# JUDGMENT OF THE COURT (Fourth Chamber)

7 November 2002 *

In Case C-184/01 P,

**Peter Hirschfeldt**, an official at the European Environment Agency, resident in Copenhagen (Denmark), represented by J.-N. Louis and V. Peere, avocats, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 13 February 2001 in Case T-166/00 *Hirschfeldt* v *EEA* [2001] ECR-SC I-A-41 and II-157, seeking to have that judgment set aside and the claims at first instance allowed,

* Language of the case: French.

the other party to the proceedings being:

**European Environment Agency**, represented by J.-L. Salazar and J. Rivière, acting as Agents, assisted by D. Waelbroeck, avocat, with an address for service in Luxembourg,

THE COURT (Fourth Chamber),

composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, D.A.O. Edward and S. von Bahr, Judges,

Advocate General: F.G. Jacobs,

Registrar: R. Grass,

having regard to the Report for the Hearing,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 26 April 2001, Mr Hirschfeldt brought an appeal under Article 49 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice against the judgment of the Court of First Instance of 13 February 2001 in Case T-166/00 *Hirschfeldt* v *EEA* [2001] ECR-SC I-A-41 and II-157 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed his application for annulment of, first, the decision of the European Environment Agency (the EEA) of 24 September 1999 to cancel internal competition EEA/T/99/1 for the post of Head of the Finance Department (hereinafter 'the decision of 24 September 1999') and, second, the decision of the EEA of 13 December 1999 transferring the appellant from the Commission to the EEA (hereinafter 'the decision of 13 December 1999'), in so far as it classifies him as an official in Grade A 5, Step 3, with effect from 1 November 1999.

## Legal background

2 Article 8 of the Staff Regulations of the European Communities (hereinafter 'the Staff Regulations') provides as follows:

'An official seconded to another institution of the three European Communities may, after a period of six months, apply to be transferred to that institution.

If the parent institution of the official and the institution to which he has been seconded both consent to the transfer, the official shall be deemed to have served his entire service career in the Community in the latter institution. He shall not receive by virtue of such transfer any of the financial benefits which an official is entitled to receive under these Staff Regulations on termination of service with one of the institutions of the Communities.

If the decision granting the application involves establishment in a grade higher than that occupied in the parent institution, this shall count as promotion; such decision may be taken only in accordance with the terms of Article 45.'

3 Article 27(1) of the Staff Regulations provides as follows:

'Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity...'.

4 Article 29(1) of the Staff Regulations provides as follows:

'Before filling a vacant post in an institution, the appointing authority shall first consider:

(a) whether the post can be filled by promotion or transfer within the institutions;

(b) whether to hold competitions internal to the institution;

(c) what applications for transfer have been made by officials of other institutions of the three European Communities;

and then follow the procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests. Annex III lays down the competition procedure.

The procedure may likewise be followed for the purpose of constituting a reserve for future recruitment.'

**Factual background to the dispute**

5 The facts which gave rise to the dispute are set out in the contested judgment as follows:

'1 The applicant joined the Commission on 1 July 1987 as a probationary official in Grade A 7 and was assigned to the Directorate-General "Environment, Nuclear Safety, Civil Protection" (DG XI). He was promoted to Grade A 6 on 1 June 1992 and to Grade A 5, Step 2, on 30 May 1996, with effect from 1 April 1996.

2 By letter of 18 December 1996, the European Environment Agency (EEA) offered the applicant the post of Financial Director as a member of the temporary staff, provisionally at Grade A 5, Step 3, for a period of two years, renewable for a year, in Copenhagen (Denmark).

3 By decision of 13 January 1997, following a request by the applicant of 20 December 1996, the Commission seconded the applicant to the EEA for an indeterminate period, with effect from 1 February 1997.

4 On 1 April 1997, the applicant joined the EEA as a member of the temporary staff at Grade A 4, Step 1. His contract, which was initially supposed to end on 31 January 1999, was extended until 31 January 2000.

5 On 14 September 1999, the EEA published notice of internal competition EEA/T/99/1 for the post of Head of the Finance Department. On 23 September 1999, the applicant applied to take part in that competition.

6 On 22 September 1999, the Director of Directorate A (staff policy) of Directorate-General Personnel and Administration (DG IX) of the Commission, Mr S. Bisarre, wrote to Mr Jiménez-Beltran, the Executive Director of the EEA, stating as follows:

"...

