JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 5 APRIL 1979 [1]

Maximilienne Caro-Fernandez (née Gilbeau) v Commission of the European Communities

Case 157/77

Officials — Recruitment — Internal competition — Filling of vacant post — Objective criteria — Consequence — Appointment of successful candidate in competition — Prior right — Exclusion — Appointment of another candidate by way of transfer — Legality
(Staff Regulations of Officials, art. 29)

Article 29 of the Staff Regulations of Officials establishes the necessary recruitment procedures so that vacant posts may be filled by officials selected on the basis of objective criteria and solely in the interests of the service. Hence that provision cannot be interpreted as meaning that it confers on a successful candidate in an internal competition held to fill a given post a prior right to appointment to that post as against an official wishing to be assigned to it by way of transfer.

In Case 157/77

MAXIMILIENNE CARO-FERNANDEZ (*NÉE* GILBEAU), an official of the Commission of the European Communities, residing at 8 Chemin de la Belle Croix, Horrues (Province du Hainaut), Belgium, represented and assisted by Marcel Slusny, Advocate of the Brussels Bar, 272 Avenue Brugmann, 1180 Brussels, with an address for service in Luxembourg at the office of Jacques Marc, 38 Rue Albert 1[er],

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Thomas F. Cusack, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Plateau de Kirchberg,

defendant,

1 — Language of the Case: French.

APPLICATION for:

— The annulment of the implied decision rejecting the applicant's complaint;

— The annulment of the defendant's refusal to promote the applicant to a post of assistant translator (L/A 8-L/A7) or to extend the duration of validity of Competition No COM/LA/11/75;

— An order that the costs be paid by the defendant.

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, M. Sørensen and A. Touffait, Judges,

Advocate General: F. Capotorti
Deputy Registrar: J. A. Pompe

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments put forward by the parties in the course of the written procedure may be summarized as follows:

I — Facts and written procedure

In 1975 the Commission organized Internal Competition No COM/LA/11/75 for the purpose of constituting a reserve to fill certain vacant posts of assistant translator in career bracket L/A 8-L/A 7. That competition was organized in conjunction with Open Competition No COM/LA/138/75. According to statements made by the Commission, there was at that time almost no possibility of members of the *French* language section obtaining an appointment with assignment to Brussels.

The applicant, who is a Belgian national and an official of the Commission in Grade B 4, took part in the internal competition. According to the Commission, the final marks obtained by

the applicant and a certain Miss F. were the same. The applicant's name had "headed the list" only because the selection board omitted to state that they were both *"ex aequo"*. The Commission states that the marks for the tests appearing in the report of the selection board of 28 November 1975 give the following figures for the three successful candidates of French mother tongue:

	Compulsory tests	Optional written tests	Oral tests	Total
Mrs Caro-Fernandez	49·5	0·5	11	61
Miss F.	44	1	16	61
Mr L.	50	—	9	59

The applicant maintains that while it is possible that at first she and Miss F. had totals of 61, it was subsequently decided to award the applicant one extra point in the oral test "so as to emphasize her superiority in the written tests" (reply p. 2).

It is, however, established that both the applicant and Miss F. refused an appointment with assignment to Luxembourg. The applicant justified her refusal on the grounds that she was married to a craftsman with a local clientele in Horrues and the surrounding areas, that her child was in the penultimate year at secondary school and that her mother was, at the time, 75 years old. Miss F., a French national and unmarried, had no ties in Belgium. Mr L., the third successful candidate in the competition (French language section) accepted assignment to Luxembourg and was duly appointed.

When two posts became vacant in the French Language Division in Brussels Mr Ciancio, Director of "Translation, Documentation, Reproduction of Documents and Library", requested Mr Baxter, Director of Personnel, in a memorandum dated 18 March 1976 "to annul the procedure for assigning Mrs Caro-Fernandez to Luxembourg and to retain her for a post in Brussels". After considering the reply from Mr Baxter, in which he referred to the case of Miss F., Mr Ciancio wrote *inter alia* in his memorandum to Mr Baxter of 31 March 1976 that "having regard to the interests of the service it is enough if I can count on one linguist of French mother tongue who is proficient — *inter alia* — in Italian. From that point of view there is no difference between the two applications. The only remaining argument in favour of Mrs Caro-Fernandez is therefore that of her family situation".

