applicant claims that it is clear from the defence that the Director and the Director General expressed unfavourable assessments of him, at odds with his last two periodical reports. The opinions in which those assessments, relating in particular to his organizational abilities, were expressed were not notified to him before the defence was lodged and were not placed on his personal file, contrary to Article 26 of the Staff Regulations. Those opinions cannot, therefore, be used against him. The applicant concludes that the contested decisions, which he claims

were based on the same opinions, must be annulled in accordance with the principles expressed by the Court of Justice in Case 21/70 *Rittweger v Commission* [1971] ECR 7, paragraphs 39, 40 and 41.

- 25 The Parliament considers that those opinions are preparatory documents, internal to the promotion procedure. Their effects are confined to that procedure and thus the assessments they contain do not fall under Article 26 of the Staff Regulations. Those assessments form an inseparable whole and are not to be communicated to the officials concerned, in order to preserve the confidentiality necessary in the interest both of the proper operation of the service and of the candidates themselves.

Findings of the Court

- 26 Article 26 of the Staff Regulations provides that an official's personal file is to contain '(a) ... all reports relating to his ability, efficiency and conduct' and '(b) any comments by the official on such documents'. Furthermore, 'the documents referred to in subparagraph (a) may not be used or cited against an official unless they were communicated to him before they were filed'. Under Article 43 of the Staff Regulations, the periodical report on the ability, efficiency and conduct in the service of each official is to be communicated to the official, who is 'entitled to make any comments thereon which he considers relevant'.
- 27 It is settled law that the purpose of those provisions is to guarantee an official's right to a fair hearing by ensuring that decisions taken by the appointing authority affecting his administrative status and his career are not based on matters concerning his conduct which are not included in his personal file. Consequently, a decision based on such matters is contrary to the guarantees contained in the Staff Regulations and must be annulled because it was adopted on the basis of a procedure vitiated by illegality (see *Rittweger*, cited above, paragraphs 29 to 41, Case 88/71 *Brasseur v Parliament* [1972] ECR 499, paragraphs 9, 10 and 11, Case 233/85 *Bonino v Commission* [1987] ECR 739, paragraph 11, and Case T-82/89 *Marcato v Commission* [1990] ECR II-735, paragraph 78).

- 28 Those provisions therefore do not in principle cover opinions of hierarchical superiors consulted in the course of a promotion or transfer procedure. Such opinions are not to be notified to the candidates concerned, since they contain only a comparative assessment of their qualifications and merits, based on factual considerations mentioned in their personal file or notified to them, so that those concerned have thus already had an opportunity to make any comments. The scope of those opinions is therefore confined to the appointment procedure in question. They reflect the discretion which the administration enjoys in the matter and do not fall under the rules laid down in Article 26 of the Staff Regulations, which seek to guarantee an official's right to a fair hearing and thus enable the administration to reach a decision in full knowledge of the facts.
- 29 That is not the case, however, where such opinions also contain, in addition to the assessments involved in the comparative consideration of candidatures, references to a candidate's ability, efficiency and conduct not previously included in his personal file. Where that is the case, Article 26 of the Staff Regulations requires the administration to include that information in the official's personal file, as the Court of Justice held in *Bonino*, paragraph 12. However, it has consistently been held that a failure to notify such assessments to the official so that he may make any comments thereon cannot vitiate decisions rejecting his candidature and appointing another candidate unless they 'had a decisive influence on the choice made by the appointing authority' (see *Rüttweger*, paragraph 35, and *Brasseur*, paragraph 18). It is for the administration to demonstrate that such failure had no decisive influence on the choice made by the appointing authority.
- 30 In the light of those principles, it must be determined in the present case whether, as the applicant maintains, the contested decisions were vitiated by the fact that the opinions of the Director and the Director General were not placed on his personal file or notified to him before those decisions were adopted. It must therefore be established whether those opinions contained factual references to the ability, efficiency or conduct of the applicant which were not mentioned in his personal file and, if so, whether those references in fact had a decisive influence on the content of the contested decisions.

