2. **Annuls the Secretary General's decisions rejecting respectively the applicant's candidature and his complaint, which were notified to him on 31 July and 18 December 1981;**

3. **Orders the Council to pay the costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 30 June 1983.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 10 MARCH 1983 [1]

Mr President,
Members of the Court,

In 1981 two new posts of director were added to the list of posts of the Council of Ministers. The Council allotted one of the posts to its Directorate General A for the newly created post of Director of the Budget and Staff Regulations.

The staff of the Council were informed of the existence of that post by a notice of 17 June 1981. The conditions for applying and the closing date for applications which appeared in that notice were subsequently altered on 24 June and 6 July 1981.

Before the expiry of the closing date on 22 July 1981 17 Grade A 3 officials of the Council, including the applicant in the present proceedings, submitted applications for the vacant post. They were all unsuccessful, as was another candidate who had submitted his application after the closing date. 17 of the candidates were notified of their failure in identical letters of 31 July 1981, which included the following conclusive sentence: "en effet, pour l'occupation de ce poste, je suis tenu de prendre en considération non seulement les connaissances et expériences professionnelles requises pour ce poste de direction mais aussi le maintien d'un équlibre géographique approprié" [in order to fill this post, I am obliged to take into account not only the knowledge and experience required for this management post but also the need to maintain an appropriate geographical balance]. On the same date a Luxembourg applicant employed by the Council

1 — Translated from the German.

was sent a similarly negative response, in which it was stated:

"En effet, le choix du candidat pour ce poste est conditionné, en dehors du respect d'un équilibre géographique approprié, par l'existence de connaissances et expériences professionnelles spécifiques nécessaires pour cette fonction de direction.

Connaissant l'évolution de votre carrière, j'estime que vos connaissances et expériences spécifiques ne correspondent pas aux fonctions du poste de direction mentionné ci-dessus."

["In addition to the need to provide for an appropriate geographical balance, the choice of candidate for this post is determined by the requirement of possessing the specific knowledge and experience necessary to perform these management duties.

I am familiar with the details of your career, and I consider that your specific knowledge and experience do not correspond to the duties of the above-mentioned management post."]

By a decision of the Secretary General of the Council of 11 September 1981 a Luxembourg national, J. J. Kasel, was appointed to the post advertised. He had applied on 9 July, as the Court heard in the course of the proceedings, and had been a temporary servant in Grade A 3 as assistant Chef de Cabinet of the President of the Commission of the European Communities since 6 January 1981.

On 12 October 1981 12 Grade A 3 officials of the Council submitted to the appointing authority essentially identical complaints against that decision; the applicant's complaint contained various special supplements and annexes. The complaints were rejected by decision of 18 December 1981. In addition to an assurance that the complaints had been fully considered, it was stated:

"After a thorough investigation I can see no reason for reversing my previous decision, which falls within the wide discretionary power and freedom of decision vested in the appointing authority in this matter.

Moreover the procedure adopted in this instance is precisely that adopted for the large majority of appointments in Grades A 1 and A 2 within the Council."

In connection with that last sentence another memorandum was issued by the Secretary General on 15 February 1981 explaining that the sentence was merely a commentary on the decision contained in the first sentence "et en conséquence elle ne fait pas partie de cette décision à proprement parler. Vous pouvez donc la considérer comme étant sans objet" [And in consequence it cannot strictly be said to form part of that decision. You may therefore disregard it]. In that memorandum it was also stated: "pour l'avenir je puis vous assurer, ... que pour la période de mon mandat de secrétaire général, je n'ai aucunement l'intention de dévier des procédures qui sont à suivre dans le cas des nominations des fonctionnaires au grade A 2" [As far as the future is concerned, I can assure you ... that for the period of my term of office as Secretary General, I in no way intend to depart from the normal procedure for the appointment of officials to posts in Grade A 2].