The decision to open a competition for the post of Head of Finance Department... therefore strikes me as regrettable on two counts: it runs counter to a policy introduced at the request of the agencies, for which it is still difficult to find acceptance among the Commission's staff representatives; and it does not meet an unquestionable need of the service since the aim in view — namely to fill a vacancy that will arise in February 2000 — is more easily attainable by means of a transfer.

...

I can therefore only ask you to reconsider holding competition EEA/T/99/1 and to re-examine the possibility of a transfer [of the applicant to the EEA] in the grade and step he occupied when he was seconded. As my department has already indicated to you, [the EEA] will then be able to promote him to the higher grade when the requirements of the Staff Regulations are met.

...

If, however, you decide to continue with the internal competition, the DG [IX] will regrettably be unable to be associated with the competition or with any future competition you may hold to fill your other permanent posts. It will also be obliged never again to have recourse to transfers for the benefit of the [EEA].

...".

7 On 24 September 1999, the EEA's personnel department announced its decision to cancel competition EEA/T/99/1.... That decision was communicated to the applicant by letter of 27 September 1999 from Mr Jiménez-Beltran, in which he stated:

"...

I regret to inform you that, following receipt of that letter [from Mr S. Bisarre], I have no alternative but to annul the internal competition for which you have applied.

In the light of the contents of this letter, I would strongly urge you to request a transfer from the Commission to the EEA as soon as possible, this being the only way in which you will be able to continue working for the agency."

8 By letter of 27 October 1999, the appellant requested a transfer from the Commission to the EEA under Article 8 of the Staff Regulations... . That request was sent to the Commission.

9 By letter of 6 December 1999 to the EEA, the Commission approved the transfer. In that letter it stated that the applicant was currently in Grade A 5 (since 1 April 1996), Step 3 (since 1 August 1996). By decision of 13 December 1999, the applicant was transferred to the EEA with effect from 1 November 1999. By that decision, he was classified as an official in Grade A 5, Step 3.

10 On 23 December 1999, the applicant made a formal complaint under Article 90(2) of the Staff Regulations against the decision of 24 September 1999. By decision of 8 March 2000, the EEA rejected that complaint.

11 On 13 March 2000, the applicant submitted a second complaint under Article 90(2) of the Staff Regulations against the decision of 13 December 1999 in so far as it classified him as an official in Grade A 5, Step 3, with effect from 1 November 1999. That complaint was rejected by the EEA by decision of 10 May 2000.'

**Procedure before the Court of First Instance and the contested judgment**

6 On 19 June 2000, Mr Hirschfeldt brought an action before the Court of First Instance for annulment of the decision of 24 September 1999 and partial annulment of the decision of 13 December 1999.

7 In support of his application for annulment of the decision of 24 September 1999, Mr Hirschfeldt put forward a single plea in law, alleging infringement of Article 27 of the Staff Regulations.

8 Referring to the letter of 22 September 1999 of the Commission's DG IX, he contended more particularly that the transfer procedure had been preferred to the internal competition procedure owing to an 'inter-institutional agreement' between the EEA and the Commission. The choice of recruitment procedure had, therefore, not been determined by the needs of the service, as required by Article 27 of the Staff Regulations, but by a policy imposed by the Commission.

9 In support of his application for annulment of the decision of 13 December 1999, Mr Hirschfeldt again raised a single plea in law, alleging infringement of Articles 5, 8 and 45 of the Staff Regulations.

10 In that connection, Mr Hirschfeldt contended more particularly that, since his request for a transfer complied with Article 8 of the Staff Regulations, the object of the transfer was to establish him in the position which he had held at the EEA for more than two years as a member of the temporary staff in Grade A 4.

11 In addition, he argued that the EEA should, in accordance with the second paragraph of Article 8 of the Staff Regulations, have reconstructed his career within that institution, and, therefore, given that he had been eligible for promotion since 1 April 1998, examined the possibilities for promoting him in the promotions exercises in 1998 or 1999.

12 By the contested judgment, the Court of First Instance dismissed the application in its entirety as unfounded.

13 With regard to the claim for annulment of the decision of 24 September 1999, the Court of First Instance observed at paragraph 25 of the contested judgment that it is settled case-law that, once a recruitment procedure has been initiated under Article 29 of the Staff Regulations, the appointing authority is not obliged to pursue it (judgments of the Court of Justice in Case 26/68 *Fux* v *Commission* [1969] ECR 145, paragraph 11, and of the Court of First Instance in Case T-38/89 *Hochbaum* v *Commission* [1990] ECR II-43, paragraph 15).