- 31 In this case, the opinions in question did include certain factual references to the ability and conduct of the applicant which had been neither included in his personal file nor brought to his notice before the contested decisions were adopted. With particular regard to his organizational abilities, both the Director and the Director General stated in their opinions that 'his ... interventions in that field ha [d] not been particularly appropriate' and the Director General added that they had 'cast serious doubts on his abilities and his spirit of cooperation'. On examination, however, it is clear that those facts were not mentioned in the applicant's file.
- 32 By failing to communicate those matters to the applicant and to include them in his personal file, therefore, the Parliament infringed Article 26 of the Staff Regulations.
- 33 In order to determine whether that irregularity vitiated the contested decisions, it must now be considered whether those matters, which were unfavourable to the applicant, had a decisive influence on the rejection of his candidature and the appointment of Mr K.
- 34 An examination of the documents before the Court and in particular of the periodical reports shows that a comparison between the respective assessments of the applicant and the candidate promoted in their periodical reports is enough to justify the administration's preference for the latter at each stage of the procedure in question. It is explicitly clear from the decision of 25 June 1992 rejecting the complaint that the appointing authority's choice was based essentially on a comparative examination of the periodical reports. In that decision, the appointing authority stated that the Director and then the Director General had carried out a detailed, thorough and comparative analysis of those reports, and indicated that it had appeared at that point that, irrespective of the merits and personal knowledge of the applicant, his periodical report was not as good as that of several other candidates who more adequately met the conditions and qualifications required by Vacancy Notice No 6776. In the defence, it was stated that the overall mark given to the promoted candidate in his periodical reports for the two reference periods

1987-1988 and 1989-1991 was on each occasion two points higher than that of the applicant. With more particular regard to certain marking categories which were decisive in this case in view of the qualities required of a head of division, the Parliament's answers to the questions put by the Court at the hearing indicate that, under the heading 'Human relations: ability to work in a team, team spirit; ability to have confidence in and give responsibility to subordinates', Mr K. was given the assessment 'excellent' and the applicant 'very good'. The same was stated to be true for the headings 'Professional conscientiousness: sense of responsibility, compliance with rules in force and instructions received, punctuality' and 'Comprehension and judgment', for both of which Mr K. received the assessment 'excellent' and the applicant 'very good'. Only under the heading '(General and professional) knowledge relevant to the post' was the applicant's assessment ('very good') higher than that ('good') of the promoted candidate. A heading-by-heading comparison of the periodical reports of the applicant and the promoted candidate, taken together with the overall number of points awarded, was therefore sufficient to justify the preference for Mr K. Consequently, the assessments of the applicant's organizational abilities in the opinions of the Director and the Director General did not have a decisive influence on the choice made by the appointing authority. The fact that they were not placed on his personal file or communicated to him cannot, therefore, vitiate the validity of the contested decisions.

35 It follows from all of the foregoing that the second plea, alleging infringement of the right to a fair hearing and of Article 26 of the Staff Regulations must be dismissed in so far as it is put forward in support of the claim for the annulment of the decisions rejecting the applicant's candidature and appointing another candidate.

Irregularity of the comparative consideration of the applicant's candidature

Arguments of the parties

36 In his third plea, the applicant alleges that the appointing authority misapplied Article 45 of the Staff Regulations, relating to the consideration of the comparative merits of officials in the context of a promotion procedure. He claims that the breach of the principle of equal treatment for officials and the infringement of the

right to be heard and of Article 26 of the Staff Regulations 'by definition give rise also to an infringement of the provision relating to the consideration of the comparative merits of officials, since such consideration is *ipso facto* impossible in the absence of equal treatment and where the candidates are not heard'.

37 The applicant further claims, in the alternative, that Article 45 of the Staff Regulations was infringed by reason of manifest error in the assessment of his organizational experience, his linguistic knowledge and his seniority in Grade LA 4.

38 He points out that his organizational experience — of particular importance for the post to be filled — is clear from the duties which he carried out for three years, from 1985 to 1988, as 'head of team' in the 'Minutes' Division and from the fact that he was in charge of the Greek translation team on some 40 occasions during parliamentary sessions in Strasbourg. The candidates heard by the Director General, in particular Mr K., do not, in the applicant's submission, have similar experience.

39 Regarding his linguistic knowledge, the applicant alleges that the contested decisions did not take account of the fact that he uses five languages whereas the candidate actually promoted uses only three.

