

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
21 June 1996 \*

(Officials – Action for damages – Implementation of a judgment annulling an appointment – Late completion of staff report)

In Case T-41/95,

**Andrew Macrae Moat**, a former official of the Commission of the European Communities, represented initially by Jacques Verhaegen, of the Brussels Bar, and subsequently by Mark Clough, Barrister, of the Bar of England and Wales,

applicant,

v

**Commission of the European Communities**, represented by Thomas F. Cusack, Legal Adviser, and Julian Currall, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for compensation for harm allegedly suffered by the applicant as a result of the failure to implement or delay in implementing the judgment of the Court of First Instance in Case T-58/92 *Moat v Commission* [1993] ECR II-1443, the delay in completing his 1991-1993 staff report, and the failure to give a reasoned reply to a memorandum of 30 March 1994 described as a request and/or complaint,

\* Language of the case: English.

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

composed of: R. Schintgen, President, R. García-Valdecasas and J. Azizi, Judges,  
Registrar: J. Palacio González, Administrator,  
having regard to the written procedure and further to the hearing on 23 April 1996,  
gives the following

**Judgment**

**Facts and procedure**

- 1 The applicant was a Grade A 4 official in the Commission and retired on 31 January 1995. He states that since 1986 he has requested in all his staff reports a transfer to duties which would allow him to make use of his management skills and that therefore in view of his management abilities, which have been praised in his staff reports since 1981, he could reasonably have expected promotion or transfer.
- 2 In this regard, he applied on 6 February 1992 for the posts of Head of Unit 7 (Recruitment) in Directorate-General IX (Personnel and Administration) (hereinafter 'post IX.A.7') and Head of Unit 3 (Transport and Tourism) in Directorate-General IV (Competition), to be filled at Grades A 3, A 4 or A 5, notice of which was published on 30 January 1992 in Vacancy Notices COM/6/92 and COM/4/92.
- 3 His candidature for the abovementioned posts and his subsequent complaints having been rejected, the applicant lodged an application at the Registry of the Court of First Instance on 12 August 1992 for the annulment of the decisions of the defendant

rejecting his candidature, the annulment of the decisions appointing other persons to those posts, and compensation for the harm allegedly suffered by him as a result of the failure to complete his staff report for the period 1 July 1989 to 30 June 1991 in due time, to consult it when the abovementioned posts were filled and to give a reasoned reply to his complaint.

- 4 By the judgment in Case T-58/92 *Moat v Commission*, referred to above, the Court of First Instance annulled the Commission's decision rejecting the applicant's candidature for post IX.A.7 and that appointing Mr T. to that post and dismissed the remainder of the application.
- 5 On 10 March 1994 the defendant published a new vacancy notice for post IX.A.7, COM/41/94 (Annex 1 to the application).
- 6 On 30 March 1994 the applicant lodged a memorandum described as a request pursuant to Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and/or a complaint pursuant to Article 90(2) of the Staff Regulations in which he sought to know the outcome of his application for post IX.A.7 (COM/6/92). He also asked in his memorandum for compensation for the harm allegedly suffered by him on account of the means adopted by the defendant to implement the judgment in Case T-58/92 (Annex 2 to the application).
- 7 By a request lodged on the same date pursuant to Article 90(1) of the Staff Regulations, he asked for compensation for the harm allegedly suffered by him as a result of the delay in completing his report for the period 1 July 1991 to 30 June 1993 (Annex 4 to the application).

- 8 On 7 April 1994, the defendant republished Vacancy Notice COM/41/94, including in it notice of the cancellation of Vacancy Notice COM/6/92 (Annex 3 to the application).
  
- 9 On 22 April 1994 the applicant discussed his reasons for wishing to occupy the IX.A.7 post with Mr de Koster, Director-General of DG IX, who had expressed a wish to see as many candidates as possible. The applicant referred to his managerial abilities and the possibility of being recruited to a post in keeping with his abilities. The interview was preceded by a telephone conversation in which the applicant informed Mr de Koster that he had not responded to Vacancy Notice COM/41/94 because he considered it was without doubt too late to do so, but that he was still a candidate for the original Vacancy Notice COM/6/92 and that he had, moreover, made a request for compensation.
  
- 10 On 8 June 1994, the defendant rejected his request for compensation for the delay in completing his 1991-1993 staff report (Annex 5 to the application).
  
