

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
10 July 1992 \*

In Case T-68/91,

**Giovanni Barbi**, an official on the scientific staff of the Commission of the European Communities, residing in Varese (Italy), represented by Giuseppe Marchesini, Avvocato with the right of audience before the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

**Commission of the European Communities**, represented by Gianluigi Valsesia, Principal Legal Adviser, acting as Agent, assisted by Alberto Dal Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of Roberto Hayder, representing the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the list of officials of the scientific or technical staff of the Commission promoted to Grade A 4 for 1990 and compensation for the damage alleged to have been suffered by the applicant,

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

composed of: K. Lenaerts, President of the Chamber, H. Kirschner and D. Barrington, Judges,

Registrar: S. Hackspiel, Administrator,

having regard to the written procedure and further to the hearing on 20 May 1992,

gives the following

\* Language of the case: Italian.

## Judgment

### The facts

- 1 The applicant was born on 27 March 1931 and is a graduate in industrial chemistry of the university of Turin. He entered the service of the Commission in 1961 at the Joint Research Centre at Ispra. He is at present an official in Grade A 5 on the scientific staff of the Commission. He has been in the highest step in his grade for more than 16 years.
- 2 Since his 1983-1985 staff report was not drawn up within the prescribed period, that is to say by 30 November 1985, the applicant, after following the two-stage pre-litigation procedure, brought an action for compensation for the material and non-material damage which he considered he had suffered as a result of that delay. By judgment of 8 November 1990 in Case T-73/89 *Barbi v Commission* [1990] ECR II-619 the Court of First Instance ordered the Commission to pay the applicant the sum of one European Currency Unit as compensation for the non-material damage suffered by him. The judgment has become final.
- 3 The 1987-1989 staff report was also not drawn up by the prescribed date, 30 November 1989.
- 4 The promotion procedure for 1990 therefore began, as regards the applicant, in the absence of a staff report. However, by a memorandum from his superior of 5 February 1990 the applicant was proposed for any promotion there might be (Annex VI to the Commission's defence; hereinafter 'the promotion proposal'). For the 1987-1989 reporting period the memorandum contains particulars of the applicant's various merits, awarding him one mark of 'excellent', ten 'very good' and three 'good'. Furthermore, the applicant's superior gives the following justification for the promotion proposal: 'Mr Barbi has shown in the past good experimental as well as theoretical ability in the field of applied thermodynamics, in particular Electrochemistry and Sensors' Science. This is amply shown by his recent publications (see

list). He has performed alone this internationally recognized work, succeeding therefore to be scientifically productive despite the unfortunate occurrence that his competence could not be satisfactorily employed with(in) the frame of Ispra past Programmes'. The Court observes of its own motion that that promotion proposal is not included in the applicant's personal file, as submitted to it.

- 5 On 24 April 1990 the Joint Committee, known as 'Instance O' of the Advance Materials Institute, in which the applicant worked, adopted a proposed list of staff members who, in its view, could be considered for promotion in 1990. For promotions to Grade A 4 the Joint Committee listed the names of three officials and one member of the temporary staff. The applicant's name was not included in the list drawn up by the Joint Committee.
  
- 6 On 13 August 1990 the Commission published the list of officials considered most deserving of promotion. For the scientific and technical service two of the three officials and the member of the temporary staff proposed by the Joint Committee for promotion to Grade A 4 were included.
  
- 7 On 30 November 1990 the Commission published the list of officials proposed within each career bracket. The two officials whose names were included in the list of officials considered most deserving were promoted to Grade A 4. The member of the temporary staff proposed was reclassified.
  
- 8 On 13 February 1991 the applicant lodged a complaint with the appointing authority. In its heading the applicant stated that it was directed against the 1990 promotions list. He alleged that by implication he had been excluded from the list of officials promoted without the various administrative bodies being able to consider his 1987-1989 staff report. There was thus an infringement of Articles 43 and 45 of the Staff Regulations of Officials of the European Communities and Article 6 of the General Provisions implementing Article 43 of the Staff Regulations adopted by the Commission. In those circumstances the fact that his name had not been included in the list of officials promoted constituted in his view an act adversely affecting him within the meaning of Article 90 of the Staff Regulations. He also

claimed that the Commission was obliged to make good the material and non-material damage resulting from the absence of the staff report.