Thereupon, one of the unsuccessful candidates, a council official, Mr Schloh, brought an action before the Court of Justice on 10 March 1982, claiming that the Court should:

Annul the decision rejecting his application for the post of Director of the Budget and Staff Regulations:

Annul the decision rejecting his complaint of 12 October 1981; and

Annul the decision of 11 September 1981 appointing Mr Kasel to the post of Director of the Budget and Staff Regulations."

In support of his claim, the applicant states that the vacancy was not brought to the notice of staff in other Community institutions and that no

applications for transfer were considered. In his view that constitutes an infringement of Article 29 (1) (c) and the third paragraph of Article 4 of the Staff Regulations. He also claims that Article 29 (2) of the Staff Regulations was infringed, inasmuch as a person from outside the Communities ("Personne extérieure aux Communautés"), who lacked the special qualifications required, was appointed to the post advertised. Moreove the post was reserved for a national of a specific Member State, which is prohibited under Article 27 of the Staff Regulations. In addition the fact that the post had already been reserved for a specific person before the initiation of the appointment procedure constitutes a misuse of power; finally the decision rejecting his complaint amounts to an infringement of the second paragraph of Article 25 of the Staff Regulations inasmuch as it fails to give sufficient grounds for the rejection.

My opinion on those facts is as follows:

I — First submission

In the first place the Council has raised *an objection of inadmissibility.* It contends that the provisions relied on by the applicant, Article 29 (1) (c) and the third paragraph of Article 4 of the Staff Regulations, are intended to protect the interests of officials of other institutions. Any failure to comply with those provisions does not therefore adversely affect the applicant. It follows that he has no interest in making the submission as is shown in particular by the fact that even if a new procedure were opened and those conditions were strictly observed, the applicant would certainly not benefit.

According to the decisions of the Court in cases on corresponding facts, that is undoubtedly correct. For example, I would remind the Court of the judgment in Case 37/72 [1] in which it was held that the applicant had no legitimate interest in claiming that a vacancy notice made no provisions for an upper age-limit, on the ground that the important point was whether the annulment of the disputed measure sought by the applicant was likely to benefit him. Further, according to the judgment in Case 29/74 [2] the question is whether an alleged illegality adversely affects the applicant or only other officials. In the judgment in Joined Cases 81 to 88/74 [3] it was emphasized that the applicant must have a recognizable personal interest in the annulment of the contested measure. Finally, according to the judgment in Case 124/75 [4] the relevant question is whether the applicant has been adversely affected by an alleged irregularity and whether, after it has been established that the procedure was illegal, it is recommenced.

I agree with the Council that there should be no deviation from those principles. In particular, the applicant's submission that the provisions on which he relies do not only protect the officials of other institutions but were adopted *in the public interest* provide no grounds for such a course. In that respect the Council put forward detailed arguments citing case-law and academic writings showing that this is not possible in national law. Equally in Community law it would not seem to be justified to allow officials

1 — Judgment of 15 March 1973 in Case 37/72 *Antonio Marcato* v *Commission of the European Communities* [1973] ECR 361.

2 — Judgment of 23 January 1975 in Case 29/74 *Raphael de Dapper* v European Parliament [1975] ECR 35.

3 — Judgment of 29 October 1975 in Jined Cases 81 to 88/74 *Guiliano Marenco and Others* v *Commission of the European Communities,* [1975] ECR 1247.

4 — Judgment of 16 December 1976 in Case 124/75 *Letizia Perinciolo* v *Council of the European Communities,* [1976] ECR 1953.

who bring actions to do so with a view to enforcing compliance with the law generally, that is to say, to insitute proceedings " dans l'intérêt de la loi" [in the interests of the law] as it were. It is thus unnecessary to decide whether the requirement in Article 29 (1) that applications for transfer from officials in other institutions of the Communities must be considered before the commencement of selection procedures — which may be disregarded only for the filling of posts in Grades A 1 and A 2 — in fact includes the duty to give *formal* notification of such posts to the staff of other institutions. It is also unnecessary to determine whether the Council in fact complied with that requirement by sending the vacancy notice (83/81) including all amendments thereto, as it stated in its replies to the questions put by the Court of Justice, to the heads of administration in other institutions, which in its view was a sufficient compliance with the requirement of notification.