The appointing authority adopted a decision on the proposal made by Mr Ciancio, but in favour of Miss F. When recommending the appointment of Miss F. in a memorandum to the appointing authority dated 27 April 1976 Mr Baichère, Director-General for Personnel and Administration, referred to her staff reports, which were better than those of the applicant, her higher grade (B 2) and to the fact that she was older and had greater seniority.

That proposal was implemented by the appointment of Miss F., who, it appears, was assigned to Directorate-General IX-D.

As the Commission had been allocated several posts of translator with effect from 1 January 1977 the appointing authority decided at the beginning of 1977 to close the list of suitable candidates on 28 February 1977, with a view to organizing a fresh open competition, No COM/LA/150/1977.

The situation in which the applicant found herself led a member of the selection board, Mrs Stom-Garnier, to send a memorandum in November 1976 to Mr Baichère, Mr Ciancio, Mr Alonso (Chairman of the Staff Committee) and the Chairman of the Translators' Committee expressing regret at the fate of the applicant (who was placed first) in comparison with that of Miss F. (who was placed second). In reply she received from Mr Hay, Chef de Cabinet to Commissioner Tugendhat, a memorandum dated 28 March 1977 which referred, in particular, to an "objective consideration of various factors" which resulted in the decision in favour of Miss F.

On 21 February 1977 Mr Alonso wrote to Mr Baichère to ask for the applicant to be appointed or, at least, for the final date for the validity of the competition to be extended beyond 28 February 1977. It appears that Mr Baichère rejected that request in March 1977 (his memorandum is undated) on the ground, in particular, of the large number of assistant translators of French mother tongue who were seeking transfer from Luxembourg to Brussels and who, under the terms of the Staff Regulations, should receive absolute priority as regards any vacant post.

In a memorandum of 3 February 1977 addressed to Mr Pignot (Head of Division in Directorate-General IX DA 3), Mr Chumas, Chief Adviser to the Customs Union Management Group, for which the applicant had worked for ten years, requested that she be assigned to that group as a translator in order to assist, in particular, with the translation of certain customs documents into Spanish.

As, however, all those approaches were unsuccessful the applicant found herself to be the only successful candidate in the internal competition in question not to have been appointed to a post of assistant translator.

On 27 May 1977 the applicant submitted to the appointing authority a complaint under Article 90 of the Staff Regulations, which contained, *inter alia*, the following passage:

"... The candidate who came second in the competition, who is unmarried and without dependants, has been appointed to a post in the French Language Translation Division in Brussels. I have waited in vain to be appointed to a similar post ...

Contrary to my expectations the appointing authority has decided to allow the list of suitable candidates to expire — on 28 February 1977 — without appointing me. Unless objective reasons can be given for the decision I consider that I have been treated in a discriminatory manner, and that the decision not to appoint me to a post of assistant translator in Brussels is an act adversely affecting me. I therefore request you by the present complaint to remedy that situation and to appoint me to a post of assistant translator in the translation department of the Commission in Brussels, in the same way as the other successful candidate of French mother tongue in Internal Competition No COM/LA/11/75."

As no reply was received to that complaint the applicant lodged the present application on 22 December

1977. It was received at the Court Registry on 23 December 1977.

The written procedure followed the normal course.

By order of 3 October 1978 the Court (Second Chamber) ordered Mr Ciancio and Mr Baxter to answer the following question:

"What posts of assistant translator corresponding to the abilities of the applicant, as shown by her success in Internal Competition No COM/LA/11/75 organized for the purpose of constituting a reserve, became vacant in the departments of the Commission in Brussels in the period between 7 July 1975 (the date of publication of the notice of competition) and 22 December 1977 (the date on which the application was lodged)?"

II — Conclusions of the parties

In her application the *applicant* claims that the Court should:

(1) Declare the implied rejection by the Commission of the applicant's complaint to be null and void;

(2) Declare the Commission's refusal to promote the applicant to a post of Assistant Translator in career bracket L/A 8-L/A 7 or to extend the duration of validity of Competition No COM/LA/11/75 to be null and void;

(3) Order the Commission to pay the costs.