14 The Court of First Instance held, at paragraph 26 of the contested judgment, that it follows from the same line of cases that, if the appointing authority has a discretion as to whether or not to proceed with a competition, it is, *a fortiori*, entitled to cancel a competition where there are doubts as to the legality of recourse to such a procedure.

15 The Court of First Instance added in the same paragraph of the contested judgment that the fact that in this case the doubts had been raised by a third party, namely the Commission's DG IX, could not lead to the conclusion that there was an 'inter-institutional agreement', and did not affect the appointing authority's exercise of its discretion.

16 Furthermore, at paragraph 27 of the contested judgment, the Court of First Instance held that, having been appointed to the post concerned prior to bringing his action, Mr Hirschfeldt did not in any event have an interest in regard to the competition. The Court of First Instance stated that it was only his establishment in Grade A 5 which was capable of affecting him adversely, and not the fact that the post in question had been filled by a method other than competition. It added that since the post was advertised as falling within the career bracket A 5/A 4 in the notice of competition, the person appointed following the competition would not necessarily have been appointed in Grade A 4.

17 The Court of First Instance held, at paragraph 28 of the contested judgment, that it followed from all of the foregoing considerations that the application for annulment of the decision of 24 September 1999 had to be dismissed as unfounded.

18 As regards the application for annulment of the decision of 13 December 1999, the Court of First Instance found at paragraph 38 of the contested judgment that Mr Hirschfeldt had been transferred from the Commission to the EEA with effect from 1 November 1999 under Article 8 of the Staff Regulations.

19 At paragraph 39 of the contested judgment, the Court of First Instance stated that Mr Hirschfeldt was accordingly deemed to have spent his entire career in the service of the Community at the EEA, pursuant to the second paragraph of Article 8 of the Staff Regulations.

20 The Court of First Instance observed, at paragraph 40 of the contested judgment, that Mr Hirschfeldt had acknowledged that when he was transferred he did not have an automatic right to promotion under the third paragraph of Article 8 and Article 45 of the Staff Regulations. It added that in any event it is settled case-law that candidates eligible for promotion do not have a right to be promoted (judgment of the Court of First Instance in Case T-76/98 *Hamptaux* v *Commission* [1999] ECR-SC I-A-59 and II-303, paragraph 49).

21 At paragraph 41 of the contested judgment the Court of First Instance held that Mr Hirschfeldt's argument that the EEA was bound by those provisions to reconstruct his career as though he had been an official of the EEA from the start, and to 'examine the possibilities' for promoting him when he was transferred, could not be accepted, given that he was eligible for promotion from 1 April 1998.

22 In that regard, the Court of First Instance held, at paragraph 42 of the contested judgment, that the promotion of an official pursuant to the third paragraph of Article 8 of the Staff Regulations is subject to two conditions, namely that, first of all, the transfer of the person concerned involves his establishment in a higher grade and, secondly, that the promotion procedure complies with the requirements of Article 45 of the Staff Regulations.

23 At paragraph 43 of the contested judgment, the Court of First Instance held that the first of those conditions was not met in this case. In that connection, it found that, notwithstanding the fact that Mr Hirschfeldt had been appointed a member of the temporary staff in Grade A 4 at the EEA, by virtue of Articles 37 to 39 of the Staff Regulations he retained his Grade A 5 status at the Commission.

24 The Court of First Instance found that Mr Hirschfeldt had been transferred by the decision of 13 December 1999 to a post in career bracket A 5/A 4, that is, a post of the same grade as that attaching to the post he held at the Commission.

25 The Court of First Instance stated that the transfer of the appellant to a post in career bracket A 5/A 4 did not necessarily involve his establishment in a higher grade, since that post could be filled at Grade A 5 or Grade A 4. Accordingly, it found that the transfer did not impose an obligation on the EEA to examine the possibility of promoting him in the circumstances provided for in Articles 8 and 45 of the Staff Regulations.

26 At paragraph 44 of the contested judgment, the Court of First Instance held that it followed from those considerations that the application for annulment of the decision of 13 December 1999 had to be dismissed as unfounded.

## The appeal

27 By his appeal, Mr Hirschfeldt claims that the Court should:

— set aside the contested judgment;

— annul the decision of 24 September 1999;

— annul the decision of 13 December 1999, in so far as it classifies him in Grade A 5, Step 3, with effect from 1 November 1999;

— order the EEA to pay the costs.