- 11 On 3 September 1994, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the express rejection of his request for compensation for the delay in completing his 1991-1993 staff report and the implied rejection of his memorandum described as a request and/or complaint (Annex 6 to the application).
  
- 12 The defendant rejected the applicant's complaint by decision of 11 November 1994, notified to the applicant on 17 November 1994 (Annex 7 to the application).
  
- 13 It is in those circumstances that, by application lodged at the Registry of the Court of First Instance on 17 February 1995, the applicant brought this action.

- 14 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.
  
- 15 The hearing was held in open court on 23 April 1996. The parties' representatives presented oral argument and answered the questions put to them by the Court. The Court requested the defendant to inform it of the date on which post IX.A.7 was filled following Vacancy Notice COM/41/94. On 29 April 1996, the defendant informed the Court and the applicant's representative that the disputed post had been filled by decision of 30 May 1994 with effect from 1 June 1995 and that that decision was replaced on 21 June 1994 by a fresh decision taken in order to allow the advancement of the appointed official to Grade A 3.
  
- 16 By decision of 29 April 1996, the President of the Fifth Chamber declared that the oral procedure was closed.

### **Forms of order sought**

- 17 The applicant claims that the Court should:
  - declare the application admissible and well founded;
  - condemn the Commission for its failure to reconsider the applicant's candidature for post IX.A.7, or for its failure to annul and republish that post and consider new candidatures, without delay;
  - condemn the Commission for its failure to ensure the early completion of the applicant's staff report for the period from 1 July 1991 to 30 June 1993;
  - condemn the Commission for its failure to reply to the applicant's request and/or complaint, with reasons, within the time-limits laid down in Article 90 of the Staff Regulations;

- order the Commission to pay the applicant compensation in whatever amounts the Court considers appropriate for its various failures;
- order the Commission to pay the costs.

18 Observing that the harm suffered by the applicant consists mainly in the loss of a chance to be promoted, the applicant's representative at the hearing assessed that harm at a total of BFR 500 000, stating that the harm suffered as a result of the delay in completing his 1991-1993 staff report amounted to BFR 100 000.

19 The defendant contends that the Court should:

- reject the application as inadmissible or, in the alternative, unfounded;
- order the applicant to bear his own costs and such proportion of the Commission's costs as the Court thinks fit in all the circumstances of the case.

### *Admissibility*

#### Arguments of the parties

20 The defendant submits that the action is inadmissible because the applicant no longer has an interest in bringing it, since he has reached retirement age and left the Commission.

21 The defendant observes in that regard that in its judgment in Case T-58/92, referred to above, paragraph 32, the Court, considering of its own motion whether the applicant had an interest in bringing the action, concluded that the applicant retained an interest in seeking the annulment of the appointments of the other candidates to the disputed posts since he could still aspire thereto, having regard to the fact that, by the time the judgment was implemented, the possibility that he could still be

employed by the institution in which the posts filled by means of the contested measures were vacant could not be excluded.

- 22 As things stand at present, however, the applicant no longer has any interest in challenging Vacancy Notice COM/41/94 and the appointment following that notice, even if he had been a candidate in competition COM/41/94, because he is no longer employed by the institution in which the vacant posts were to be filled.
- 23 The defendant concludes that, in the absence of an act against which an action may be brought by the applicant, the applicant's claims for compensation are inadmissible in view of the fact that there cannot be claims for compensation in the abstract since such claims must be always be linked to an unlawful act. It complains, moreover, that the applicant did not provide any indication of the actual harm allegedly suffered or its extent.
- 24 The applicant maintains that his action is admissible inasmuch as even if he no longer had any interest in applying for post IX.A.7 when Vacancy Notice COM/41/94 was published, he suffered specific damage as a result of having lost a chance of promotion owing to the misconduct of the defendant in failing to duly implement the judgment of the Court in Case T-58/92. The damage thus suffered consists in the difference between the salary of a Grade A 3 official and that of a Grade A 4 official, such as himself in this case, for the period from December 1993 to his retirement, and the difference between Grade A 3 and Grade A 4 pensions.
- 25 The applicant points out, moreover, that his action concerns not the annulment of an appointment but two compensation claims which the defendant rejected. His retirement has no bearing on his interest in obtaining compensation for the damage suffered as a result of the defendant's misconduct and omissions.