In its defence the *Commission* contends that the Court should:

(1) Declare that the application is inadmissible;

(2) In any event, dismiss it as unfounded;

(3) Order the applicant to pay the costs.

In her reply the applicant adheres to the conclusions set out in her application and, in addition, requests the Court to order "the circumstances under which the appointing authority was prompted not to appoint the applicant" to be proved by witnesses and to call upon the Commission to produce various documents.

After commenting in its rejoinder on the requests for the production of documents and the examination of witnesses made by the applicant in her reply the *Commission* states that it adheres to all the conclusions set out in its defence.

III — Submissions and arguments of the parties

The *applicant* observes that the Commission has not given any reply to her complaint of 27 May 1977.

The Commission has not even availed itself of the period provided for by way of an exception in the second section of the second indent to Article 91 (3) of the Staff Regulations of Officials. The absence of any reply is in itself sufficient to show the inability of the Commission to give any avowable reason for its failure to appoint the applicant to a post of assistant translator in career bracket L/A 8-L/A 7 after having appointed in preference to her a candidate who was less well placed in the competition. That failure is completely unjustified, as posts have become vacant in the intervening period and there are still posts vacant at present, since the appointing authority is about to propose that six posts be filled in Brussels on the basis of the results of Competition No COM/LA/150/77, which was held even though the list of suitable candidates drawn up in consequence of Competition No COM/LA/11/75 was still in force.

It was up to the Commission either to appoint the applicant before the expiry of the duration of validity of the list of suitable candidates or to order a sufficient extension of that duration, as it very frequently does.

In support of her argument that she has been the object of discriminatory treatment the applicant refers in particular to various remarks made about her by certain officials of the Commission.

The applicant maintains that in those circumstances she is entitled to rely on the following submissions:

(1) It is with good reason that no grounds are given for the implied decision rejecting the applicant's complaint which, as it adversely affects her, is void and of no effect, since it fails to fulfil the obligation laid down in Article 25 of the Staff Regulations to state the grounds on which it is based;

(2) The Commission has failed to fulfil its obligation to ensure that the applicant's career develops normally, having regard to her abilities and the results of the tests in which she has taken part;

In addition, there is a failure to fulfil the obligation to provide assistance, of which Article 24 of the Staff Regulations is an illustration;

(3) The Commission has failed to fulfil its obligation towards her as laid down by the final paragraph of Article 24 of the Staff Regulations;

(4) The decision of the appointing authority not to appoint the applicant is vitiated by misuse of powers, since it results entirely from internal quarrels between certain high officials and/or from the opposition of certain of those officials to the entry into Category A of an official recruited in Category C, or, more generally, to appointments being made on the basis of internal competitions, not to mention the opposition which very probably exists in certain quarters to too brilliant a career being achieved by a woman;

The considerations which have led to the "blocking" of the applicant's career are contrary to the principles ensuring the equality of officials and are in conflict with the very concept of the interests of the service.

In its defence the *Commission* contests, in particular, the remarks imputed by the applicant to certain officials of the Commission.

As regards the applicant's first submission the Commission observes that although a failure to give a reply to a complaint preceding legal proceedings within the time-limits laid down constitutes an implied decision to reject that complaint (for which, necessarily, no reasons are given), it cannot alone justify the bringing of an action before the Court of Justice for failure to fulfil the obligation to state the reasons for decisions adversely affecting officials as laid down by the provisions of Article 25 of the Staff Regulations.

Furthermore, it maintains that in her complaint the applicant does not refer to any specific measure capable of being described as an act adversely affecting her. The complaint merely requests the appointing authority to "remedy" the situation she has described (which she considers unjust) and, of course, to appoint her to a post of assistant translator in Brussels. No measure adopted by the institution is therefore intended. There remains, in the express terms of Article 90 (2), the failure to adopt a "measure prescribed by the Staff Regulations" which (and this is essential for the purposes of the rules governing the time-limits for submission of the complaint) formed the subject-matter of a preliminary request in accordance with the provisions of Article 90 (1), followed by rejection of that request.