- 9 On 22 April 1991 Mr Bishop, Director of the Joint Research Centre, signed a staff report for the applicant covering the period from 1 July 1987 to 31 December 1988. The report contains the following assessments: one 'excellent', ten 'very good' and three 'good', accompanied by the following assessment of the applicant's ability: 'Il signor Barbi ha eccellenti conoscenze nel campo elettrochimico, che aggiorna regolarmente con frequenti contatti con il mondo accademico. Dotato di ottima capacità di sintesi, lavora con successo nel suo campo specifico e ne ha dato un'eccellente prova nell'attività di supporto alla Commissione' (Mr Barbi has excellent knowledge in the electro-chemical field which he keeps up to date with regular and frequent contacts with the academic world. He has exceptional ability for synthesis, works with success in his specific field and has given to the Commission excellent proof of supporting work). In a letter sent to the applicant on 27 May 1991 Mr Bishop explained that the period covered by the report was shorter than the two years normally provided for by the Staff Regulations because the Joint Research Centre had been reorganized in institutes from 1 November 1988. On 31 May 1991 the applicant signed the Staff Report 'per presa conoscenza' (note taken).

## Procedure

- 10 In those circumstances the applicant brought the present action which was lodged at the Court Registry on 23 August 1991. The written procedure followed the normal course.
- 11 On 25 October 1991 the appointing authority replied to the complaint. It stated that it had not been possible to draw up any staff reports in 1989 in the Institute for Advanced Materials. That was due, according to the Commission, to the reorganization of the Joint Research Centre with effect from 1 November 1988. However, the applicant had been proposed for promotion. Consequently, the absence of a staff report had not harmed him. Moreover the applicant had not specified the material and non-material damage which he alleged. The Commission was thus unable to respond favourably to his complaint.

12 Upon hearing the Report of the Judge-Rapporteur the Court of First Instance decided to open the oral procedure without any preparatory inquiries. It did, however, ask the parties to answer two questions concerning the pre-litigation procedure and the defendant's assessment of the applicant's merits.

13 At the hearing on 20 May 1991 the parties presented oral argument and replied to the questions put by the Court. The applicant produced at the hearing a bulletin from the Commission's Central Staff Committee dated 7 February 1992 and headed 'The negligence of certain departments blocks the 1992 promotions'. The President declared the oral procedure closed at the end of the hearing.

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

- (i) annul the 1990 procedure for promotion to Grade A 4 of the scientific staff as being vitiated for infringement of Article 45 of the Staff Regulations with regard to him;
  
- (ii) order the Commission to make good the non-material damage caused to him by the late and incomplete communication of his 1987-1989 staff report, which damage should be fixed at no less than BFR 300 000;
  
- (iii) order the Commission to pay the costs.

15 The defendant contends that the Court of First Instance should:

with regard to admissibility:

- (i) declare the application inadmissible in relation to the claim for compensation for damages;

with regard to the substance:

- (i) dismiss the application as unfounded;
  
- (ii) make an order for costs in accordance with the law.

**The claim for annulment of the decision concerning the 1990 promotions to Grade A 4 of the scientific staff**

16 As a preliminary it is necessary to determine what is the appointing authority's decision referred to in the application for annulment. First, the claim for annulment in the application refers to the '1990 procedure for promotion to Grade A 4 of the scientific staff'. Secondly, the applicant has stated as the subject-matter of his application 'annulment of the list of promotions for 1990 to Grade A 4' (page 1 of the application). In addition, it must be pointed out that his complaint was directed only against the list of officials promoted for 1990. The previous list of officials which, according to the 'Instance O' Joint Committee, could be taken into consideration for promotion and the list of officials considered most deserving of promotion were not the subject of any specific complaint. It should therefore be held that this application for annulment is directed against the decision of the appointing authority published on 30 November 1990 concerning the promotion to Grade A 4 of 15 officials of the scientific or technical staff and the reclassification of several members of the temporary staff (Annex X to the defence).