## Findings of the Court

- 26 It should be observed that, although it is true that an applicant who has retired has no interest in seeking the annulment of a vacancy notice or of a decision appointing an official in relation to a post to which he can no longer aspire, he nevertheless retains a personal interest in bringing an action seeking compensation for the harm allegedly caused by the decision to refuse to promote him and by various faults and omissions committed by the administration (Case T-82/89 *Marcato v Commission* [1990] ECR II-735, paragraphs 53 and 54, and Case T-82/91 *Latham v Commission* [1994] ECR-SC II-61, paragraphs 24 and 25).
- 27 In this case, the aim of both the memorandum described as a request and/or complaint and the request for compensation under Article 90(1) of the Staff Regulations, both of 30 March 1994, is to seek compensation for damage which did not arise from an alleged act adversely affecting the official but which he attributes to service-related faults and omissions of the defendant. In the first place, the applicant called in question in his memorandum not Vacancy Notice COM/41/94 as such, but the defendant's conduct in not reexamining his application for post IX.A.7 and its delay in implementing the judgment in Case T-58/92 with respect to the post at issue, thus depriving him of the opportunity of being promoted. Secondly, in his request, he complained that the appointing authority had delayed in completing his report for the period 1 July 1991 to 30 June 1993.
- 28 It follows that the defendant's plea that, first, the applicant no longer has an interest in seeking the annulment of Vacancy Notice COM/41/94 and, secondly, that the applicant's requests for compensation are inadmissible because they lack a link with an act adversely affecting him is unfounded.
- 29 The action is therefore admissible.



*Substance*

- 30 The applicant claims compensation for the harm allegedly suffered by him as a result of three service-related faults which he accuses the Commission of having committed. The applicant complains that the Commission failed to comply with the judgment in Case T-58/92 by failing either to reconsider his candidature for post IX.A.7 on its own initiative or to republish, without delay, a new vacancy notice relating to that post; secondly, he complains that the Commission completed his staff report for the period from 1 July 1991 to 30 June 1993 late; and, thirdly, he criticizes the Commission for not having replied by way of a reasoned decision to his memorandum described as a request and/or complaint.

Failure to implement or delay in implementing the judgment in Case T-58/92

– Arguments of the parties

- 31 The applicant observes that in Case T-58/92 the Court annulled the contested appointment, stating that annulment would compensate him for the damage suffered by him as a result of the improper appointment since, taking into account, in particular, the time required for compliance with a judgment, the prospect that the applicant would at that date still be employed by the institution within which the posts filled by the contested measures were vacant could not be excluded. He should also be compensated, however, for the fact that the chances of appointment to a worthwhile post diminished as his retirement drew near.
- 32 The applicant states that, in order to restore the balance of the reciprocal rights and obligations established in the Staff Regulations in the relationship between the administration and its servants (Joined Cases 33/79 and 75/79 *Kuhner v Commission* [1980] ECR 1677, paragraph 22), the defendant should have reconsidered the initial applications for post IX.A.7 or, at the very least, republished as soon as possible a new vacancy notice relating to the post at issue, in this case while he still had an interest in applying. If it had taken such steps, the defendant would have acted in the interest of the service and in accordance with paragraph 32 of the judgment in Case T-58/92.

- 33 The applicant accepts that, where an appointment is annulled by the Community judicature, the institution is not obliged to reopen the original procedure but may cancel it and re-advertise the post at issue (Case T-38/89 *Hochbaum v Commission* [1990] ECR II-43, paragraph 15). However, he considers that the duty of care incumbent upon it required it, in this case, to act without delay. Thus, the failure of the defendant to exercise all due care justifies a request for compensation.
- 34 The defendant submits that the applicant is mistaken as to the scope of the annulment in the judgment in Case T-58/92 when he asserts that Vacancy Notice COM/6/92 remained open following the annulment and that the institution should have assumed that he was still a candidate for that post (*Hochbaum*, referred to above, paragraph 15). The defendant observes that the applicant implicitly acknowledges that the Commission was entitled to publish a new vacancy notice for the disputed post inasmuch as he complains that the Commission delayed in publishing that new notice.
- 35 The defendant denies that it delayed in re-advertising the post and thus failed to implement the judgment timeously. It claims that the applicant's definition of 'without delay' is a personal one, since he alleges that the new vacancy notice should have been published while he still had an interest in applying for the post, that is to say while he still had at least one year of service before him. Even if the defendant had been able to advertise the post in question before the 1993 Christmas holiday, the applicant would no longer have been able to benefit from a full year in Grade A 3.
- 36 The defendant maintains that it was impossible for it to publish a new vacancy notice before March 1994 because it needed time, first, to decide whether the post in question needed to be filled, secondly, to complete the formalities for publication of the notice and, thirdly, to give potential candidates time to apply. Moreover, the applicant misconstrues the duty of care incumbent on the institution, which can never be interpreted as requiring the administration to break the rules laid down in the Staff Regulations (Case T-68/91 *Barbi v Commission* [1992] ECR II-2127 and Case T-65/92 *Arauxo-Dumay v Commission* [1993] ECR II-597, paragraph 37).

## – Findings of the Court

- 37 It should be recalled at the outset that it has been consistently held that in order for applicants to be able to claim compensation they must demonstrate that the institution has committed a fault, that a definite and quantifiable loss has occurred and that a causal link exists between the fault and the alleged loss (judgment of the Court of First Instance in Case T-16/89 *Herkenrath and Others v Commission* [1992] ECR II-275, paragraph 36).
- 38 Next, it should be observed that the Court of First Instance has held that the appointing authority is not obliged to carry through a recruitment procedure initiated pursuant to Article 29 of the Staff Regulations. The principle thus laid down remains applicable even when, as in the present case, the recruitment procedure has been partially annulled by a judgment of the Court of Justice. Accordingly such a judgment can in no way affect the discretionary power of the Commission to extend its field of choice in the interests of the service by annulling the original vacancy notice and at the same time initiating a fresh appointment procedure (*Hochbaum v Commission*, paragraphs 15 and 16).
- 39 Consequently, the defendant did not infringe Article 176 of the Treaty by cancelling Vacancy Notice COM/6/92 and at the same time initiating a fresh procedure by publishing Vacancy Notice COM/41/94 (*Hochbaum*, paragraph 16). Since the appointing authority had the right to open a fresh recruitment procedure without being obliged, in order to implement the judgment, to take up the procedure at the stage it had reached before the adoption of the unlawful act, it was not obliged, in the present case, to reconsider the applications received in response to the original Vacancy Notice COM/6/92.
- 40 The Court also finds that, in the present case, the time taken by the defendant was reasonable, inasmuch as it published within three months of the judgment annulling an appointment to a post a fresh vacancy notice for that post. The appointing authority is not obliged to expedite a recruitment procedure on the ground that one of the potential candidates for the disputed post was close to retirement.

41 The Court finds, in this regard, that the applicant has not in any event suffered damage as a result of the publication of the vacancy notice in March 1994, since his situation on 10 March 1994 was not appreciably different to what it was on 16 December 1993 with regard to his interest in bringing proceedings. The applicant had the possibility of submitting his candidature for the disputed post in either December 1993 or March 1994 and, if appropriate, to request that he be awarded damages in the event that he was refused appointment to the post in question (*Latham v Commission*, referred to above, paragraphs 24 and 25).

42 Furthermore, the Court considers that the duty to have regard for the welfare of officials which is incumbent upon the appointing authority did not include an obligation to inform the applicant personally of its intentions concerning post IX.A.7. Even though the applicant might have been uncertain as to the intentions of the defendant as regards that post after the publication of Vacancy Notice COM/41/94 on 10 March 1994, the fact remains that the cancellation of Vacancy Notice COM/6/92 on 7 April 1994 and the telephone conversation he had with the Director-General of the Directorate-General for Personnel and Administration enabled the applicant to know the appointing authority's intentions regarding the annulment. It was on his own initiative that the applicant failed to apply for Vacancy Notice COM/41/94, considering that it was too late to do so.

43 The applicant's claim for compensation for the harm allegedly suffered by him as a result of the failure to implement or delay in implementing the judgment in Case T-58/92 must therefore be rejected.