40 Finally, he had 20% more seniority in Grade LA 4 than the four candidates seen by the Director General.

41 The applicant acknowledges that his superiority in those three areas could have been cancelled out by the content of the periodical reports if Mr K.'s report had in fact been much more favourable than his own, but states that that was not the case. In those circumstances, the applicant considers that the administration was manifestly in error in its comparative consideration of the candidatures, by taking no account either of the minimal difference between the number of points given to the

successful candidate (59) and the number which he himself received (57) or of the existence of known differences of opinion between the applicant and the author of those reports.

- 42 The Parliament rejects those arguments. It states that the applicant's periodical report is two points lower than that of the successful candidate and that it was after a thorough, detailed and comparative analysis of the periodical reports that the appointing authority decided that another candidate, Mr K., was more suitable for the post in question.
- 43 Regarding the allegedly minimal difference between the periodical reports, the Parliament points out that 'a difference of two points is quite sufficient to confirm the appointing authority's choice, especially since (such a choice) is justified in terms of the qualifications, knowledge and conditions required in the notice of vacancy'. It submits that the applicant has provided no proof of his greater organizational experience, not having been called upon to deputize for the head of division in recent years, unlike Mr K. Finally, Mr K. met the conditions relating to linguistic knowledge laid down in the notice of vacancy.

Findings of the Court

- 44 The claim that the comparative consideration of the candidatures was vitiated by the fact that the applicant was neither heard personally by the Director General nor informed before the contested decisions were adopted of the opinions concerning him expressed by his hierarchical superiors overlaps with the first two pleas put forward in support of his application for annulment. Those two pleas having been held unfounded, that claim must also be rejected for the same reasons.
- 45 With regard to the second, alternative, complaint that the contested decisions are vitiated by a manifest error of assessment, it must be borne in mind that the appointing authority has consistently been held to enjoy a wide discretion in

assessing the interests of the service and the suitability of candidates to occupy a vacant post in the context of a transfer or promotion procedure. The Court's review must therefore be restricted to considering whether, having regard to the considerations which may have influenced it in making its assessment, the appointing authority has not used that discretion in a manifestly incorrect way (see, in particular, Case 306/85 *Huybrechts v Commission* [1987] ECR 629, paragraph 9, *Bonino*, cited above, paragraph 5, and Case T-11/92 *Schlob v Council* [1992] ECR II-203, paragraph 51).

46 In the present case, it is clear from its reply to the complaint and from its observations before the Court that the Parliament relied mainly, in making its choice, on a thorough comparative consideration of the candidates' periodical reports at each stage in the procedure. The appointing authority was moreover entitled to consider, in the exercise of its discretion, that Mr K. was better qualified in organizational matters than the applicant, who does not deny that, unlike the successful candidate, he had not been called upon to deputize for the head of division in recent years. Nor is there anything in the file to suggest that in its examination the administration took no account of the applicant's language qualifications, of the fact that he had acted as 'head of team' or of his seniority. On the contrary, it is clear from the reply to the complaint and from the parties' observations before the Court that the appointing authority took the applicant's merits, which it does not deny, into consideration but none the less considered that Mr K. was the candidate best suited for the post in question. Nor has the applicant adduced any evidence casting doubt on the abilities of the successful candidate. The Court therefore finds, without there being any need to examine the parties' arguments in any further detail, that the above considerations on which the appointing authority based its choice do not go beyond the bounds of its power of assessment.

47 The contested decisions cannot, therefore, be considered to be vitiated by a manifest error of assessment. The third plea in law must thus be dismissed as unfounded.

Inadequate statement of reasons

Arguments of the parties

- 48 In his fourth plea, the applicant states that the Parliament's reply to his complaint does not indicate the reasons for the rejection of his candidature. Article 45(1) of the Staff Regulations requires the administration to select candidates on the basis of consideration of two criteria: the comparative merits of the officials eligible for promotion and the reports on them. As regards the first criterion, the Parliament merely dismisses certain of the applicant's arguments as irrelevant, without even mentioning the others. As regards the second criterion, it confines itself to stressing that the applicant's report was less favourable than those of several other candidates, but does not identify them.
- 49 The Parliament considers that the reply to the complaint was sufficient for the applicant to decide whether the rejection of his candidature was justified and whether to bring an action.

