JUDGMENT OF THE COURT (FIRST CHAMBER)
28 OCTOBER 1982 [1]

Dominique Noëlle Oberthür
v Commission of the European Communities

(Official — Annulment of periodic report)

Case 105/81

1. *Officials — Assessment — Procedure for appeal within the institution — Opinion of the Joint Committee on Staff Reports — Joint Committee unable to express an opinion on the point raised by the official concerned — Decision of the appeal assessor — Validity*
   (Staff Regulations, Art. 43)

2. *Officials — Assessment — Periodic report — Assessor's appraisal — Judicial review — Limits*
   (Staff Regulations, Art. 43)

1. If the Joint Committee on Staff Reports finds itself unable to express an opinion on a point raised by the official concerned, the appeal assessor is not obliged to refrain from adopting a decision upholding or amending the periodic report.

2. As regards the appraisal of the applicant's qualities contained in the periodic report, it is not the Court's function to usurp the rôle of the assessor or of the appeal assessor.

In Case 105/81

DOMINIQUE NOËLLE OBERTHÜR, an official of the Commission of the European Communities, residing at 30 Batticelaan, Zaventem, Belgium, assisted and represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Advocate, 34b Rue Philippe-II,

applicant,

v

1 — Language of the Case: French.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jacques Delmoly, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob, of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of: the decision adopted by Mr Le Goy, appeal assessor, concerning the applicant's periodic report for the period from 1 July 1975 to 30 June 1977; the fourth version of the applicant's periodic report for the period from 1 July 1975 to 30 June 1977; and the decisions of 29 November 1976 and 13 December 1978 transferring the applicant to Directorate General VII with effect from 1 December 1976,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the submissions and arguments put forward by the parties during the written procedure may be summarized as follows:

I — Facts and procedure

Following a competition, Miss Oberthür, a French national, was appointed in June

1959 as a Commission official in Grade C 2. She was promoted to Grade B 5 with effect from 1 January 1967. Between 1 June 1972 and 1 June 1975 she was assigned to Directorate General VII (Transport) in Grade B 3. From 1 June 1975 the applicant was temporarily assigned to the Environment and Consumer Protection Department whilst her definitive posting was to be decided after a trial period of six months.

With effect from 1 October 1975, Miss Oberthür was temporarily assigned to Directorate General V (Employment and Social Affairs), at first also for a trial period of six months.

By decision of 29 November 1976, the applicant was once again assigned to Directorate General VII with effect from 1 December 1976. However, she continued to work in Directorate General V until April 1977 when she in fact took up her duties in Directorate General VII. Since the decision of 29 November 1976 was vitiated by certain substantive defects, a new decision was adopted on 13 December 1978 assigning the applicant to Directorate General VII with retroactive effect from 1 December 1976.

The present case concerns the applicant's periodic report for the period from 1 July 1975 to 30 June 1977, which was compiled on 4 April 1979. The failure to compile the report for that period before the merits of the officials eligible for promotion in 1978 were considered was penalized by the Court (First Chamber) in Case 24/79 [1980] ECR 1743. The background to the report is complicated. It is apparent from the file on the case that. four reports were compiled before the final version was adopted.

The applicant has outlined the successive stages in the preparation of the report as follows:

(a) An *initial periodic report* was compiled on 2 March 1978 by Mr Weindl, Mr Muilwijk and Mr Zambelli, the applicant's immediate superiors, who were properly authorized to assess her.

Mr Munro, who at the time was assistant to the Director General for Transport, approved the report after questioning Mr Van Heesen, head of the archives of Directorate General VII, the only official with whom the applicant had worked in that directorate general.

(b) A *second version,* which Mr Wathelet described as a "Draft Periodic Report" and *dated 1 September 1978,* was forwarded by him as the applicant's former head of division to Mr Muilwijk. In view of the contents of that draft report, Mr Weindl, Mr Muilwijk and Mr Zambelli rejected it and by a memorandum of 7 December 1978 confirmed the first report of 2 March 1978 which they had compiled jointly.

(c) *On 3 and 4 April 1979 a third version,* very similar to that of 1 September 1978 but translated into English, was forwarded by Mr Wathelet to Mr Munro, *ad interim* assistant to the Director General for Transport. Mr Van Heesen, head of the archives of Directorate General VII and the only person under whose supervision and with whom the applicant had worked in that directorate general since 12 April 1977, wrote certain comments on pages 2, 3 and 4 which formally contradicted the judgment of Mr Munro, for whom the applicant had

never worked either during that very short period of 2½ months or, for that matter, during the period covered by the periodic report from 1 July 1977 to 30 June 1979.

(d) *A fourth version, also dated 3 and 4 April 1979* but in fact compiled after those dates by Mr Wathelet and Mr Munro, was based word for word on the previous report in English, with the sole difference that the comments of Mr Van Heesen, the applicant's superior in Directorate General VII, were not included. This fourth version became the applicant's definitive periodic report and was classified as such in her personal file, although her three former superiors in Directorate General V, namely Mr Weindl, Mr Muilwijk and Mr Zambelli, had not been consulted.

Since she was dissatisfied with the final version of the report, Miss Oberthür lodged the complaints provided for by the Guide to Staff Reports.

(a) She asked for the report to be submitted to the appeal assessor, Mr Le Goy. When requested by the Director for Personnel to review the report, Mr Le Goy refused to make any changes and confirmed the existing report by decision of 4 July 1980.

(b) Miss Oberthür asked for the report to be submitted to the Joint Committee on Staff Reports. The Committee was divided in its evaluation of the report and failed to give an opinion on its contents.

By a memorandum of 30 September 1980, the applicant lodged a complaint against:

(a) Mr Le Goy's decision of 4 July 1980;

(b) the periodic report itself;

(c) the transfers decided on 29 November 1976 and 13 December 1978 in so far as they were relevant for the purpose of determining which directorate general was competent to draw up the periodic report and, consequently, had a bearing on the case.

Since her complaint failed to evoke any response within the period prescribed by the Staff Regulations, Miss Oberthür brought this action on 28 April 1981, which was registered at the Court Registry on 30 April 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

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

"Annul the decision adopted by Mr Le Goy, appeal assessor, in his memorandum of 4 July 1980, regarding the applicant's periodic report for the period from 1 July 1975 to 30 June 1977;

Annul the fourth version of the applicant's periodic report for the period from 1 July 1975 to 30 June 1977;

Annul, in so far as is necessary, Decisions Nos 6060 of 29 November 1976 and 1656 of 13 December 1978 of Directorate General IX, transferring the applicant to Directorate General VII with effect from 1 December 1976;

Order the defendant to pay the costs".

The *defendant* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

A. The decision adopted by Mr Le Goy, appeal assessor, on 4 July 1980

First submission: The *applicant* argues that Mr Le Goy was not the competent appeal assessor because Directorate General VII was itself not competent to draw up the applicant's periodic report.

The question whether it was necessary, for the purpose of determining the competent directorate general, to take account of the official's *de facto* assignment or of his *de jure* assignment is open to dispute. The Guide to Staff Reports for September 1971, which applies to the contested report, provides that:

"Application of these rules may give rise to problems either for the assessor, or for the person assessed, or for both. These problems must be solved by reference in each case to *de facto* or *de jure* situations".

It does not follow that an official's *de jure* assignment must take precedence over his *de facto* assignment for the purpose of determining the appropriate assessor.

The system established by the Commission, which is set out in detail in the Guide to Staff Reports, provides for the consultation of all persons who are in a position to express an opinion on the work carried out by the official (which, according to Miss Oberthür, was not done in her case) and it is therefore necessary to take the *de facto* assignment as a basis for determining the authority which is competent to draw up the periodic report.

The *Commission* maintains that at the time of her assessment the applicant had been officially assigned to the Secretariat General of Directorate General VII (Transport) for over six months. It was for that directorate general to draw up her periodic report in accordance with the first paragraph of Article 3 of the General Provisions for Implementing Article 43 of the Staff Regulations. Moreover, the Commission emphasizes that, according to the relevant version of the Guide to Staff Reports, that is to say the version in force in September 1973, an official's *de jure* assignment took precedence over his *de facto* assignment.

Second submission: The *applicant* observes that the Joint Committee on Staff Reports did not express an opinion on the contents of the report in question and that, accordingly, Mr Le Goy adopted his decision without taking that factor into account, whereas he should have referred the matter to the administration to enable it to take steps in order to permit the Joint Committee to carry out its duties.

The administration should have referred the file to the Joint Committee with a request that it vote on the matter. In the absence of any rules stipulating that the Joint Committee's decisions must be unanimous, the general principle concerning votes at meetings may be applied, according to which decisions are adopted by a simple majority.

Against that the *Commission* argues that, as a result of the Joint Committee's refusal to discuss the contents of the report, the administration was relieved of its duty of consultation and the procedure followed cannot be regarded as vitiated. Since the body in question is a joint committee, the adoption of an opinion expressed by one half of its members would have served no purpose and would have run counter to the aim in pursuance of which the Joint Committee was created.

Third submission: According to the *applicant*, the appeal assessor's decision is based on factual information which is incorrect or incomplete:

1. No mention is made in the periodic report of the work which the applicant carried out in the Environment and Consumer Protection Department, which was assessed in a report dated 30 September 1975 drawn up by Mr Léon Klein, a former senior administrative assistant in that department.

2. The observations of the applicant's immediate superior, Mr Van Heesen, head of the archives of Directorate General VII, who made certain very pertinent comments concerning the periodic report, are not appended thereto.

3. The periodic report itself was based word for word on a memorandum drafted by Mr Wathelet, the terms of which fell short of those of the draft report which he compiled on 1 September 1978, in which the applicant's output was assessed as being above average. That draft report was rejected by Mr Wathelet's three colleagues.

4. The applicant strongly challenges each and every one of the assessments made by Mr Munro, for whom she never worked and who can have received only favourable reports of her work from Mr Van Heesen.

The *Commission* contends that the Court has no power to review assessments except as regards procedural irregularities or patent errors of fact (judgment of 17 March 1971 in Case 29/70, *Marcato* [1971] ECR 243, and judgment of 25 November 1976 in Case 122/75 *Küster* [1976 ECR 1685).

Accordingly, it is necessary in the present case to ascertain whether the information provided by the applicant reveals the existence of a patent error of fact.

The Commission contends that, contrary to the applicant's assertion, the periodic report expressly states that during the period of assessment she worked in the Environment and Consumer Protection Department where she performed the duties of a documentalist for a period of three months.

The *applicant* maintains that the observations of Mr Van Heesen, an official in Directorate General VII, were "suppressed".

The *Commission* replies that, when he was consulted by the appeal assessor who showed him the report in question, Mr Van Heesen signed it without comment. Mr Van Heesen wrote certain observations on Miss Oberthür's copy of the report. Since those comments were communicated to the appeal assessor after the report had been drawn up, they could not be taken into account.

As far as Mr Wathelet's memorandum is concerned, the Commission states that it was drafted by Miss Oberthür herself and signed in Mr Wathelet's absence by Mr Weindl, his deputy. That report is devoid of any value because it was not compiled by the competent assessor, in this case Mr Wathelet, the applicant's head of division.

The *applicant* challenges the Commission's assertion that she drew up her draft periodic report herself. She claims that she merely drew attention to the duties which she had performed, which is the practice followed in most departments. The report was signed by Mr Weindl, in Mr Wathelet's absence, a procedure which was entirely proper.

In her reply, the applicant expresses the view that the Court may review the means relied upon by the assessor or by the appeal assessor to formulate an opinion. She points out that the Guide to Staff Reports, in its September 1971 and September 1979 versions, provides that:

"The superiors in other departments to which the official belonged during the reference period shall also be consulted by the assessor before he compiles the report. They shall sign the report and may append their comments if they disagree with it".

In this case, Mr Munro should have consulted the applicant's superiors in the other departments to which she was or had been assigned, namely Mr Weindl, Mr Muilwijk, Mr Zambelli and, possibly, Mr Foret and Mr Klein.

The *Commission* on the other hand contends that by consulting Mr Wathelet, Head of the Finance and Administration Division in Directorate General V, to which the applicant was assigned between October 1975 and March 1977, and Mr Van Heesen, the applicant's superior between March and June 1977, the assessor complied with the rules contained in the Guide to Staff Reports.

Fourth submission: The *applicant* considers that the decision of the appeal assessor is in any event null and void because in adopting it he did not take into account the rules contained in Article 7 of the Guide to Staff Reports. That provision lays down that the appeal assessor must consult the original assessor, the official assessed and any other person whom he sees fit to consult. The applicant does not know whether Mr Le Goy consulted the original assessor, but there is no doubt that he did not consider it appropriate to consult any other persons.

The *Commission* replies that the appeal assessor consulted the original assessor, Mr Munro, and also the applicant on 19 June 1979. In the light of all the information at his disposal, including the numerous detailed memoranda sent to him by the applicant, the appeal assessor might with good reason have considered that it was unnecessary to consult any other persons.

B. The periodic report

Fifth, sixth and seventh submissions: According to the *applicant*, the periodic report should not have been compiled by an assessor from Directorate General VII since he was not competent to do so; moreover, it is based on factual considerations which are incorrect or incomplete. In addition, the report was

compiled in English, although the Guide to Staff Reports states that it must be drawn up in the mother tongue or habitual language of the official concerned.

In reply to those submissions, the *Commission* states that the Guide to Staff Reports provides as follows:

"... assessors may use the official language of their choice. Where the language chosen by the assessor is different from the mother tongue or main language of the person assessed, a translation of the assessment must be given to him if he so requests".

The applicant made no such request. Moreover, it is clear from the periodic report that she has a thorough knowledge of English, the language in which the report was compiled.

C. The applicant's assignment to Directorate General VII

Eighth submission: According to the *applicant,* the decisions of 29 November 1976 and 13 December 1978 transferring her to Directorate General VII with effect from 1 December 1976 would acquire significance in this case only if the Court were obliged, for the purpose of determining the assessor, to refer to the *de jure* rather than to the *de facto* assignment. If that were so, the applicant's *de jure* assignment would not correspond to the true state of affairs because the applicant worked in Directorate General V from 29 September 1975 until 11 April 1977. She should therefore have been assessed by an assessor from that directorate general.

In reply, the *Commission* states that in any event her application for the annulment of those decisions is wholly unfounded.

The Commission contends that the applicant was re-assigned to Directorate General VII by decision of 29 November 1976 with effect from 1 December of the same year and, therefore, without any retroactive effect whatever. The decision of 23 December 1978 had as its purpose to correct two errors of substance and not to modify the applicant's assignment. Even if the decision transferring her had been adopted in April 1977, that is to say less than six months before the end of the period of assessment, the applicant would not have been assessed by an assessor from Directorate General V. Her assignment to that directorate general was provisional in nature and therefore there was no question of the applicant's being assessed by an official belonging to that directorate general.

In her reply, the *applicant* observes that she had no cause to lodge a complaint against the decisions transferring her until she instituted these proceedings during which those decisions were used against her. Until then, she had regarded them as neutral.

IV — Oral procedure

The parties presented oral argument at the sitting on 10 June 1982.

The Advocate General delivered his opinion at the sitting on 8 July 1982.

Decision

1 By application lodged at the Court Registry on 30 April 1981, Miss Oberthür, an official of the Commission of the European Communities, brought an action pursuant to Article 179 of the EEC Treaty and Article 91 of the Staff Regulations of Officials for the annulment of her periodic report for the period from 1 July 1975 to 30 June 1977, the appeal assessor's decision concerning that report and the decisions of 29 November 1976 and 13 December 1978 of the Director for Personnel transferring the applicant to Directorate General VII with effect from 1 December 1976.

2 Miss Oberthür, who was assigned to Directorate General VII from 1 June 1972 to 1 June 1975, was subsequently assigned temporarily to the Environment and Consumer Protection Department and to the European Social Fund in Directorate General V. By decision of 29 November 1976, she was assigned once again to Directorate General VII (Transport), Secretariat of the Director General, with effect from 1 December 1976, although she continued to work in Directorate General V until April 1977 when she in fact took up her duties in Directorate General VII. Since the decision of 29 November 1976 was vitiated by certain defects, a fresh decision was adopted on 13 December 1978 assigning the applicant to Directorate General VII with retroactive effect.

3 As regards her periodic report, the applicant puts forward three submissions based on the following factors: the lack of competence of Directorate General VII and, consequently, of an assessor therefrom; the manner in which the report was compiled; the fact that it was based on incorrect or incomplete factual considerations; the fact that it was drafted in English whereas, according to the Guide to Staff Reports adopted by the defendant, it should be drafted in the mother tongue or the habitual language of the official.

4 As regards the decision of the appeal assessor, the applicant argues that he was not competent to act as appeal assessor since Directorate General VII was itself not competent to draw up her periodic report. She also observes that the Joint Committee on Staff Reports did not express an opinion on the

contents of the periodic report in question and that the appeal assessor therefore adopted his decision without taking that factor into account, whereas he should have referred the matter to the administration to enable it to take steps in order to permit the Joint Committee to carry out its duties.

5 As regards the decisions of 29 November 1976 and 13 December 1978 transferring the applicant to Directorate General VII, she maintains that the first decision was vitiated by certain errors and that the second decision, which had retroactive effect, was invalid on the ground that it was prejudicial to her interests. The decision of 13 December 1978, replacing that of 29 November 1976, was adopted in order to permit the applicant to be assessed by an assessor from Directorate General VII rather than by an assessor from Directorate General V, which, according to her, would have been the competent directorate general if the second decision had not been taken.

The decisions of 29 November 1976 and 13 December 1978

6 It is necessary to consider first the claim for annulment of the decisions of 29 November 1976 and 13 December 1978, which may affect the other claims contained in the application.

7 By decision of 29 November 1976, the Director for Personnel took the following decision:

"1. In the interests of the service, Miss Dominique Oberthür (Personnel No 11 437), a temporary servant in Grade B 3, and the post which she occupies in Career Bracket B 2-B 3 are hereby transferred as follows:

Former assignment: Directorate General V, (Directorate B (Employment and Vocational Training)

New assignment: Directorate General VII (Transport), Secretariat of the Director General.

2. This decision shall take effect on 1 December 1976.

3. This decision terminates the temporary assignment notified on 1 October 1975".

8 That decision was vitiated by two errors. The first error was the description of the applicant, who was an official, as a temporary servant. The second error was the description of the applicant's former assignment, which was Directorate General V, Directorate B (European Social Fund), as "Directorate General V, Directorate B (Employment and Vocational Training)".

9 However, the applicant failed to challenge the validity of the decision within the period prescribed by the Staff Regulations and her application for annulment is therefore inadmissible. Even if her application were admissible, it would be unfounded. The contested decision identified the applicant by her surname and forename and by her personnel number. Her new assignment and the date on which it was to take effect were clearly specified. It follows that the applicant could not have been in any doubt as regards the effect of the decision and that consequently her application for annulment is unfounded.

10 The Director for Personnel annulled and replaced the decision of 29 November 1976 by the decision of 13 December 1978. Unlike the first decision, the second decision correctly specified the applicant's status and former assignment; its purpose was merely to rectify the errors contained in the first decision whilst confirming the effects thereof. It follows from the circumstances described above that, even in the absence of the second decision, the applicant would still have been validly assigned to Directorate General VII and that, consequently, she has no interest in seeking the annulment of that decision. In any event, the applicant failed to challenge it within the period prescribed by the Staff Regulations and her application for annulment is therefore inadmissible.

11 The application for the annulment of the decisions of 29 November 1976 and 13 December 1978 must therefore be dismissed as inadmissible and, in any event, as unfounded.

The periodic report

12 The applicant's first submission in support of her application for the annulment of her periodic report is that Mr Munro, her superior in Directorate General VII, was not competent to compile the report. That submission is based on two factors. In the first place, the applicant argues

that, since the decisions of 29 November 1976 and 13 December 1978 are invalid, she was assigned to Directorate General V throughout the period of assessment, namely from 1 July 1975 to 30 June 1977. Secondly, she maintains that, even if she was assigned to Directorate General VII as from 1 December 1976, the periodic report should not have been compiled by an assessor from that directorate general in view of the fact that she did not return to Directorate General VII until April 1977 and therefore worked there for only a little over two months during the period of assessment.

13 As regards the first factor, the Court need merely point out that for the reasons stated above the contested decisions are not invalid.

14 As regards the second factor, it is apparent from the General Provisions for Implementing Article 43 of the Staff Regulations (hereinafter referred to as "the General Provisions") that, where an official who is to be assessed has moved from one department to another during the period of assessment, the report must, if he moved more than six months previously, be drawn up by his immediate superior at the time of the report. The applicant was assigned to Directorate General VII with effect from 1 December 1976, in other words more than six months before the end of the period of assessment. It was therefore proper for the report to be compiled by Mr Munro, her superior in Directorate General VII, and not by an assessor from Directorate General V.

15 The applicant maintains that the report is invalid on the ground that her superior in Directorate General V was not consulted in accordance with Article 4 of the General Provisions. It is apparent from the file, however, that the applicant's superior in Directorate General V, Mr Wathelet, was consulted and indicated that he agreed with the report. The same is true of Mr Van Heesen, the applicant's immediate superior in Directorate General VII.

16 The applicant also argues that her periodic report is null and void because it was drawn up in English, whereas the Guide to Staff Reports provides that the form used must be in the mother tongue or main language of the official

assessed. During the oral procedure, the applicant withdrew this submission. Accordingly, there is no need to consider it.

17 Since the submissions concerning the periodic report are unfounded, the application for annulment must be dismissed.

Review by the appeal assessor

18 As regards the decision of the appeal assessor upholding the periodic report compiled by Mr Munro, the applicant puts forward the following submissions:

1. Mr Le Goy was not the competent appeal assessor since Directorate General VII was not competent to draw up the periodic report.

2. The appeal assessor may not adopt a decision without obtaining the opinion of the Joint Committee on Staff Reports.

3. The appeal assessor's decision was based on factual information which was incorrect, incorrectly interpreted or incomplete.

4. The decision is null and void because it was not adopted in accordance with Article 7 of the Guide to Staff Reports, according to which the appeal assessor must consult the original assessor, the official assessed, and any other persons whom he sees fit to consult.

19 As regards the first submission, it is clear from the considerations set out above that the competent assessor and appeal assessor are those from Directorate General VII and that, consequently, this submission is unfounded.

20 It should be noted, moreover, that by letter of 15 May 1979 the applicant was notified by Mr Pratley, Head of the Individual Rights and Privileges Division, that if she wished to appeal the appeal assessor was the Director General for Transport.

21 On 23 May 1979, the applicant sent a long letter to Mr Le Goy, Director General for Transport, in which she took formal note of Mr Pratley's statement concerning the identity of the appeal assessor.

22 By letter of 12 June 1979, Mr Le Goy asked the applicant whether she had written to him in his capacity as appeal assessor and, if so, to arrange an appointment with him. It is clear from the evidence before the Court that an appointment was arranged and that on 19 June 1979 a meeting took place between the applicant and Mr Le Goy in which Mr Munro took part. Following that meeting, the applicant asked for the matter to be referred to the Joint Committee on Staff Reports.

23 It appears that before the Joint Committee the applicant attempted to cast doubts on the validity of her assessment by an assessor from Directorate General VII. Since the Joint Committee was unable to express an opinion on the matter, the appeal assessor upheld the periodic report.

24 The Guide to Staff Reports does not specify the procedure to be followed in cases in which the Joint Committee does not express an opinion on a matter duly referred to it. The Guide makes provision for cases in which the Joint Committee does not consider itself obliged to accept the observations made by the official. In such a case, the opinion expressed is merely entered in the file.

25 When the Joint Committee found itself unable to express an opinion, the appeal assessor was not obliged to refrain from adopting a decision upholding or amending the report. The submission based on the absence of an opinion expressed by the Joint Committee must therefore be rejected.

26 As regards the submission based on alleged errors of fact, the errors in question are the omission from the report of the comments made by certain officials and the incorrect appraisal by both the assessor and the appeal assessor of the applicant's qualities. This submission cannot be accepted. The assessor is not obliged to include in the report the comments of every official

consulted and, as far as the appraisal of the applicant's qualities is concerned, it is not the Court's function to usurp the rôle of the assessor or of the appeal assessor.

27 In the light of all those considerations, the application must be dismissed.

Costs

28 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, institutions are to bear their own costs in proceedings by servants of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

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

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 28 October 1982.

For the Registrar

H. A. Rühl
Principal Administrator

A. O'Keeffe
President of the First Chamber