- 17 The applicant put forward in his application against that decision two pleas based first on infringement of Article 43 of the Staff Regulations and Article 6 of the General Provisions and secondly on infringement of Article 45 of the Staff Regulations.
- 18 As regards the first plea in law the applicant alleged that his 1987-1989 staff report ought to have been drawn up and notified to him before 30 November 1989. Since the staff report procedure was not completed until May 1991 there was a flagrant irregularity and one moreover which had happened before. In addition, the period covered by the report ends on 31 December 1988, although no provision allows such a limit. Such disregard of the applicable provisions cannot be justified by the administrative difficulties within the Commission or by the reorganization of the Joint Research Centre. The general provisions for implementing Article 43 of the Staff Regulations specify the procedure to be adopted in the case of a reassignment or transfer of the official reported on and the Court finds that an intermediate staff report is provided for only where the official is transferred to another institution.
- 19 In the context of the promotion procedure, the promotion proposal of 5 February 1990 could not replace the missing staff report. In that respect the applicant stated at the hearing that the promotion proposal of 5 February 1990 was more restrictive than the staff report drawn up in 1991. The staff report was unconditionally favourable to him in quite explicit terms whereas the promotion proposal contained a less favourable assessment in relation to his ability. It expressed a reservation that the applicant had not been able to display his talents fully. The applicant therefore maintained that the two documents could not be regarded as equivalent.
- 20 The Commission denies that Article 43 of the Staff Regulations and Article 6 of the General Provisions were infringed. A radical reorganization of the structure of the Joint Research Centre had created at the material time an exceptional situation. As a result of that reorganization almost all the administrative activities were seriously delayed. For all officials of the Joint Research Centre 'who were most directly concerned' by that reorganization the reference period for the 1987-1989

staff report had to be limited to 31 December 1988. The 1989-1991 staff report covered the first six months of 1989 not covered by the previous staff report. In the Commission's view the complete reorganization of the Joint Research Centre which caused the staff report in question to be late and incomplete should be distinguished from the different circumstances found by the Court of First Instance in its aforementioned judgment of 8 November 1990 in *Barbi*. Consequently, the Commission says, the staff report could not be found to be in any way unlawful.

21 Furthermore, the absence of a staff report had no decisive effect on the contested promotion procedure. The promotion proposal, which was an official, complete and detailed document replaced the staff report which was missing at the time.

22 At the hearing the Commission stated that the staff report, which was drawn up later, and the promotion proposal were equivalent. The two documents contained identical marks, namely one 'excellent', ten 'very good' and three 'good'. A mention of an 'unfortunate occurrence' in the promotion proposal did not detract from the applicant's merits. It simply reflected the regret that he had not been able fully to deploy his knowledge in the previous programmes whilst he was — now — able to make greater use of his knowledge. The Commission maintained that the expression 'good ability' employed in the promotion proposal expressed a positive opinion even if the terms used were a little less glowing than the expressions 'eccelenti conoscenze' and 'ottima capacità di sintesi' in the staff report. In any event the figures and the marks were identical without any possible equivocation.

23 Article 43 of the Staff Regulations provides that the ability, efficiency and conduct in the service of each official are to be the subject of a periodical report made at least once every two years as provided for by each institution. In the present case Article 6 of the General Provisions provided that the assessor should draw up the staff report before 30 November 1989, the reference period ending on 30 June 1989

or, according to the defendant, on 31 December 1988. The Court finds that that time-limit was not observed.

24 As for the reorganization of the Joint Research Centre between 1988 and 1989, it must be pointed out that, however radical the reorganization of the departments of a research centre may be, it cannot in itself justify the failure to draw up the staff reports of officials who work there. The Court does not overlook the fact that such reorganization may create administrative difficulties complicating the drafting of staff reports by superiors and their discussion with those concerned. The Commission has, however, not demonstrated, nor even alleged, that in the present case the applicant's assessors were prevented by specific circumstances from drawing up the applicant's staff report within the period laid down by the Staff Regulations. In the absence of such specific matters capable of excusing disregard of the Staff Regulations and the applicable general provisions, mere reference in general terms by the Commission to the reorganization of the Joint Research Centre must be regarded as insufficient to excuse infringement of Article 43 of the Staff Regulations and Article 6 of the General Provisions.

25 Moreover, the report finally signed in 1991 is only a partial report in so far as it covers only the period up to 31 December 1988. However, Article 8 of the General Provisions provides for an intermediate report on officials only in the case of a reassignment or transfer. Furthermore, the Commission has not explained why its departments were not able, at least in 1991, to draw up a staff report covering the whole period 1987-1989. It must therefore be observed that the infringement of the abovementioned provisions continued, at least in part, even after the partial report in question was drawn up.