28 The EEA contends that the Court should:

— dismiss the appeal as partially inadmissible, in so far as it challenges findings of fact made by the Court of First Instance, and as unfounded as to the rest;

— in the alternative, in the event that the Court of Justice decides to set aside the contested judgment, refer the case back to the Court of First Instance for a fresh decision on the application;

— order Mr Hirschfeldt to pay the costs.

29 By application lodged at the Court Registry on 29 April 2002, Mr Hirschfeldt requested that the oral procedure be reopened in order to enable him to respond at a hearing to the Opinion of the Advocate General, which, he claimed, contained a number of contradictions.

30 In that regard, it must be recalled that the Court may of its own motion, on a proposal from the Advocate General or at the request of the parties, order that the oral procedure be reopened in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, *inter alia*, judgment of 18 June 2002 in Case C-299/99 *Philips* [2002] ECR 5475, paragraph 20).

31 The Court finds that there is no reason in this case to order that the oral procedure, which was closed on 25 April 2002, be reopened, since it has before it all the information it needs in order to determine this appeal.

32 Mr Hirschfeldt's request that the oral procedure be reopened must therefore be refused.

## Findings of the Court

### *The decision of 24 September 1999*

#### First plea

33 By his first plea in law, Mr Hirschfeldt challenges the findings of the Court of First Instance, at paragraph 26 of the contested judgment, that the exercise by the EEA of its discretion as the appointing authority in regard to deciding whether to cancel a competition was not vitiated in this case by the doubts raised by the Commission's DG IX, and that there was no 'inter-institutional agreement' on the subject between the agency and the Commission.

34 According to Mr Hirschfeldt, the competition at issue was organised in accordance with Article 29(1), first subparagraph, under (b), of the Staff Regulations, in the interests of the service. Such a competition is, by its nature, intended to enable the broadest possible range of officials and other servants to apply, so that at the end of the recruitment procedure the institution is able to secure the services of officials of the highest standard of ability, efficiency and integrity, pursuant to Article 27 of the Staff Regulations. It cannot therefore be claimed in this case, as the EEA contends in order to justify cancelling the competition, that the sole purpose of the competition was 'to remedy the anomalous administrative status of a specific official'; accordingly, the EEA's action was contrary to the intended purpose of any recruitment procedure.

35 Mr Hirschfeldt further contends that it is clear on the actual wording of the decision of 24 September 1999 that the only reason for adopting that decision was in fact to comply with the letter of 22 September 1999 from the Commission's DG IX, and in particular the instruction to cancel the competition, accompanied by an express threat 'never again to have recourse to transfers for the benefit of the [EEA]'.

36 The Court of First Instance was therefore wrong in finding, first of all, that the appointing authority in this case was entitled to cancel the contested competition, on the ground that there were doubts as to the legality of recourse to such a procedure and, secondly, that the fact that those doubts were raised by a third party did not affect the exercise by the appointing authority of its discretion.

37 According to Mr Hirschfeldt, the first plea is admissible in appeal proceedings because it does not involve appraisal of the facts, which, moreover, are not contested, but the legal categorisation of those facts.

38 The EEA submits that this plea is inadmissible because it relates to findings of fact made by the Court of First Instance and does not therefore involve a matter of law, within the meaning of Articles 225 EC and 51 of the EC Statute of the Court of Justice, which the Court is entitled to hear and determine in the context of an appeal.

39 As regards the substance of the plea, the EEA submits that the Court of First Instance was right in finding in the contested judgment that the decision of 24 September 1999 was not, in this case, a result of the letter of 22 September 1999 from the Commission's DG IX, as Mr Hirschfeldt contends, but was adopted because the competition in issue was held purely to remedy the anomalous administrative status of the appellant, which, under the case-law of the Court of Justice, constitutes a misuse of powers (see, *inter alia,* Case 105/75 *Giuffrida* v *Council* [1976] ECR 1395, and Case 142/85 *Schwiering* v *Court of Auditors* [1986] ECR 3177). In those circumstances, organising an internal competition was clearly not in the interests of the service.

40 In that connection, it must be recalled that under Article 225 EC and Article 51 of the EC Statute of the Court of Justice, an appeal lies on points of law only and that therefore the Court of First Instance alone has jurisdiction to find and appraise the facts, save where the factual inaccuracy of its findings results from the documents in the case before it. The appraisal of the facts by the Court of First Instance does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (see, *inter alia*, Case C-449/99 P *EIB* v *Hautem* [2001] ECR I-6733, paragraph 44).

41 The Court finds in this case that the arguments raised by Mr Hirschfeldt in support of his first plea in law amount to a complaint that the contested judgment, at least by implication, upheld the view put forward by the EEA at first instance that the decision of 24 September 1999 was based on the case-law cited at paragraph 39 of this judgment, and was not motivated by a desire to comply with the letter of 22 September 1999 from the Commission's DG IX.

42 However, the findings made by the Court of First Instance as to the basis of the decision of 24 September 1999 are factual in nature and cannot, therefore, unless the clear sense of the evidence before the Court of First Instance has been distorted, be subject to review by the Court of Justice in appeal proceedings.

43 Nor, furthermore, do documents in the file show that, in making those findings, the Court of First Instance distorted the clear sense of any of the evidence.

44 It must be observed that, in the decision of 8 March 2000 rejecting Mr Hirschfeldt's complaint under Article 90(2) of the Staff Regulations on the decision of 24 September 1999, the EEA clearly indicated that the case-law cited at paragraph 39 of this judgment constitutes not only the reason why the Commission opposed the organisation of the competition, but also the basis of the decision of 24 September 1999.

45 In the light of those considerations, the first plea must be dismissed as inadmissible.

Second plea

46 By his second plea, Mr Hirschfeldt challenges the finding by the Court of First Instance, at paragraph 27 of the contested judgment, that he did not have an interest in bringing an action in regard to the competition cancelled by the decision of 24 September 1999.

47 The EEA argues that it was in conformity with settled case-law, and therefore correctly, that the Court of First Instance found, for the sake, it should be said, of that completeness, that the appellant did not have such an interest.

48 In that regard it should be recalled that it is settled case-law that the Court of Justice will reject outright complaints directed against grounds of a judgment of the Court of First Instance included purely for the sake of completeness since they cannot lead to the judgment being set aside and are therefore nugatory (see, *inter alia*, Case C-244/91 P *Pincherle* v *Commission* [1993] ECR I-6965, paragraph 25, and order in Case C-137/95 P *SPO and Others* v *Commission* [1996] ECR I-1611, paragraph 47).

49 It must be observed here that the reasoning of the Court of First Instance in paragraph 27 of the contested judgment, unlike that in paragraph 26, was included purely for the sake of completeness.

50 The wording of paragraph 27 of the contested judgment, particularly the introduction ('Furthermore, and in any event,'), clearly indicates that what follows is an observation made by the Court of First Instance, following on from the previous paragraph of the contested judgment, purely for the sake of completeness and the fact that the Court of First Instance did not conclude that the plea was inadmissible confirms this.

51 There is therefore no need to examine the second plea.

*The decision of 13 December 1999*

First plea

52 By his first plea in law, Mr Hirschfeldt criticises the Court of First Instance for having held, in particular at paragraph 42 of the contested judgment, that

promotion under the third paragraph of Article 8 of the Staff Regulations is subject, *inter alia,* to the condition that the transfer will necessarily entail establishment in a higher grade. The Court of First Instance thus imposed a condition that does not appear in that provision.

53 In support of that plea, Mr Hirschfeldt contends that the decision of 13 December 1999 must be considered not as a transfer entailing his appointment to a vacant post in career bracket A 5/A 4, but as establishing him in the post at the EEA which he held as a member of the temporary staff in Grade A 4, pursuant to a decision taken by the EEA in the interests of the service, and with the consent of the Commission. It was in his capacity as a member of the temporary staff in Grade A 4 that he requested a transfer to the EEA and establishment in the post already occupied by him within that organisation.

54 Mr Hirschfeldt argues that establishment following such a request for transfer must, in accordance with the principles of legal certainty and of the protection of legitimate expectations, be in the post and grade the official occupied as a member of the temporary staff of the institution to which he was seconded. He adds that otherwise the term 'establishment' in the third paragraph of Article 8 of the Staff Regulations would be meaningless.

55 The EEA contends first of all that, on the basis of paragraphs 42 and 43 of the contested judgment, the Court of First Instance was entitled to conclude that, under the third paragraph of Article 8 and Article 45 of the Staff Regulations, the EEA was not under any obligation in this case to examine the possibilities for promoting Mr Hirschfeldt.

56 The EEA argues next that the grade attaching to the post occupied by an official in the capacity of a member of temporary staff in the institution to which he is seconded is irrelevant for the purposes of the application of Article 8 of the Staff Regulations. Article 8 does not mean that the person concerned has a right to be established in the post and grade he held in that institution.

57 The EEA contends, finally, that the Court of First Instance was right in finding that the third paragraph of Article 8 of the Staff Regulations governs the situation where the post to be filled is at a higher grade than that previously held by the person who has applied to be transferred in his institution of origin. According to the EEA, it is clear that in such circumstances the decision to transfer him can only be made by establishing him in a higher grade. Establishment in this way, which is exceptional and derogates from the general rules in the Staff Regulations, must therefore be deemed equivalent to a promotion and therefore be subject to Article 45 of the Staff Regulations.

58 In that connection it must be observed that only the third paragraph of Article 8 of the Staff Regulations covers the situation where the transfer of an official means that the institution to which he is transferred must make the transfer coincide with a promotion.

59 That provision governs a situation that is exceptional and also derogates from the general rule in the second paragraph of Article 8 of the Staff Regulations, which is that a transfer does not in principle affect the status of the official concerned, in particular as regards his grade and seniority in step.

60 The second paragraph of Article 8 of the Staff Regulations is also intended to ensure that, in particular at the time of future promotions exercises in the institution to which the official is transferred, he is treated, with regard to length of service required, as if his career in the service of the Community had been spent in that institution. In addition, it is clear from the file that the EEA took Mr Hirschfeldt's time on secondment to the EEA as a member of the temporary staff into account in the first promotions exercise after his transfer. In contrast, and contrary to Mr Hirschfeldt's contention, that provision does not require the institution to reconstruct the career of the official transferred for the purposes of promotions exercises preceding the date of transfer.

61 It follows that the Court of First Instance was correct in finding, at paragraph 42 of the contested judgment, that promotion of an official when he is transferred is, pursuant to the third paragraph of Article 8 of the Staff Regulations, subject, in particular, to the condition that the transfer involves establishment in a higher grade than that occupied by the official in his institution of origin. Only in those circumstances does a transfer in itself require the official's grade to be altered, thus derogating from the rule laid down in the second paragraph of Article 8 of the Staff Regulations, to which reference was made at paragraph 59 of this judgment.

62 The first plea must therefore be dismissed as unfounded.

Second plea

63 By the second plea, Mr Hirschfeldt complains that the Court of First Instance failed to verify whether, by the decision of 13 December 1999, the EEA correctly reconstructed his career for the purposes of the second paragraph of Article 8 of the Staff Regulations, and that it failed to respond to the arguments he raised in that connection. According to the appellant, it follows that the contested judgment is vitiated by an inadequate statement of reasons on this point.

64 The EEA argues that the Court of First Instance was right to confine itself to pointing out that there was no need in this case to resort to the possibility, exceptionally and by way of derogation, of promoting the official on his transfer, as provided for in the third paragraph of Article 8 of the Staff Regulations, since one of the conditions for the application of that provision — namely establishment of the official in a higher grade — was not fulfilled.

65 On that point, it must be observed that the Court of First Instance found, at paragraph 43 of the contested judgment, that transferring the appellant did not entail an obligation on the part of the EEA to examine the possibility of promoting him in the circumstances provided for in Articles 8 and 45 of the Staff Regulations.

66 That statement of reasons must be understood as applying to the present case the principles recalled at paragraphs 58 to 60 of this judgment, namely that the second paragraph of Article 8 of the Staff Regulations does not provide for the possibility of promotion upon transfer, since that is only possible in the exceptional circumstances envisaged in the third paragraph of Article 8 of the Staff Regulations.

67 It follows that, contrary to Mr Hirschfeldt's contention, the contested judgment is not vitiated by an inadequate statement of reasons.

68 The second plea must therefore be rejected as unfounded.

69 It follows from the foregoing considerations that the appeal must be dismissed in its entirety.

## Costs

70 Under Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the EEA has applied for costs and Mr Hirschfeldt has been unsuccessful, Mr Hirschfeldt must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders Mr Hirschfeldt to pay the costs.**

Timmermans Edward von Bahr

Delivered in open court in Luxembourg on 7 November 2002.

R. Grass
Registrar

C.W.A. Timmermans
President of the Fourth Chamber