Whether that rejection is express or implied is not conclusive; what is essential is to be able to determine the date on which the period for submitting a complaint begins to run, as provided for in the third indent to Article 90 (2).

The Commission therefore concludes that the present application is inadmissible on the ground that when the complaint preceding legal proceedings was submitted it was directed neither against an act adversely affecting the applicant nor against a decision refusing to adopt in her favour a measure prescribed by the Staff Regulations and that it was therefore out of time.

In the opinion of the Commission the second and third submissions put forward by the applicant may in fact be regarded as a single submission, that is, infringement of the provision forming the final subparagraph of Article 24 of the Staff Regulations, according to which: "Such training and instruction shall be taken into account for purposes of promotion in their careers".

To reply to that argument it is sufficient to point out that the obligation incumbent on the administration by virtue of that provision cannot in any way prevail over those provisions of the Staff Regulations which govern the filling of vacant posts. With the exception of the applicant's argument that she alone heads the list of suitable candidates drawn up in consequence of the competition it has in no way been shown that those rules have been infringed. The Commission therefore considers that it is under no obligation to reply more fully to that submission.

As regards the submission concerning a misuse of powers the Commission maintains, in particular, that there was no question of "internal quarrels" between certain high officials. There is no opposition to the entry into Category A of an official from Category C (the appointment of Miss F. is evidence of that) or to the achievement of a more brilliant or better than average career by a woman.

Moreover, the decision to give preference to Miss F. as regards an appointment in Brussels is based upon objective criteria which are in keeping with the interests of the service, so that there has been no disregard in this instance of the principle of the equality of officials.

The *applicant* observes in her reply that she refers to the fact (which she has never contested as such) that the Commission gave preference to Miss F. for the first and only appointment in Brussels following Competition No COM/LA/11/75 merely because *that promotion is indicative in itself.* In effect it enables the Commission, within the context of the system which it has adopted, to claim — incorrectly — that it was no longer possible to release a post for the applicant in Brussels.

The appointment of the applicant ought not to have posed any problem, since of the three successful candidates:

— Mr L. was employed at Luxembourg;

— Miss F. was assigned to Brussels;

— And even at the outset there remained at all events one post in Brussels to which the applicant could have been assigned.

Furthermore, at the very time that the Commission allowed the validity of the list of suitable candidates to expire without taking any effective steps to extend it there were a number of other posts available for translators of French mother tongue, since the Commission had been allocated 40 new posts of

translator (other than for English and Danish) with effect from 1 January 1977 and was organizing Open Competition No COM/LA/150/1977.

It appears that the real reasons for the failure to appoint the applicant do not relate to the absence of posts but are those which according to the applicant constitute a misuse of powers.

Referring to her first submission the applicant states that the failure to give any reply to a complaint preceding legal proceedings which presented no difficulties demonstrates the absence of avowable reasons on the part of the Commission. The absence of any reply is in itself an infringement of the Staff Regulations and is prejudicial to the official in question. If the official receives a reply within the periods laid down and has therefore an additional period of three months in which, if appropriate, to lodge an application before the Court of Justice he can make approaches to the administration, make application to the Staff Ombudsman nominated by the Commission, discuss the matter with the Staff Committee, consult if appropriate his union organization, consult one or more lawyers and, finally, adopt a decision in circumstances which allow for reflexion and prudence, which are not those surrounding an official who finds himself up against a blank (and silent) wall. In those circumstances the applicant requests the Court, in the alternative, to order the Commission in any event to bear all or part of her costs, if she does not receive satisfaction from the Court.

As regards the Commission's argument that the application is not admissible, the applicant considers that the distinction between a request and a complaint must not be applied in an excessively formal manner. The aim of the present version of Article 90 of the Staff Regulations must be sought. First of all, that provision made the complaint preceding legal proceedings compulsory and even subdivided it into two stages in certain cases. That is the case not only in order to avoid "anarchical" applications but also to protect the interests of the official by enabling him to put forward his submissions in the course of a procedure prior to proceedings before the Court which may in certain cases last for a considerable period.