It is however significant that in fact no complaints or actions by officials in other institutions against the disputed appointment have come to notice. That would surely not have been the case if there had been officials in other institutions who were genuinely interested and who were of the opinion that the Council had committed a serious breach of procedure.

II — Second submission

The applicant objects that the Council appointed a person from outside the Communities to the vacant post. According to the observations in his reply "a person from outside the Communities" is to be interpreted as meaning that the person appointed was not an *official* of the Communities and that he lacked the status necessary for the post.

In his complaint, which is expressly referred to in the application, a proposition is advanced in that connection to the effect that, if I have understood it correctly, recourse to Article 29 (2) is not automatically possible even for posts in Grade A 2. On the contrary, it is a condition that there must be special requirements as regards exceptional knowledge, experience and qualifications, so that that provision may in any case be applied only if there are no prospects of filling the post by the normal method.

In the application, then, stress was clearly laid on the fact that the successful candidate lacked the necessary qualifications. On the basis of the consideration that it had not been possible for the Council to accept qualifications to be found amongst the officials in Grade A 3 who were in the service of the Council, the applicant thought he could deduce in the light of the information published by the Council administration on 10 September 1981 relating to the successful candidate that he lacked the special knowledge of law in connection with the Budget and the Staff Regulations on which the disputed appointment apparently depended in the first place according to the description of the nature of the duties in the vacancy notice, and secondly according to the explanation given in the letter informing the Luxembourg candidate from the Council staff of the decision.

1. As regards that line of argument, two observations should immediately be made:

(a) It is not clear why the applicant places so much emphasis on the fact that Mr Kasel at the time of his appointment was not yet an *official* of the Communities. In fact that cannot be a ground for the annulment of the decision

as there is no provision according to which only officials may apply in such a case, and such a restriction cannot be inferred from the vacancy notice.

(b) There is moreover, in my view, no doubt that the Council was right to have recourse to the *procedure under Article 29 (2)* of the Staff Regulations. That provision, which authorizes an exception to selection procedures, may be applied in two cases, which should not be confused: in the first place, when a post requires exceptional specific knowledge, which is particularly rare, and in the second place quite generally for the recruitment of A 1 and A 2 officials. In the latter case there is not therefore — as the applicant thinks — a restrictive condition that the post concerned must require exceptional knowledge. On the contrary in that context a special procedure, which departs from the normal rules, is justified on the ground that the duties are those of management requiring special human qualities, or that — as in the case of the so-called political officials in the national sphere — that they involve the establishment of a special relationship of trust which may then also be more easily dissolved. Therefore the applicant is certainly not justified in maintaining that it is possible to think of applying Article 29 (2) of the Staff Regulations only if there is no prospect of filling one of the posts in question by the normal method.

2. In connection with the *question of qualifications,* which — as was made clear in the oral procedure — is clearly central to this submission, the Council's representative rightly pointed out by way of principle that a discretion is of course vested in the appointing authority as regards the assessment of the individual qualities of candidates. He emphasized, again correctly, that it cannot be the duty of the Court of Justice to review such value judgments or in any way decide between the qualities of various candidates in place of the administration. In such cases the Court of Justice may — as is repeatedly emphasized in the case-law — only establish the existence of manifest irregularities.