26 The Court notes that the Court of Justice has held that the fact that the personal file of an official eligible for promotion is irregular is not sufficient to invalidate the promotions made unless the irregularities might have had a decisive influence on the promotion procedure (see Joined Cases 156/79 and 51/80 *Gratreau v Commission* [1980] ECR 3943, paragraph 24, and Joined Cases 156/79 and 51/80 *Gratreau v Commission* [1981] ECR 3139, paragraph 15). Consequently it is necessary to

consider whether the delay in drawing up the applicant's staff report could have had a decisive effect on the promotion procedure in question.

27 In that respect the Commission alleged that the absence of the staff report was compensated for by the promotion proposal of 5 February 1990, which was equivalent to the staff report drawn up in 1991. The Court must therefore check whether those two documents contain equivalent assessments as regards the applicant's ability, efficiency and conduct. Although it is true that the analytical assessments in the two documents are identical, the general assessment in the staff report is clearly more favourable to the applicant than that in the promotion proposal. The terms 'eccelenti conoscenze nel campo elettrochimico', and 'ottima capacità de sintesi' and an 'eccelente prova nell' attività di supporto alla Commissione' used in the staff report are a more positive assessment than the expression 'good experimental and theoretical ability' employed in the promotion proposal. Furthermore the promotion proposal mentions the 'unfortunate occurrence that his competence could not be satisfactorily employed with(in) the frame of ISPRA past Programmes'. In the context of a promotion procedure such an observation has a greater effect than a mere expression of regret by the institution; it may be a factor diminishing the chances of the person concerned of being promoted in relation to other officials who have not been the victims of such an 'unfortunate occurrence'. The Court thus finds that the two general assessments of the applicant's ability, efficiency and conduct were not equivalent. Consequently the fact that the applicant's staff report was not drawn up within the time-limit prescribed by the Staff Regulations could have had a decisive effect upon the promotion procedure.

28 The applicant's first plea is therefore well founded.

29 The applicant's second plea alleges an infringement of Article 45 of the Staff Regulations resulting from the fact that his staff report was not available at the time of the promotion procedure. That report which was more than praiseworthy in regard

to the assessments of his merits could therefore not have been taken into account in the procedure. The officials promoted in 1990 were not better qualified or of greater seniority or merit than him. Consequently the promotion procedure was vitiated for infringement of Article 45 of the Staff Regulations and should be annulled.

- 30 The Commission argues that there was no infringement of Article 45 of the Staff Regulations. It states that the absence of a staff report may be compensated for, in exceptional circumstances, by the existence of other information on the official's merits. The Commission repeats that the promotion proposal contains the same analytical assessments as those which were later confirmed in the definitive staff report. Consequently it was on account of the consideration of the comparative merits and not the absence of the staff report that the applicant's name could not be included in the list of officials who were successful in the preliminary stages of the promotion procedure. It was proved that the authorities responsible for considering the merits of the eligible officials had before them from the beginning of the procedure the same basis for assessing the applicant's merits as would have been afforded by his staff report. Of the three persons from the Institute for Advanced Materials whose names were included on the list of officials promoted, the first two had already been included on the list of officials 'considered most eligible' in the previous year. There had already been an internal proposal for the promotion of the third. In those circumstances the appointing authority had kept within the authorized limits and had not wrongly exercised its — wide — discretion. No evidence has been adduced of the existence of any causal link between the absence of the staff report and the fact that the applicant's name was not included on the list of officials promoted.
- 31 It follows from the foregoing (see paragraphs 26 and 27) that the second plea must also be upheld. The absence of the staff report during the promotion procedure prevented consideration of the applicant's comparative merits. The contested decision was based on a promotion proposal which was less favourable to the applicant than the staff report later drawn up. Consequently there was also an infringement of Article 45(1) of the Staff Regulations.

- 32 In the reply the applicant put forward a third plea in law. He alleged that he did not become aware of the promotion proposal until the present proceedings. That document was never notified to him and was not in his personal file.
- 33 The Commission expressed doubts about the veracity of the applicant's allegation that he was not aware of the promotion proposal until the proceedings were brought.
- 34 Since the third plea was made only at the stage of the reply, it is necessary to consider whether it is admissible for the applicant to rely on it. In that respect the Court observes that the Commission mentioned the existence of the promotion proposal only in its defence and in the reply to the complaint which was not delivered until after the action was brought. In its rejoinder the Commission did not specify how the applicant could have known of the promotion proposal before notification of those documents; it merely alleged that it would be difficult not to 'entertain doubts' on that subject. In those circumstances it must be held that the promotion proposal to which the Commission referred is a matter of fact which came to light during the written procedure. Pursuant to Article 48(2) of the Rules of Procedure of the Court of First Instance the applicant's third plea is therefore admissible.
- 35 As regards the substance, the Court notes that the promotion proposal was not placed in the applicant's personal file although it contains a brief report on his ability, efficiency and conduct, as well as assessments relating thereto. Pursuant to Article 26 of the Staff Regulations the promotion proposal ought to have been placed in the applicant's personal file. Consequently there was an infringement of Article 26 of the Staff Regulations. It follows that the contested decision was adopted following a procedure vitiated by a third illegality (see Case T-82/89 *Marcato v Commission* [1990] ECR II-735, paragraphs 76, 78 and 89). The applicant's third plea in law must therefore also be upheld.

36 In those circumstances it is necessary to consider whether the irregularities found above must lead to the complete or partial annulment of the contested decision in so far as it promotes two officials and reclassifies a member of the temporary staff in the same institute as the applicant. In Case 24/79 *Oberthür v Commission* [1980] ECR 1743 the Court of Justice held that the annulment of the promotions of all the officials then actually promoted to Grade B 2 would constitute an excessive penalty for the irregularity committed and it would be arbitrary to annul the promotion of the only official from the same directorate as the applicant Oberthür. Consequently the Court dismissed the application for annulment. However, of its own motion it ordered the Commission to pay compensation for non-material damage caused by the wrongful act or omission which the Court had found (*Oberthür*, paragraphs 13, 14 and 15). In accordance with that judgment the present action must be dismissed in so far as it seeks annulment of the contested decision.

**The claim that the Commission should make good the non-material damage alleged by the applicant**

37 The applicant claims that disregard of the provisions on the drawing up of staff reports constituted in the present case maladministration for which the Commission is responsible. That maladministration caused him non-material damage in connection with his uncertainty and disquiet regarding his professional future. As compensation for that non-material damage the Commission should pay him compensation which takes account of the duration of that delay (18 months), the systematic repetition of that irregularity and the complete absence of a staff report for the first six months of 1989. The applicant considers that the amount of compensation to make good the damage should not be less than BFR 300 000. In order to take account of the fact that this failure repeated a previous failure on the part of the Commission the Court of First Instance ought to order the Commission to pay him an amount likely to have a dissuasive effect.

38 As regards the admissibility of the claim for compensation, the applicant states that this claim was already included in the complaint. As regards the quantum of damage he specified the figure in the first pleading in the present proceedings (the application). As the Court of Justice has held (see Case 126/87 *Del Plato v Commission* [1989] ECR 659, paragraph 12) the application is therefore admissible.

- 39 At the hearing the applicant argued that it was not necessary to submit a request within the meaning of Article 90(1) of the Staff Regulations that a Staff Report be drawn up since such a decision had to be taken within precise time-limits. As regards the two heads of the application (annulment and damages), the applicant maintained that they were set out both in the application and in the reply. He recognized that he may perhaps have emphasized the delay in drawing up the report rather than the fact that it was not available during the various stages of the promotion procedure. Since the claim for annulment was admissible, he considered it obvious that the claim for damages was also admissible. In view of the systematic breaches committed by the Commission a significant and dissuasive penalty was called for.
- 40 The Commission argued that the claim for damages was not admissible. During the pre-litigation procedure the applicant had not supplied the necessary details for the alleged damage to be assessed. The appointing authority thus did not have precise details of the reasons and facts of the case. Furthermore the applicant failed to submit first a request within the meaning of Article 90(1) of the Staff Regulations that the alleged damage be made good. It was only against the decision rejecting such a request that the applicant could have made a complaint under Article 90(2) of the Staff Regulations. Since there was no pre-litigation procedure complying with the provisions of the Staff Regulations, the claim in question was inadmissible.
- 41 With regard to the substance, the Commission repeats the arguments already raised against the application for annulment to deny any maladministration. Furthermore the assessment by the applicant of the alleged damage was in any event unjustified and exorbitant. A sum of BFR 300 000 appears quite disproportionate in relation to any damage which might be found. As regards the dissuasive effect which might justify the amount in question, the Court should take into account the fact that the delay in drawing up the staff report could hardly have been avoided during the period of reorganization of the Joint Research Centre. Any non-material damage to the applicant could in any event be no more than the non-material damage found by the Court in its aforementioned judgment of 8 November 1990 in *Barbi* which had led it to order the Commission to pay the applicant the token amount of one European Currency Unit.

- 42 As regards the admissibility of the application for damages the Court observes at the outset that this claim seeks compensation for the non-material damage which according to the applicant had been caused to him by the delay in drawing up his 1987-1989 staff report. In stating at the hearing that he sought a dissuasive penalty against systematic breaches by the Commission of the rules relating to the drawing up of staff reports the applicant has confirmed that that is indeed the object of his claim for damages.
- 43 In the aforementioned *Oberthür* case (paragraphs 9, 10 and 11) the applicant's staff report had not been drawn up at the time the Promotion Committee was considering proposals for promotion. The Court of Justice considered that the Commission had committed a wrongful act or omission which made the promotion procedure irregular as regards the applicant. Although the applicant's complaint had not sought damages (see the factual part of that judgment at p. 1746), and in the absence of valid claims to that effect, the Court, referring to its unlimited jurisdiction, of its own motion ordered the defendant to pay compensation for the non-material damage caused by its wrongful act or omission.
- 44 In the present case the Court of First Instance, like the Court of Justice in *Oberthür*, has rejected the applicant's claim for annulment in spite of the defects vitiating the contested decision. Nevertheless, in accordance with the aforementioned case-law the Court has power to order, in accordance with the form of order sought by the applicant, the defendant to pay compensation for the non-material damage suffered by the applicant without the absence or irregular nature of the pre-litigation procedure forming an obstacle. Since in *Oberthür* the Court of Justice made an order against the defendant in the absence of a pre-litigation procedure preceding an action for damages, the Court must in any event consider the action for damages actually brought in this case admissible even if it were to hold that there was no prior request within the meaning of Article 90(1) of the Staff Regulations. In those circumstances it is unnecessary to rule on the applicant's observations that the complaint made in the present case was sufficient because it was directed against the failure of the appointing authority to adopt a measure 'prescribed by the Staff Regulations' within the meaning of Article 90(2) of the Staff Regulations.

45 As regards the substance, the Court finds that the Commission was guilty of maladministration by failing to draw up the applicant's staff report within the time-limit prescribed by the Staff Regulations and substituting for it in the contested promotion procedure a promotion proposal less favourable than the staff report later drawn up (see paragraphs 23 to 27 above). Instead of drawing up the staff report before 30 November 1989, the Commission did not forward to it to the applicant until after 22 April 1991. It must be added that the report covered only the period to 31 December 1988 while the assessment of the remainder of the period in question was left until a later date. That maladministration on the part of the Commission caused the applicant non-material damage by reason of the state of uncertainty in which he found himself with regard to his professional future (see Case T-63/89 *Latham v Commission* [1991] ECR II-19, paragraph 31).

46 In the assessment of the damage suffered, it is necessary to bear in mind the applicant's advanced age. Since he is 61 years old the applicant will be able to take part in promotion procedures for only a few more years. Furthermore it must be observed that the Commission had already been responsible for considerable delay in the drawing up of his 1983-1985 staff report, which led the Court in its judgment of 8 November 1990 in *Barbi* to order the Commission to pay the applicant the sum of one European Currency Unit. Finally the Commission's delay in drawing up the staff report in the present case was at least 18 months since only a partial report covering only the period to 31 December 1988 was drawn up. In those circumstances the Court of First Instance, assessing the damage suffered *ex aequo et bono*, considers that the award of an amount of BFR 200 000 constitutes adequate compensation for the applicant.

### Costs

47 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs. Since the Commission has been largely unsuccessful, it must be ordered to pay the costs.

On those grounds,

**THE COURT OF FIRST INSTANCE (Fifth Chamber)**

hereby:

- 1. Orders the Commission to pay the applicant the sum of BFR 200 000 by way of damages;**
- 2. Dismisses the remainder of the application;**
- 3. Orders the Commission to pay the costs.**

**Lenaerts**

**Kirschner**

**Barrington**

Delivered in open court in Luxembourg on 10 July 1992.

**H. Jung**

**K. Lenaerts**

**Registrar**

**President of the Chamber**