Furthermore, the maintenance of a reasonable balance between the various interests at stake demands that pointless procedures are not required. If indeed the applicant's complaint must in this instance be regarded as relating to the refusal to extend the duration of validity of the competition, there was also another request: that made on her behalf by Mr Alonso on 21 February 1977 in his letter to Mr Baichère. It is therefore not clear what a further request, which is, moreover, set out in the complaint, could have added to the procedure.

Moreover, it is not true that no action on the part of the administration is referred to. Omissions also constitute action and the applicant has indicated sufficiently clearly that she was referring, first, to the failure to appoint her, which is vitiated by misuse of powers and, secondly, to the failure to extend the duration of validity of the competition.

As regards her second and third submissions, the applicant maintains, in particular, that in the absence of any urgent reasons relating to the interests of the service, and in this instance none has ever been indicated, the appointing authority is failing in its duty to give general assistance as well as in the specific duty laid down by the final paragraph of Article 24 of the Staff Regulations by not allowing a meritorious

official to receive the promotion for which he is eligible, either through the implementation of Article 45 of the Staff Regulations or following a competition. The Court is judge of whether the conduct of the appointing authority is in accordance with Article 24 of the Staff Regulations.

The final paragraph of Article 24 of the Staff Regulations must be interpreted in such a way that when a question of promotion arises (and the same applies *mutatis mutandis* where the promotion occurs as the result of a competition) the appointing authority will not be able to disregard the advanced vocational training of the official (in this instance, further education at university level) in the absence of compelling reasons relating to the interests of the service. No such reasons have ever been given, unless it be in a rather unconvincing manner when preference was given to Miss F., and were not given subsequently when at least one post was vacant and the administration failed to allocate it in favour of the applicant.

The applicant states that she also relies on the submission of misuse of powers, pointing out that the refusal to appoint her and, in any event, the obstacles which the administration voluntarily created by only allowing itself a period of extension which was too short to enable her to be appointed arise out of the considerations set out in the text of that submission in the application.

In the case of misuse of powers it is normally necessary to have recourse to indications, or to what the Anglo-Saxon tradition refers to as circumstantial evidence. The applicant considers that the factors already referred to are quite sufficient and that at all events they enable negative evidence to be brought, since, first, there were no avowable reasons for the refusal to appoint her, as there was subsequently at least one post vacant in Brussels and, secondly, there was no reason to act, as was done in her case, in a manner which conflicts with the established rules at the Commission, that is, to allow a list of suitable candidates to expire without having promoted the candidate classified in first place (and the same reasoning applies in the case of a first place *ex aequo*). In any event, if there is any doubt in the mind of the Court the applicant requests that a certain number of witnesses be heard, whose names she lists in conclusion in her statement.

In its rejoinder the *Commission* stresses that it does not maintain that it was *impossible* "to release a post for the applicant in Brussels". It recalls that when the two competitions (internal and open) were organized in 1975 there was no post vacant in Brussels.

Two posts subsequently became vacant unexpectedly.

Faced with numerous requests for transfer from Luxembourg to Brussels by translators of French mother tongue the Commission decided to fill those two posts, first, by making use of the reserve list from the internal competition and, secondly, by accepting one of the requests for transfer from Luxembourg to Brussels.

As regards the new posts in the Language Service allocated by the budgetary authority in 1977, there was a maximum of between three and five posts available as regards the French section, and they were in Luxembourg. Furthermore, it is clear from the wording of the open competition organized in

1977 that as regards the French section one condition of admission was a thorough knowledge of German (in the context of the internal competition the applicant took an optional test in translation from German for which she received only 4.5 marks out of 20). It follows that in the light of the requirements existing in 1977 the applicant was unable to lay any claims to the new posts allocated by the budgetary authority for the financial year 1977, which completely justified the decision not to extend the reserve list drawn up in consequence of Competition No COM/LA/11/75 beyond February 1977.

The Commission adheres to its conclusions on the question of the admissibility of the application.

As regards the second and third submissions put forward by the applicant the Commission refers only to the rule whose aim is "to ensure that an official's career develops normally", which derives from the final paragraph of Article 24 of the Staff Regulations. Whatever the exact scope of that obligation may be, the administration has fully satisfied it as regards the applicant, since it proposed her appointment with assignment to Luxembourg.