In addition, the applicant, I think, goes too far inasmuch as he attaches too much importance to the *technical* knowledge required for the post advertised and expresses the opinion that it had at least to be of an equivalent standard to that of officials active in the sphere in question. It must in principle be accepted that the appointing authority has a discretion too when it appraises the requirements set out in the vacancy notice. Therefore there can be no objection in the present case to the fact that, as was explained in the course of the procedure, the Council attached more importance to the capacity for *directing* a branch, for establishing *contacts* and for *co-ordinating* work (synthèse) than to special knowledge of the law relating to the Budget and to the Staff Regulations, which it considered as of secondary importance. That does not of course mean that it was possible to dispense with substantial knowledge in that sphere. Indeed, it was stated in the description of the nature of the duties in the vacancy notice that candidates would be required to carry out "études spécialisées de haut niveau" [specialized high-level research] in the spheres concerned. In that respect however the candidates were certainly not, as the applicant maintains, required to be something like "super-experts", since it

is precisely in regard to the technical details that an official at the level of the vacant post has at his disposal specialist colleagues whose work it is his particular duty to direct and to evaluate.

3. Under those circumstances it is difficult to consider the applicant's criticism of Mr Kasel's appointment justified; in any case there is no manifest error in the manner in which his qualities were assessed.

The same is true of the required qualities of leadership, which certainly cannot be called in question purely on the ground of his age.

It is equally true in relation to the required knowledge of the "politique générale des Communautés européennes" [general policy of the European Communities] which was particularly stressed in the vacancy notice and in respect of which the Council was able to refer to Mr Kasel's career both at national level and within the Communities. In particular I refer in that respect to the "notice biographique" [biographical note] which was included in Mr Kasel's application.

Finally the same may also be said of the knowledge of the law relating to the Budget and the Staff Regulations. In that respect it is significant that Mr Kasel was a "diplômé de l'institut d'études politiques de Paris (économie et finances), docteur en droit et licencié spécial en droit administratif" [graduate of the Institute of Political Studies in Paris (economics and finance), a doctor of law and a special graduate in administrative law] which provides a foundation of sound knowledge in matters relating to Budgetary and Staff Law. In that respect for the purpose of the application the relevant experience acquired in the course of his earlier earlier career is significant as is the statement which was made in the course of the proceedings and not challenged that Mr Kasel has in fact carried out the duties assigned to him by the Council to the general satisfaction of all concerned.

4. I am therefore of the opinion that the second submission of the applicant's claim must also fail.

III — Third submission

The third submission, as we know, concerns an alleged infringement of Article 27 of the Staff Regulations, according to which no posts are to be reserved for nationals of any specific Member State.

Thus the applicant referred in his complaint to the judgment in Case 15/63 [1] which emphasized the importance of that principle and stated, in addition, that only where the qualifications of the various candidates are equal can nationality be decisive in the interest of restoring a geographical balance. The applicant then appears to suggest that that consideration — the need to redress the geographical balance — can have been of no significance in the present case, since reference is made to the fact that Luxembourg nationals in other Community institutions (the Commission, the Economic and Social Committee) occupy even high-level posts in sufficient numbers. Moreover the applicant submits that, in any event, this case is not genuinely one in which nationality was a decisive factor by reason of the equality of the candidates' qualifications since it must be accepted that the successful candidate lacked the special knowledge required for the vacant post and therefore that he could not be included in the group of eligible candidates or in the comparison of qualifications which, according to the case-law, is required. In his reply the applicant further pointed out with special emphasis that Article 29 (1) (a) provides that consideration must first be given to

1 — Judgment of 4 March 1964 in Case 15/63 *Claude Lasalle* v *European Parliament* [1964] ECR 31.

the question whether the post may be filled by promotion or transfer within the institution, the purpose being to give a certain priority to candidates who are already in the service of the institution in which the post is available, that is, in the present case, Council officials in Grade A 3. At that stage of the procedure, however, Mr Kasel had not participated at all. It follows, the applicant claims, that nationality could not in this case have been decisive in the sense established by the case-law to which I have referred, but that it must rather be assumed that in that context the nationality of the candidates eligible for promotion was a ground for *excluding* them which is certainly improper. That conclusion is further confirmed, it is alleged, by the fact that there is absolutely no documentary evidence relating to the consideration of the qualifications of the eligible candidates. Finally the applicant maintains that an indication of the correctness of his view and the justification of his complaint may be seen in the resolution of the Council of September 1980 which was adopted after the departure of the former Luxembourg Secretary General and after the appointment of his Danish successor. That resolution states:

"Le Conseil reconnaît que la nomination du nouveau secrétaire général implique un changement dans la structure et un déséquilibre régional supplémentaire dans la répartition des hauts fonctionnaires du secrétariat général, qui en respectant les qualifications, doit être compensé dans la mesure du possible dans le plus proche avenir."

[The Council recognizes that the appointment of the new Secretary General entails a change in the structure and an additional regional imbalance in the regional imbalance in the distribution of posts for senior officials in the General Secretariat which, regard being had to the need to maintain the standard of qualifications, ought, in so far as possible, to be redressed in the immediate future].

The present Secretary General, as a former member of the Council, was aware of that resolution and it is difficult to escape the conclusion, the applicant states, that the measure now in dispute was adopted by him essentially in compliance with that resolution.

1. As far as that submission is concerned, in the first place there can be no doubt that, in connection with the filling of the post in question, it was correct to make efforts to take into account the geographical balance from the point of view of an appropriate participation of Luxembourg nationals in the Council. In that respect the proportion of Luxembourg officials in other institutions of the Community is completely irrelevant. According to the wording and sense of Article 27 of the Staff Regulations, the requirement that officials be recruited on the broadest possible geographical basis from among nationals of Member States of the Communities applies to *each* Community institution. There was no such balance in the Council after the departure of the Luxembourg Secretary General in October 1980, as the applicant himself acknowledged in his complaint. That was again made clear in the oral procedure by his answers to the relevant questions of the Council's representative.

2. I do not moreover consider that the legality of the appointment which is the subject of this case may be questioned on the ground that nationality may only be relevant — according to the case-law quoted — in cases in which the qualifications of several candidates are equal and that in any case that precondition was not fulfilled since the qualifications of the successful candidate were not equal to those of the candidates from the staff of the Council.

In that respect the Council has correctly submitted that — according to the

relevant case-law — it had a discretion in the assessment of the qualities of the candidates for the vacant post. In fact there is no evidence to suggest that there was any manifest error, such as alone can be relevant as regards judicial review, in the general assessment of all the principal aspects of importance for the vacant post — and knowledge of the law relating to the Budget and the Staff Regulations constituted only *one* of those aspects.

3. Further, as regards the various steps for filling a post provided for in Article 29 of the Staff Regulations, I do not think that there are grounds for suggesting that Article 29 (1) (a) — consideration of the question whether the post may be filled by promotion — was not complied with. The letters which communicated the rejection of applications from the Council officials expressly refer to the fact that the Secretary General had to take into consideration the knowledge and experience of the candidates. Without any clear indication to the contrary we must therefore accept that such an examination was conducted. In view in particular of the assurance that all the applications which had been received at that date were examined on 15 July 1981 in the presence of the Director General of Administration and the Director of Personnel, that statement cannot be called in question merely on the ground that there is no written record of that examination.

On the other hand the applicant maintains that the first step of the procedure for filling a post was limited to a comparative examination of the candidates eligible for *promotion* — in order to give priority to their applications — and that in this case nationality could not have been a decisive factor since the successful candidate had not yet been involved in the procedure, so that it must be assumed that on the contrary the nationality of the candidates eligible for promotion constituted what was certainly an improper ground for excluding them. In my view that is only an *apparently* conclusive ground for objecting that Article 27 of the Staff Regulations has been infringed. It is true that Article 29 (1) (a) requires possibilities of promotion to be considered first. It does not however follow that officials eligible for and deserving of promotion have an *unconditional claim* to be appointed to the vacant post by way of promotion. On the contrary, in that respect care must be taken not to ignore the general principle, set out in Article 27, of the preservation of geographical balance. If it appeares that the promotion has not achieved a satisfactory result, the appointing authority is entitled to dispense with promotion as a means of filling the post and to envisage other possibilities of doing so. That is particularly true when, as in this instance, it is known at that time — and let us not forget that Mr Kasel had already applied on 9 July 1981 — that it is possible to comply with the principle set out in Article 27 by other means. In pursuing that course of action in this case, the Council was not in my opinion improperly reserving a post for a national of a specific Member State. It was merely attributing appropriate weight to the principle of the geographical balance of officials in the context of the general assessment of all the aspects to be taken into consideration before filling a post. A clear-cut

separation of the various steps provided for in Article 29 is I feel, somewhat theoretical.

4. Finally in that connection, the applicant's reference to the Council's resolution of September 1980 can, I think, avail him nothing. It states only one fact — that after the departure of the Luxembourg Secretary General, nationals of that State were no longer represented in sufficient number in the senior ranks of the Council. And it adds the conclusion that the balance should be redressed, though not unconditionally, but "dans la mesure du possible" (in so far as possible) and "en respectant la qualification" (regard being had to the need to maintain the standard of qualifications). That merely expresses what according to Article 27 of the Staff Regulations is, in any case, a binding principle for filling posts. In any case there is nothing to show that the Council was committing itself to an irregular appointment and it cannot therefore be proved that the Secretary General of the Council infringed the Staff Regulations by seeking to give effect at the first available opportunity to the wish expressed in the Council resolution.

5. The applicant's third submission is therefore also incapable of establishing his claim.

IV — Fourth submission

In the fourth submission the applicant claims that the disputed appointment constitutes a misuse of power. He states that the vacant post had been reserved for a specific person before the initiation of the procedure for filling it and that the notice had been drawn up merely for the sake of appearances.

In his complaint the applicant relied principally on the Council meeting of September 1980, to which I have referred, at which a Dane was appointed successor to the Secretary General of Luxembourg nationality. On that occasion the Luxembourg Member of the Council, seeking "compensation", obtained the promise that a Grade A 2 post would be filled by a Luxembourg national. It was therefore made clear that the possibility of appointing a person from outside the Communities and thus not a Council official was to be considered. That fact is said to establish that the Luxembourg Government came to an agreement with the appointing authority of the Council as to the appointment of a specific person. That view is, moreover, supported, it is alleged, by a series of facts which the applicant set out in his complaint. In both the written and the oral procedure the applicant referred to additional points which he claims confirm his theory.

In that connection, it must first be recalled, and here I agree with the Council, that it is possible to speak of a *misuse of power* in the filling of a post only when it is clear that an objective has been pursued which has nothing to do with the interest of the service, which in this case is to be understood as the selection of a sufficiently well-qualified candidate, regard being had to the need to maintain the geographical balance. It is clearly not sufficient to base such a claim on speculation or even on establishing a certain probability. It must instead be *proved* to the Court's satisfaction that the interests of the service have only *apparently* been pursued.

In the light of all the material submitted to the Court in these proceeding, I cannot accept that the serious allegation made by the applicant is indeed well founded.

1. A whole series of the large number of arguments put before the Court may be distinguished from the outset inasmuch as they cannot be regarded, with the best will in the world, as having evidential value and therefore require no special comments.

That applies to the facts, referred to in the *complaint*, that the post was not advertised in the normal monthly list, that it was twice amended and that only a short period was allowed for submitting applications. That also applies to the fact that the Secretary General of the Council met the representatives of the Council's A 3 officials only two months after they had submitted their request and on *the very day* on which the appointment was officially approved. In that connection the statement of the Secretary General of the Council that he saw no possibility of satisfying the A 3 officials' demand does not of course mean that he was committed from the outset to filling the post by a specific candidate.

Moreover the same may be said of some of the observations in the *reply*. In the defence it was observed that the applications from A 3 officials had been considered "pour autant que besoin" (in so far as was necessary). In view of what is stated in the rest of the defence that statement may hardly be said to amount to an admission that "au départ les jeux étaient faits" (the die was case from the beginning). I consider that the same consideration applies to the reference to the fact that 17 Grade A 3 applicants from the staff of the Council are supposed to have been rejected solely on the ground of their nationality. In reply to that allegation the Council's representative stated that even if in the letters of rejection the candidates' special knowledge of the law relating to the Budget and to the Staff Regulations had not been called in question, a further important factor was the requirement of the special qualities which a management post demanded. In that context I may also refer to the applicant's argument which has already been discussed that the successful applicant lacked the necessary capacity and to his allegation that the post was not advertised in the other Community institutions an omission which moreover — in so far as it actually occurred — cannot be regarded as a misuse of power, regard being had to the summer recess which had not yet begun.

Finally the same may equally be said of the following arguments which were first presented in the *oral procedure:*

The fact that a Grade A 3 Council official of Luxembourg nationality was also denied a chance — which as cannot be disputed — was purely to be ascribed to his lack of qualifications and in no way the fact that the Council was already committed to an external candidate;

In addition the alleged failure to assess the merits of the candidates from the Council staff, which — in view of the express assurances in the letters of 31 July 1981 and the statement contained in a memorandum from the Secretary General of 31 January 1983 that the applications were examined in the presence of the Director General of Administration and the Director of Personnel on 15 July 1981 — can certainly not be proved by the failure to provide a given preliminary document;

And finally mere rumours, even before Easter 1981, to the effect that a Luxembourg national who was not employed by the Council was to be appointed, which prompted the applicant to address

a letter referring to the matter on 19 May 1981 to the Director General of Administration.

2. Other arguments too which were raised by the applicant before and in the course of the proceedings before the Court are not in my view sufficient to compel the view that there has been a misuse of power in the sense alleged by him.

Thus, as we know, he refers to the fact that two other candidates who were Council officials received the same letter of rejection as he himself did, although they had been promoted to Grade A 2 before the letters were dispatched. I do not think that that in any way proves that there was no proper consideration of the applications with regard to the A 2 post in question here. There were doubtless other requirements for the posts to which those officials were promoted.

The applicant also refers to the Secretary General's memorandum of 15 February 1982 to which I referred at the beginning of this opinion and to the assurance that he in no way intended "pour l'avenir de dévier des procédures qui sont à suivre dans le cas des nominations des fonctionnaires au grade A 2" [to depart from the normal procedure for the appointment of officials to posts in Grade A 2]. In my opinion that statement is easily explained in the light of the understandable agitation among Council officials over an appointment which they considered to be unsatisfactory; it cannot however seriously be regarded as an admission that departures from the correct appointment procedure had occurred in the *past* and in particular in the present case.

The applicant then cites once again the resolution of the Council of September 1980 to which I have referred. As I suggested, however, the view must be taken that the decision in so far as it refers to the necessity of redressing "un déséquilibre régional supplémentaire dans la répartition des hauts fonctionnaires du secrétariat général" [an additional regional imbalance in the distribution of posts for senior officials in the General Secretariat] merely expresses a legitimate request in conformity with the Staff Regulations. There are absolutely no grounds for drawing an inescapable conclusion that a specific person was already under consideration. In particular it cannot be established in that way that an agreement existed between the Luxembourg Government and the Secretary General of the Council over the appointment of Mr Kasel.