Findings of the Court

- 50 In a decision rejecting a candidature, or at least in its rejection of a complaint against that decision, the appointing authority is obliged to state its reasons. It is settled law that, since promotions are made by selection, it is enough that the reasons given relate to the existence of the legal conditions which the Staff Regulations lay down as a prerequisite for a lawful promotion.
- 51 In the present case, the decision of the President of the Parliament of 25 June 1992 rejecting the applicant's complaint contained a sufficient statement of the grounds on which it was based. The appointing authority explicitly stated that it had made its selection on the basis of a thorough and detailed comparative consideration of the candidates' periodical reports and respective merits. It further specified that the applicant's periodical report was less favourable than those of several other

candidates who more adequately met the conditions and qualifications required in the vacancy notice. That statement of reasons was sufficient to enable the applicant to decide whether to bring an action before the Court and the Court to exercise its power of review. Contrary to what the applicant argues, the appointing authority was under no obligation whatever, when stating the reasons for its decision, to give any more specific details of the results of its comparative consideration of the candidatures.

52 In addition, and in any event, even on the assumption that the statement of the reasons for the decision rejecting the complaint was inadequate — which was not the case — it is settled law that the institution could have expanded on those reasons by giving further explanation before the Court following the introduction of this action (see, in particular, Case C-343/87 *Culin v Commission* [1990] ECR I-225, paragraph 15, and *Schloh*, cited above, paragraph 85). In the present case, the adequate reasons given in the reply to the complaint were also enlarged upon to a considerable extent before the Court, in particular in the Parliament's answers to the Court's questions concerning the analytical assessments in the periodical reports on both the applicant and the successful candidate.

53 The fourth plea, alleging an inadequate statement of reasons, must therefore be dismissed as unfounded.

54 It follows from all of the foregoing that the application for annulment cannot be allowed.

The claims for compensation

Arguments of the parties

55 The applicant states that the contested decisions have caused him non-material damage both within the division and in his relations with his superiors. In his application, therefore, he seeks an order against the Parliament to pay him symbolic damages of 1 ECU if those decisions are annulled.

- 56 In the alternative, the applicant seeks an order against the Parliament to pay him BFR 200 000 in compensation for the non-material damage suffered as a result of the irregularities in the administration's conduct of the procedure for appointing the head of division, even if those irregularities do not lead to the annulment of the two contested decisions. He maintains, in particular, that by arbitrarily excluding him from interviews with the Director General, the Parliament acted in breach of the principle of equal treatment, of his right to a fair hearing and of the principle of sound administration, and abused its powers. That exclusion had a seriously adverse effect on his standing and gave rise to considerable difficulties in his working relationships.
- 57 In the further alternative, even if none of the circumstances giving rise to liability listed in the previous paragraph were to be held proven, the applicant stresses that the Parliament failed to comply with its duty to assist officials under Article 24 of the Staff Regulations. Under that article, he submits, the administration must include in periodical reports observations which can 'effectively help the official concerned to improve his performance in the service'. In the present case, his report for the reference period from 1 January 1989 to 1 January 1991 contained one 'excellent', six 'very goods' and one 'good'. He had considered that assessment perfectly satisfactory until he learned from the Parliament's reply to his complaint that many other candidates had been more favourably assessed. The administration had therefore failed to comply with its obligation to assist him by not drawing his attention to the fact that his performance was less satisfactory than that of his colleagues.
- 58 In the reply, the applicant alleges another circumstance giving rise to liability on the part of the Parliament, involving a breach of Article 26 of the Staff Regulations. He considers that it is clear from the defence that the Parliament had at its disposal administrative documents containing statements and assessments capable of having an adverse effect on his career, which had not been included in his personal file pursuant to Article 26 of the Staff Regulations. That circumstance aggravates, he alleges, the non-material damage he has suffered. He therefore amends the form of order sought in his application and seeks an order against the Parliament to pay him BFR 100 000 in compensation for that damage if his main claim for the annulment of the contested decisions is allowed. In the alternative, if that claim is dismissed, the applicant seeks an order against the Parliament requiring it to pay him BFR 300 000 in compensation for non-material damage.

59 The Parliament submits that the claim for compensation directly linked to the pleas in law put forward in support of the claim for annulment must be dismissed as unfounded. It argues, furthermore, that the new claims for compensation not directly linked to the claim for the annulment of the contested decision are inadmissible because no complaint within the meaning of Article 90(1) of the Staff Regulations, seeking compensation for the alleged damage, was submitted to the appointing authority at the prelitigation stage.

60 In any event, as regards the damage resulting from the alleged breach of Article 24 of the Staff Regulations, the Parliament denies that it failed to comply with its duty to assist the applicant. The duty to encourage officials to improve their standard of performance is of general scope, so that it would be contrary to the principle of equal treatment to exercise it with regard to a specific official with a view to his appointment to a higher grade.

Findings of the Court

61 The claim for compensation of 1 ECU for the non-material damage allegedly caused to the applicant by the contested decisions is closely linked, as regards its substance, to the claim for annulment itself. Since the claim for annulment has not been allowed, that claim for compensation must also be dismissed as unfounded (see Case 53/70 *Vinck v Commission* [1971] ECR 601, paragraph 14, and Case T-1/91 *Della Pietra v Commission* [1992] ECR II-2145, paragraph 34).

62 As regards the other claims for compensation, it must first be stressed that the applicant claims to have suffered, independently of the contested decisions themselves, damage of three kinds, each from a separate, independent cause. First, he claims that, if the contested decisions are not found to be unlawful, he suffered damage simply through not having had an interview with the Director General. Secondly, he suggests in the further alternative that by failing to draw his attention to the fact that his assessment was less favourable than that of some of his colleagues, the administration failed to comply with its duty to assist him under Article 24 of the Staff Regulations and thereby caused him damage. Thirdly, he

considers that he suffered damage because the opinions of the Director and the Director General, referred to above, were not included in his personal file, contrary to Article 26 of the Staff Regulations.

- 63 Those three claims for compensation have no link with the claim for the annulment of the decisions rejecting the applicant's candidature and appointing Mr K. The source of the damage for which compensation is sought lies not in the contested decisions themselves but in the three abovementioned circumstances, which the applicant invokes independently, quite separately from the question whether those decisions were lawful. The admissibility of those claims for compensation must therefore be examined separately from that of the claim for annulment.
- 64 In the present instance, those claims for compensation must be held inadmissible, since the applicant did not first submit a request within the meaning of Article 90(1) of the Staff Regulations, asking the appointing authority to take a decision on the possible reparation of the alleged damage (see Case T-46/90 *Devillez and Others v Parliament* [1993] ECR II-699, paragraph 43).
- 65 Furthermore, those three claims for compensation are in any event unfounded, since the three conditions which must be met for the Community to incur liability — illegality of the conduct alleged against the institution, existence of damage and existence of a causal link between the conduct and the alleged damage — are not fulfilled in the present case (see Case T-165/89 *Plug v Commission* [1992] ECR II-367).
- 66 As regards the claim for compensation for the damage allegedly caused by the fact that the applicant did not have an interview with the Director General, the failure to invite him to such an interview in no way constitutes a fault on the part of the administration, which, as has already been established in the examination of the first plea in law in support of the claim for annulment, remained within the limits of its discretion.

67 Nor is any fault established with regard to the second claim for compensation, based on an alleged breach of Article 24 of the Staff Regulations. Periodical reports are individual, personal documents and the administration is not obliged, either under the Staff Regulations or by practice, to inform officials how their assessments compare with those of other candidates. The Parliament cannot, therefore, be charged with having failed in its duty to assist under Article 24 of the Staff Regulations, since it has not failed to comply with any obligation towards the applicant under the Staff Regulations.

68 As regards the claim for compensation based on Article 26 of the Staff Regulations, alleging that the administration did not place certain information mentioned in the opinions of the Director and the Director General on the applicant's personal file, the applicant did not suffer any damage as a result of that irregularity; in its examination of the second plea in law in support of the claim for annulment, the Court found that those assessments had no effect on the contested decisions.

69 All the claims for compensation must therefore be dismissed.

Costs

70 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 institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application in its entirety;**
2. **Orders the parties to bear their own costs.**

Bellamy

Saggio

Briët

Delivered in open court in Luxembourg on 30 November 1993.

H. Jung

C. W. Bellamy

Registrar

President