Furthermore, the Commission considers that it is by holding internal competitions (in particular those which enable movement from one category to another) that the appointing authority satisfies its duty to take into account the vocational training of each candidate since:

— First, such training, in the case for example of a university degree, will in many cases ensure his admission to the tests; and

— Secondly, once admitted, the knowledge which he has acquired will often enable him to succeed in the tests and sometimes to obtain a better placing in the list of suitable candidates, which the appointing authority will necessarily take into account.

On those grounds the principle laid down by the wording of the final paragraph of Article 24 of the Staff Regulations finds its classic application in the context of both promotions within the grade and promotions from one career bracket to another.

The assertions of the applicant concerning an alleged misuse of powers are quite without foundation. In fact the two posts in question were filled by:

(a) The appointment of a candidate placed *ex aequo* with the applicant;

(b) A transfer made at the request of the official concerned.

No other opportunity has arisen in Brussels and even if such an opportunity had existed the applicant had, in the light of her refusal of an assignment to Luxembourg, no prior right to it in preference to the candidates for transfer. The extension of duration of the list of suitable candidates beyond 28 February 1977 was meaningless as regards the applicant having regard to the combinations of languages required in 1977 as stated in the notice of general competition for that year.

IV — Oral procedure

The witnesses Mr Ciancio and Mr Baxter were examined at the hearing on 14 December 1978.

The applicant, represented by Marcel Slusny, Advocate at the Cour d'Appel, Brussels, and the Commission, represented by its Legal Adviser, Thomas F. Cusack, acting as Agent, presented oral argument at the same hearing.
The Advocate General delivered his opinion at the hearing on 22 February 1979.

V — Application submitted after the closure of the oral procedure

By letter from her adviser dated 13 March 1979 the applicant referred to certain facts which came to her knowledge after the hearing on 14 December 1978.
According to that letter the applicant has identified the official who during the period of validity of the list of suitable candidates drawn up in consequence of Competition No COM/LA/11/75 was transferred from the departments of the Commission in Luxembourg to its departments in Brussels in order to fill a post of assistant translator.

The transfer took place even though there were more cogent social reasons to justify the promotion of the applicant to that post.

The letter states further that after the expiry of the period of validity of the list of suitable candidates six transfers were made from within the institution or from other institutions to posts of translator with the Commission in Brussels (three of which were to posts of assistant translator).

After stating that she was unable to give that information at the hearing the applicant requested the Court to initiate the procedures provided for in Articles 60 and/or 61 of the Rules of Procedure.

Having regard to the grounds of judgment set out in the present decision the Court has not considered it necessary to give effect to the aforementioned application.

Decision

1 The applicant, an official in Category B at the Commission, took part in 1975 in Internal Competition No COM/LA/11/75 held to constitute a reserve with which to fill vacant posts in career bracket L/A 8-L/A 7 (assistant translator).

2 The file shows that the applicant was placed first among the successful candidates of French mother tongue or, at least, first *ex aequo* with another candidate, Miss F.

3 There was a third successful candidate in the competition (French language section), Mr L., who was placed after the applicant and Miss F.

4 Although both the applicant and Miss F. refused the offer of an appointment in the services of the Commission with assignment to Luxembourg the third successful candidate accepted it and was duly appointed.

5 When subsequently in the course of 1976 two posts for translators of French mother tongue became vacant in the services of the Commission in Brussels Miss F. was appointed to one of them while the other was filled by the transfer to Brussels of an official employed in Luxembourg.

6 Although the final date for the validity of the list of suitable candidates drawn up in consequence of the aforementioned internal competition was deferred from 31 December 1976 to 28 February 1977 the applicant remained after the expiry of that period the only successful candidate in that competition not to have been appointed to a post of assistant translator.

7 By a complaint by way of Article 90 (2) of the Staff Regulations of Officials submitted to the appointing authority on 27 May 1977 the applicant stated that the decision not to appoint her to a post of assistant translator in Brussels constituted discriminatory treatment and is therefore an act adversely affecting her.

8 She requested that that situation be remedied and that she be appointed "to a post of assistant translator in the translation department . . . in Brussels, in the same way as the other successful candidate of French mother tongue in Internal Competition No COM/LA/11/75".