Finally the applicant draws attention to certain publications in the press, namely a bulletin from Agence Europe on 28 July 1981 which stated that Mr Kasel was to become a Director in the Council's Secretariat in September. A similar article appeared in Letzeburger Land of 4 September 1981 and the Tageblatt of 27 April 1982 published an interview with the Luxembourg Permanent Representative according to which after the departure of the Luxembourg Secretary General of the Council, a "poste stratégique" [strategic post] in the Council had been offered to Luxembourg and that Mr Kasel had then been transferred to it. To begin with the last statement, it should be noted that an accurate appraisal may be arrived at only by reference to the whole context, which was a matter simply of defending the Luxembourg policy as regards staff in the Community. In the light of that consideration, it appears that, essentially, no more was stated than what had already been recorded, legitimately, in the resolution of the Council of September 1980. That can in no way be taken to prove that the Secretary General of the Council had already promised to appoint a specific person before the post now in question was advertised. On the other hand although it must certainly be conceded, in relation to both the first-mentioned articles, that at first sight they may give rise to

surprise and perhaps to suspicion, that does not make it possible to exclude the possibility in view of what we know now — the decision concerning the filling of the post had already been taken on 24 July 1981 — that it was merely a question of unfortunate indiscretions. But certainly even they do not constitute sufficient evidence to establish the alleged misuse of power or therefore that the appointment of Mr Kasel had already been arranged before the commencement of the procedure for filling the post.

3. The fourth submission too, therefore, fails to provide sufficient basis for allowing the application.

V — Fifth submission

Finally I must consider the allegation that the rejection of the applicant's complaint did not state sufficient grounds for that rejection and that it must, at least on that ground, be annulled. (The application does not refer to the infringement of basic rights which is alleged in the complaint.)

In answer to that I can be comparatively brief.

Article 25 of the Staff Regulations provides that a decision adversely affecting an official must state the grounds on which it is based. Such decisions are, according to the system laid down by the Staff Regulations (cf. Article 90 (2)), decisions *against* which a complaint is lodged, in the present case therefore the rejection of the applicant's candidature and the appointment of another applicant. On the other hand a decision *regarding* a complaint, at least when no new arguments are advanced, — as is the case here — is merely a measure confirming the actual decision which gave rise to the complaint. We must therefore conclude that Article 25 does not in principle refer to decisions on complaints. Whether in this respect, that is in relation to the second clause of the second indent of Article 91 (3) the basis is provided for a sort of *nobile officium* is another question which we need not consider here. To take a different view would be to hold that each implied rejection of a complaint which naturally is accompanied by no statement of grounds, may be annulled on that ground alone which would appear unreasonable in the context of the system laid down by the Staff Regulation.

Moreover the Council is certainly right in thinking that it cannot be required to give detailed explanations for the rejection of each argument contained in a complaint. We are concerned essentially only with the grounds for a *decision to appoint* as the rejections of other applications are merely inevitable consequences thereof. Therefore in the light of the case-law on the duty to state grounds, which is limited in this respect, it is possible to agree with the Council that in the present case, where the decision involved relates to applications for a post in Grade A2, it was sufficient for the purposes of the statement of the essential grounds on which the decision of rejection was based to quote the two principles which were contained in the decision on the complaint.

Therefore the application must also fail in respect of the reference to Article 25 of the Staff Regulations.

VI — The decision on costs

In conclusion I must add a final word on the applicant's request that in the event of the rejection of the application the

costs of the proceedings be awarded against the Council.

According to the Rules of Procedure, that possibility may only be considered if it must be accepted that the Council which in my view is successful has "unreasonably or vexatiously caused" the applicant to incur costs (the second subparagraph of Article 69 (3) of the Rules of Procedure) — if, that is to say, it had caused the application to be brought. I can find no evidence of such a state of affairs, or of the exceptional circumstances within the meaning of the first paragraph of Article 69 (3) of the Rules of Procedure, which would justify a decision to order the parties to bear their own costs in whole or in part. Costs must therefore remain to be decided in accordance with the provision in Article 70 of the Rules of Procedure under which each party must bear its own costs.

VII — In conclusion I propose that the application be dismissed as unfounded and that the costs of the proceedings be decided in accordance with Article 70 of the Rules of Procedure.