Delay in completing the staff report for the period 1 July 1991 to 30 June 1993

– Arguments of the parties

44 The applicant denies that the delay in completing his report for the period 1 July 1991 to 30 June 1993 was so small that, as the defendant maintains in its decision rejecting the complaint, the principle of *de minimis non curat lex* applies. In reply to the assurance given by the defendant that it would make every effort to observe

the time-limits prescribed by Article 43 of the Staff Regulations and the general implementing provisions and complete staff reports at the latest by 21 January following the reference period of the report, the applicant observes that, according to those provisions, which are binding on the defendant, his staff report for the period 1991-1993 should have been included in his personal file by 30 November 1993 at the latest. His staff report for the period in question was therefore completed seven weeks late.

- 45 Moreover, it is the dates on which it is possible to complete the reports in question which ought to be taken into consideration rather than exclusively the time-limits provided for in the general provisions giving effect to Article 43 of the Staff Regulations. According to the applicant, it appears from the Guide to Staff Reports that the aim of the defendant is to finalize the staff reports as early as possible. The applicant points out in this regard the particular importance of completing reports timeously with regard to officials nearing the end of their career who should be provided with every opportunity for promotion.
- 46 The applicant concludes that the defendant is obliged to compensate him for the delay in completing his staff report. He suffered damage resulting from the absence of his staff report in so far as he applied for various posts between November 1993 and February 1994 and he was, more generally, eligible for promotion and transfer. Moreover, that delay resulted in uncertainty as to his future, causing him anxiety detrimental to him.
- 47 The defendant submits, first, that the applicant's action goes beyond his complaint in that, in his complaint, he only criticized the late completion of his staff report for the period 1991-1993, whilst in his application he maintains that, in view of his impending retirement, the defendant had a duty to draw up his report as early as possible and, in any event, before the final date laid down by the general provisions giving effect to Article 43 of the Staff Regulations. The defendant therefore doubts whether that plea is admissible.

48 The defendant maintains, moreover, that it was under no obligation whatsoever to complete the applicant's report more promptly than other reports. Accordingly, it cannot be criticized for not having completed it before 21 January 1994. Moreover, a delay of 14 working days is insignificant and the applicant suffered no harm as a result of his staff report's having been completed on 9 February 1994, since he made no use of that report. In any event the report was completed before publication of Vacancy Notice COM/41/94 relating to post IX.A.7.

– Findings of the Court

49 The Court finds, first, that the objection of inadmissibility of this plea relating to the lack of correspondence between the complaint and the action is unfounded. By reading the complaint, the defendant was able to know sufficiently precisely the grounds for complaint made against it by the official.

50 The plea is therefore admissible.

51 As regards the substance, it should be observed, first, that the implementing provisions of Article 43 of the Staff Regulations provide as follows:

Article 6

'The assessor shall compile the report and refer it to the official assessed by 30 November of the year in which the reference period ends. Within 15 working days of such referral the assessor shall discuss the report with the official, change it where necessary, and resubmit it to the official. The official shall sign it within 15 working days. He may append any comments which he considers relevant and, where necessary, ask that the report and the comments thereon be submitted to an appeal assessor appointed as provided for in Article 7.'

Third and fourth paragraphs of Article 7:

'If the official so requests, the entire report and the comments thereon shall be referred to the Joint Committee on Staff Reports for its opinion. The opinion of the Joint Committee shall be notified to the official and to the appeal assessor. The latter shall draw up another report and refer it to the official. This report shall be considered final. The above procedure shall be completed not later than six months before the end of the new reference period.'

- 52 It follows that, where, as in the present case, the official requests a referral neither to the appeal assessor nor to the Joint Committee on Staff Reports, his report must be completed, as the applicant acknowledges, with his signature by the 21 January of the year following the reference period of the report.
- 53 The Court finds that the applicant received his staff report from the first assessor on 19 January 1994 instead of on 30 November 1993, that is, seven weeks late. The result of this was that the applicant did not sign his final staff report for the period 1991-1993 until 9 February 1994, that is to say, 14 working days late.
- 54 Next, it should be observed that, according to settled case-law, where there are no particular circumstances justifying it, the absence from an official's personal file of his staff report because of the late completion of the latter is capable of giving rise, in so far as that official is concerned, to non-material damage if, on the one hand, his career could have been affected thereby or if, on the other, that fact resulted in his being put in an uncertain or anxious state of mind with regard to his future (see, most recently, Case T-496/93 *Allo v Commission* [1995] ECR-SC II-405, paragraph 89).
- 55 In the present case, the Court considers that the applicant has not established that the delay in completing his 1991-1993 staff report had a negative influence on his career. Although the applicant applied during January 1994 for certain posts, he has

not established that those posts involved the chance of promotion for him and he did not challenge the rejection of his applications for those posts. Moreover, the applicant's latest staff report was available when the administration filled post IX.A.7.

- 56 As regards the alleged harm suffered by the applicant as a result of the anxiety caused him by the delay in the completion of his staff report, the Court considers that even though after the judgment in Case T-58/92 the applicant might have wished to know the content of his latest staff report, it appears that the duration of the disputed delay could not, in the circumstances described in paragraph 53, have been such as to cause the applicant real uncertainty as to his future. The applicant has also failed to provide any evidence to demonstrate the harm suffered by him, or its extent.
- 57 The applicant's claim for compensation for the harm allegedly suffered by him for the delay in completing his staff report for the period from 1 July 1991 to 30 June 1993 must therefore be rejected.

Failure to give a reasoned reply to the memorandum described as a request and/or complaint

– Arguments of the parties

- 58 The applicant states that the defendant did not reply to his memorandum, described as a request and/or complaint, and in particular to his question concerning the defendant's intentions regarding post IX.A.7. He points out that the only information available to him in reply was the publication on 10 March 1994 of Vacancy Notice COM/41/94, in which the defendant appears to have sought to dissemble an error, in response to his complaint, by publishing a new notice on 7 April 1994 containing the cancellation of Vacancy Notice COM/6/92. He claims that it was impossible for him to know whether that republication was as a result of reconsidering and rejecting the applications received in respect of Vacancy Notice COM/6/92 or whether it meant that the notice in question was withdrawn.



59 In this regard, the applicant complains that the defendant never sent him a green slip informing him that his application for vacancy COM/6/92 had been rejected or that the original vacancy notice had been cancelled. It was for the defendant to have informed the candidates for vacancy COM/6/92 of the steps taken to implement the judgment in Case T-58/92. The absence of a reply to his memorandum described as a request and/or complaint distressed him so much that he was obliged to consult a psychiatrist.

60 The defendant points out that Vacancy Notice COM/41/94 of 10 March 1994, which was distributed to all the staff, was an appropriate and sufficient reaction to the judgment in Case T-58/92 and that it made it plain by implication that Vacancy Notice COM/6/92 had been cancelled. Therefore, it could not escape the notice of the applicant, who in any case mentioned it during his interview with Mr De Koster on 22 April 1994. It also maintains that it replied to all the applicant's requests for compensation in its letter of 8 June 1994.

– Findings of the Court

61 The Court finds, first, that the applicant asked in his memorandum of 30 March 1994 what were the exact intentions of the defendant with regard to implementing the judgment in Case T-58/92 and filling post IX.A.7.

62 It follows from the foregoing considerations (paragraph 42) that the defendant was not obliged to inform the applicant personally of the steps taken to implement the judgment in Case T-58/92 and that the applicant was aware of Vacancy Notice COM/41/94 and the cancellation of Vacancy Notice COM/6/92 so that he could have applied for post IX.A.7.

63 The Court points out, furthermore, that the defendant rejected by reasoned decision of 11 November 1994 the applicant's complaint of 3 September 1994 which related

both to the delay in implementing the judgment in Case T-58/92 and the delay in completing his 1991-1993 staff report.

64 The applicant's claim for compensation for the harm allegedly suffered by him as a result of the failure to reply to the memorandum described as a request and/or complaint must therefore be rejected.

65 It follows from all the foregoing considerations, and in view of the applicant's failure to establish fault on the part of the institution and the existence of actual and quantifiable damage, that the action for damages must be dismissed in its entirety.

### Costs

66 The defendant requests that the applicant be ordered to pay all the costs incurred by the parties or, at least, part of the defendant's costs.

67 The Court considers that the facts of the present case do not justify ordering the applicant to pay all the costs. Accordingly, pursuant to Articles 87(2) and 88 of the Rules of Procedure, each of the parties shall bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders each party to bear its own costs.**

Schintgen

García-Valdecasas

Azizi

Delivered in open court in Luxembourg on 21 June 1996.

H. Jung  
Registrar

R. Schintgen  
President