9 Since no reply was received to that complaint, on 22 December 1977 the applicant lodged the present application which was received at the Court Registry on 23 December 1977. The application seeks the annulment of the implied decision rejecting the complaint as well as of the refusal of the Commission either to promote the applicant to a post of assistant translator in career bracket L/A 8-LA 7 or to extend further the duration of validity of the competition.

10 In support of her conclusions the applicant maintains in particular that the Commission has failed to fulfil its obligation to ensure the normal development of her career as well as, on a more general level, its obligations deriving from Article 24 of the Staff Regulations.

11 She complains in particular that the Commission failed to take her advanced vocational training into account (in this instance duly certified further education at university level) when filling the two posts which became vacant in 1976.

12 It is clear from the terms of the final paragraph of Article 24 of the Staff Regulations that the training and instruction of officials shall be taken into account for purposes of promotion in their careers.

13 It is established that the appointing authority organized an internal competition for the purpose of constituting a reserve to fill vacant posts in career bracket L/A 8-L/A 7 and that the applicant took part successfully in the tests for that competition.

14 As a result of that competition the applicant was offered and refused an appointment to a post in that career bracket with assignment to Luxembourg which would have resulted in her promotion from her present category to a higher category.

15 Up to the time of the applicant's refusal of that appointment, therefore, the Commission did not in any way fail in its obligations towards her deriving from the provisions of Article 24 of the Staff Regulations as a whole.

16 Although the applicant does not contest the appointment of Miss F. and her assignment to the services of the Commission in Brussels she criticizes the appointing authority for having failed to appoint her in like manner to another post of assistant translator which became vacant in Brussels during the duration of validity of the list of suitable candidates and which was filled by the transfer of another official from the services of the Commission in Luxembourg.

17 In that regard she relies on the provisions of Article 29 of the Staff Regulations in order, as it were, to claim a prior right to that post, as a successful candidate in an internal competition, over an official wishing to be assigned to it by way of transfer.

18 However, that argument receives no support from the wording of Article 29 itself, which establishes the necessary recruitment procedures so that vacant posts may be filled by officials selected on the basis of objective criteria and solely in the interests of the service.

19 In the light of the foregoing considerations the fact that the Commission's choice did not fall upon the applicant but rather upon an official who was already employed in the language service does not appear to be open to objective criticism.

20 The applicant has not been able to produce any evidence to prove that the considerations which led to the filling of the abovementioned post by way of transfer were extraneous to the interests of the service.

21 It results from all of the foregoing that the fact that the administration did not appoint the applicant to a post of assistant translator during the duration of validity of the list of suitable candidates does not constitute an infringement either of Article 24 or of Article 29 of the Staff Regulations.

22 As regards the failure to extend the duration of validity of the reserve list beyond 28 February 1977 the Commission has explained that at that period it intended to organize an open competition for the purpose of filling the new posts allocated by the budgetary authority for the financial year 1977, which, as regards the French language section, involved assignment to Luxembourg.

23 The conduct of the Commission in that regard, which is, moreover, justified by the interests of proper administration, cannot constitute a failure to fulfil its obligation to assist the applicant which derives from Article 24 of the Staff Regulations.

24 There is, therefore, no reason to examine the method used to fill two posts of translator of French mother tongue in Brussels which, according to statements made by two officials of the Commission during their examination by the Court, became vacant during the second half of 1977.

25 Finally, the applicant maintains that the Commission's refusal to appoint her to a post of assistant translator in Brussels and to extend the duration of validity of the list of suitable candidates constitutes a misuse of powers, since it is based on considerations which conflict with the interests of the service and derive, in particular, from the opposition of certain officials to the entry of the applicant, who was recruited in Category C, into the language service.

26 In support of that ground of complaint the applicant refers to various complaints allegedly made in that connexion by certain officials of the Commission.

27 However, those are factors which cannot be adduced to support the argument of a misuse of powers on the part of the Commission.

28 In the light of all of the foregoing considerations the application must be dismissed as unfounded, with the result that it is unnecessary to consider the question of admissibility raised by the Commission.

Costs

29 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

30 However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Mackenzie Stuart Sørensen Touffait

Delivered in open court in Luxembourg on 5 April 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber