higher than his substantive career bracket", it in no way follows from that provision that an official may only be called upon to occupy temporarily a post corresponding to a grade no higher than that immediately above his own.

3. By postponing, out of necessity, as the result of the setting-up of its departments, the implementation of the procedures laid down in Article 29 of the Staff Regulations, the administration concerned does not act against the interests of the service.

In Case 184/80

ADRIAEN VAN ZAANEN, a reviser at the Court of Auditors, residing at 16 Rue des Roses, Luxembourg, represented by Victor Biel, Advocate, residing at 18a Rue des Glacis, Luxembourg, with an address for service in Luxembourg at the Chambers of Mr Biel,

applicant,

and

COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Luxembourg, represented by Jean-Aimé Stoll, Secretary of the Court, residing in Luxembourg, assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

defendant,

APPLICATION for, *inter alia*, the annulment of a decision of the defendant to terminate the applicant's temporary posting,

THE COURT (Third Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, A. Touffait and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. The applicant, Adriaen Van Zaanen, a Netherlands national and an official in Grade L/A 4 with the Commission since 1974, was transferred by a decision of 8 December 1978 to the Court of Auditors in Grade L/A 4, Step 5, of the Translation Division with effect from 1 January 1974. His seniority in step was fixed as from 1 March 1978.

2. In 1978 the Court of Auditors was in the process of setting up its departments including its Translation Division. It considered the possibility of filling the vacant post of Head of the Translation Division using the recruitment procedures provided for in the Staff Regulations but having ascertained that there were no qualified candidates to whom the procedures set out in Article 29 (1) (a) and (b) of the Staff Regulations could be applied it decided to have recourse to the procedure provided for in Article 29 (1) (c). It therefore authorized publication of Vacancy Notice No CC/LA/27/1978 which was published on 24 October 1978. It seems that no official was eligible for promotion to L/A 3 on that date.

3. Vacancy Notice No CC/LA/27/1978 announced that the post of Head of Translation Division (Grade L/A 3) was vacant. Of the three candidates who submitted their application for a transfer in due time, the only one to fulfil the conditions set out in the notice (Grade L/A 3) withdrew his application at the end of 1978.

4. In that situation, by decision of 1 March 1979, the appointing authority appointed the applicant as temporary head of the Translation Division of the Court of Auditors for a period of three months starting on 1 March 1979.

By a decision of 21 June 1979 that temporary posting was extended by one month from 1 to 30 June 1979. At the same time the applicant was granted the differential allowance provided for by Article 7 (2) of the Staff Regulations.

That decision was extended three times until 29 February 1980 when the applicant had occupied the temporary posting for the maximum period of one year (see the second subparagraph of Article 7 (2) of the Staff Regulations). The last decision, adopted on 28 February 1980, extending the temporary posting, therefore stated that the differential allowance was to come to an

end on the same date as the temporary posting, namely 29 February 1980.

5. By decision of 28 February 1980 the appointing authority nominated another official, Mr E., a Danish national and a reviser in Grade L/A 5, as Head of the Translation Division on a temporary basis from 1 March to 30 August 1980. That decision was extended to 30 November 1980.

6. On 3 April 1980 the applicant submitted a complaint to the appointing authority under Article 90 of the Staff Regulations. In his complaint he criticized the creation by the appointing authority of another temporary posting as being contrary to the Staff Regulations. He claimed that a vacant post may not be filled by a procedure which involves by-passing a grade and that the temporary appointment of his successor was hardly reconcilable with the interests of the service which had for a long time required that the vacant post in L/A 3 should be filled lawfully, that is to say by a competition under Article 29 of the Staff Regulations or else by one of the other methods provided for by that article, namely promotion or transfer.

That complaint met with no reply.

7. On 2 September 1980 the Court of Auditors published Notice of Competition No CC/LA/3/80 relating to an internal competition for the post of Head of its Translation Division.

8. By an application lodged at the Court Registry on 4 September 1980 the applicant brought an action for, *inter alia*, the annulment of the decision to terminate his temporary posting.

9. After the closing date for applications for the internal competition had been extended to 2 October 1980 the applicant submitted his application on 1 October 1980. However, he stated: "I intend to make an appeal to the Court of Justice pursuant to Article 91 (4) of the Staff Regulations in order to obtain an interim ruling suspending this competition until a decision has been given on the merits of my main application".

10. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber), to which the case was assigned by the Court's decision of 9 October 1979 (Official Journal 1979, C 265, p. 8) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

In his originating application the *applicant* claims that the Court should.

(a) Declare the application admissible;

(b) Declare it well-founded;

(c) Consequently declare that since no statement was provided of the reasons on which the decision to terminate the applicant's temporary posting was based, it cannot be relied upon against him and must therefore be annulled;

(d) Declare that in any event the appointing authority could not nominate another servant for a temporary posting as that period cannot exceed one year;

(e) Declare that on the contrary the appointing authority was bound to

advertise the vacant post and under Articles 4 and 29 of the Staff Regulations had to examine the possibility of filling the post by promotion;

(f) Declare that by its omission the appointing authority has caused injury to the applicant and that the damage suffered may be assessed at one unit of account to be converted into Belgian francs at the rate in force on the date of judgment;

In the alternative

Take note of the applicant's proposal to prove by inquiry that:

(a) The L/A 3 post in question is more or less reserved to a national of one of the Member States and is not bound to be given to a Netherlands national;

(b) The nomination of an L/A 5 official as Head of Division on a temporary basis has seriously damaged the interests of the department in question;

In any event order the defendant to pay the costs.

In its defence the *Court of Auditors* claims that the Court should:

— Declare all three heads of the application to be inadmissible;

— Reject the applicant's proposal to adduce proof; declare the application unfounded;

— Dismiss the application;

— Decide as to costs in accordance with the relevant provisions of the Staff Regulations.

In his reply the *applicant* claims that the objections of inadmissibility raised by the defendant should be rejected and, for the rest, maintains his conclusions contained in the originating application.

In its rejoinder the *Courts of Auditors* claims that the Court should uphold the conclusions contained in the defence.

III — Summary of the submissions and arguments of the parties

In his originating application the *applicant* claims that the *object* of his application is to make the appointing authority of the Court of Auditors comply with the provisions of the Staff Regulations relating to vacant posts. The applicant alleges that his appointing authority has not complied with the requirements contained in Article 4 of the Staff Regulations, and in particular with the final paragraph of that article which requires the institutions to fill vacant posts "by transfer, promotion or an internal competition". In the applicant's view that omission has caused him manifest injury and he claims in respect of non-material damage, one unit of account to be converted into Belgian francs.

As far as the *facts* are concerned, the applicant observes in particular that the post of Head of the Translation Division exists under the budget. He points out that by decision of 1 March 1979 and as from that date he was made "temporarily responsible for the running of the Translation Division".

By a decision of 28 February 1980 the applicant's differential allowance was finally terminated as from 29 February, thus on the day after the decision was adopted. That decision does not contain any statement of the reasons on which it is based and in that sense it is contrary to Article 25 (2) of the Staff Regulations. That decision injured the applicant in two ways: materially, by withdrawing a

financial benefit, and non-materially, in so far as the applicant was replaced by another temporary appointee, whose status was Grade L/A 5. That was all the more surprising in view of the fact that on 10 December 1979 the Court of Auditors in the person of Sir Norman Price had congratulated the applicant for the enormous amount of translation work which had been undertaken under his direction and which was described as a "tremendous effort".

The applicant states that he fulfils all the conditions as to seniority laid down in Article 45 of the Staff Regulations so that his promotion would have been quite regular (and was what all the staff expected.)

As to the *law,* the applicant contends that the appointment of his successor is contrary to Article 7 of the Staff Regulations under which the temporary occupation of a post may last no more than one year and which furthermore prohibits such occupation where it involves by-passing a grade.

He maintains the arguments set out in his complaint but states further that the appointing authority had a whole year to fill the L/A 3 post in accordance with the procedures laid down in Article 4 of the Staff Regulations but it had not done so.

The appointing authority had not only infringed Articles 4 and 7 of the Staff Regulations but also Article 29 which requires it to consider the possibility of promotion and transfer within the institution in order to fill vacant posts. Furthermore the applicant offers to prove that, contrary to Article 27 of the Staff Regulations, it was not desired to appoint a Netherlands national to the post in question.

In its defence the *Court of Auditors* states that the *object* of the dispute is the fact that the applicant was not promoted to Grade L/A 3. In the application that object is divided into three parts and all three are *inadmissible.*

In his complaint the applicant stated that he accepted that under Article 7 (2) of the Staff Regulations his temporary appointment could not be renewed whereas in his application he claims that the decision not to renew his temporary posting should be annulled. Therefore the application is not admissible on that ground. In any event the decision of 28 February 1980 is not an act adversely affecting the applicant within the meaning of Article 90 (2) of the Staff Regulations. That decision extended the differential allowance and the applicant's temporary posting from 1 January 1980 to 28 February 1980.

As for the submission that "the appointing authority could not nominate another servant for a temporary posting", the Court of Auditors contends that that ground of action is inadmissible unless the official in question is joined as a party.

As for the allegation made in the application that the appointing authority failed to comply with the provisions of the Staff Regulations relating to the filling of vacant posts, that failure was not as such criticized in the complaint. Therefore that claim should be declared inadmissible on the ground that the preliminary procedure required by the Staff Regulations has not been followed.

As regards the *substance* of the dispute, the Court of Auditors begins with the

third claim (subparagraph (e) of the conclusions contained in the application) by which the applicant asks the Court to declare that the appointing authority was bound to advertise the vacant post and examine the possibility of filling the post by promotion in accordance with Articles 4 and 29 of the Staff Regulations.

As regards this matter the Court of Auditors points out in particular that even if the applicant had been an official at the Court since 24 October 1978 (the date of Vacancy Notice No CC/LA/27/1978) his two years' seniority would not be sufficient to ensure his promotion. It is apparent from Article 45 that if only one candidate is eligible for promotion the appointing authority may justifiably take the view that it does not have a choice which is sufficiently large to make an appointment fulfilling as far as possible the requirements of the post to be filled. What is more, the Court of Auditors has never intended to exclude a Netherlands national from the post in question.

The decision of 28 February 1980 relating to the applicant's temporary posting is not an act adversely affecting him, it does not come within the provisions of Article 25 (2) of the Staff Regulations and for that reason it did not have to contain a statement of the reasons on which it was based.

As regards the statement that the appointing authority did not comply with Articles 4 and 29 of the Staff Regulations, the Court of Auditors points out that in view of the negative result of the procedure to fill the post by transfer, the appointing authority had to open the competition procedure. The initiation of that procedure and the preparations and formalities which it involved took some time, especially since the Court of Auditors had to set up and organize all its departments. On 28 February 1980 the notice of competition was still not ready for publication. That is why the administration had to decide to proceed with a new temporary posting so that the post to be occupied was not left vacant.

As for the decision on the new temporary posting, the second paragraph of Article 7 (2) of the Staff Regulations provides that "the duration of a temporary posting *shall not exceed one year*". That stipulation required the administration to terminate the applicant's temporary posting but did not prohibit a second temporary appointment where there are practical difficulties in regard to making a permanent appointment to the post in question. What is more, it is apparent from Article 7 (2) that it does not prohibit the temporary appointment of an official to a higher post. Therefore it was permissible in this case for the appointing authority to assign an official in Grade L/A 5 to a post in Grade L/A 3 on a temporary basis.

One of the *factual* arguments put forward by the *applicant* in his reply is that the Court of Auditors did not publish Notice of Competition No CC/LA/3/80 relating to an internal competition until 17 months after the applicant's temporary posting had commenced although everyone and particularly the appointing authority knew that as from 1 January 1976 the applicant fulfilled the requirement as to seniority in grade in order to be eligible

for promotion. The reason for that delay was that the appointing authority had a candidate in mind and wanted to give him time to acquire some "seniority" and experience so that he might become eligible for Grade L/A 3.

As far as *admissibility* is concerned, the applicant replies to the Court of Auditors' claim that his application is inadmissible by contending in particular that it goes without saying that in challenging the appointment of a second person by way of temporary posting the applicant had in mind all aspects of the decision of 28 February 1980 terminating his own temporary posting. The administration did not give reasons for its decision to terminate the applicant's temporary posting and simultaneously make the applicant subordinate overnight to a colleague of lower rank in disregard of Article 25 of the Staff Regulations. The applicant also contests the defendant's argument that he should have joined as a party the official appointed on a temporary basis by the appointing authority when the applicant's own temporary posting came to an end. Finally, he emphasizes that in his complaint he drew attention to the appointing authority's duty to fill a vacant post in the year in which the temporary posting was made and he specifically refers to a letter of 6 March 1980 which the Staff Committee wrote on this matter to the appointing authority.

As to the *substance* of the dispute, the applicant stresses that the criticism levelled at the appointing authority is that it did not commence a new appointment procedure in good time, that is to say, from the time when it ought to have ascertained that, to the disadvantage of the applicant and during the temporary posting, the procedure begun on 24 October 1980 with the advertising of the vacant post in Vacancy Notice No CC/LA/27/78 had been unsuccessful. The applicant's action does not rest on a complaint that he was not promoted but on subparagraphs (c) to (f) of the conclusions set out in his application.

According to the last subparagraph of Article 7 of the Staff Regulations a temporary posting may not last more than one year. That provision is a necessary corollary to Article 4, its purpose being to require the appointing authority to start and complete the selection of candidates for a vacant post within the shortest period possible.

The applicant also contends that an official may not be called upon to occupy a posting on a temporary basis by by-passing a grade. The Court of Auditors quotes Article 7 (2) of the Staff Regulations but it is careful not to go into considerations of substance. The irregularity of conferring a temporary posting on an official who is not eligible to be appointed to that post follows from the fact that it is impossible to calculate correctly the differential allowance referred to in the first subparagraph of Article 7 (2) in the event of the temporary appointment to a post of an official to whom there has to be paid an amount determined by the step "which

he would receive ... in the starting grade if he were appointed to the career bracket of his temporary posting". That provision in fact clarifies the preceding sentence in so far as it restricts temporary postings to officials who are or will be eligible for promotion to the temporary post if they choose to apply.

In its rejoinder the Court of Auditors attributes the delay in the publication of Notice of Competition No CC/LA/3/80 to the problems of organization which it had to face as a new institution which had only been established on 25 October 1977 after ratification of the Treaties. The setting-up of the various bodies took some time. The first Staff Committee took up its duties on 10 November 1978. Its Rules of Procedure were adopted on 21 November 1978. The Joint Committee was set up by decision of 1 February 1979. The composition of that committee for 1979 was established on 19 February 1979.

Those bodies for which the Staff Regulations make provision had to have taken up their duties before the organization of any competition.

The departments could only be brought into operation gradually. The organization of the Translation Division presented particular problems. The various sections had to be set up.

In order to recruit officials no less than 157 competitions were organized. Every one entailed the elaborate procedures required by the Staff Regulations. The competition for the post of Head of the Translation Department was the last to be advertised.

In those circumstances and in view of the dates mentioned above the appointing authority's conduct which the applicant criticizes is understandable and justified. The appointment of an official to a post on a temporary basis on 1 March 1979 and the extension of his temporary posting to 29 February 1980 were dictated by the needs of the service. The position was no different in the case of the second temporary appointment as the formalities for making a permanent appointment to the post had still not been completed.

As to the *admissibility* of the application, the Court of Auditors maintains that it is not admissible for the reasons given in the defence.

As far as the *substance* of the case is concerned, the Court of Auditors claims that a time-limit placed on the temporary posting by Article 7 of the Staff Regulations is the result of considerations relating to the interests of the service so that, if the interests of the service so require, a second temporary posting may be justified and is permissible. As far as the issue of the by-passing of grades is concerned, the Staff Regulations also take account of the interests of the service which in some circumstances may justify the appointment of an official occupying a lower grade.

IV — Oral procedure

The applicant, represented by Victor Biel of the Luxembourg Bar, and the Court of Auditors, represented by Alex Bonn also of the Luxembourg Bar, presented oral argument at the sitting on 9 April 1981.

The Advocate General delivered his opinion at the sitting on 4 June 1981.

Decision

1 By application lodged at the Court Registry on 4 September 1980 the applicant, an official of the Court of Auditors in Grade L/A 4, brought an action under Article 179 of the EEC Treaty for the annulment of a decision of the appointing authority of 28 February 1980 terminating as from 29 February 1980 the applicant's temporary occupation of the post of Head of the Translation Division, a post corresponding to Grade L/A 3. In the same application the applicant further asks the Court to declare, first, that the appointing authority could not appoint another official temporarily to the post of Head of the Translation Division as the period of a temporary posting may not exceed one year and, secondly, that the appointing authority was bound to advertise the vacant post and according to Articles 4 and 29 of the Staff Regulations had to examine the possibility of filling the post by promotion. The applicant finally asks the Court to declare that by its omission the appointing authority has caused injury to the applicant which may be assessed at one unit of account to be converted into Belgian francs at the rate in force at the date of judgment.

2 The file on the case shows that the applicant, an official of the Commission in Grade L/A 4 since 1974, was transferred by a decision of 8 December 1978 to the Court of Auditors in Grade L/A 4, Step 5, of the Translation Division (L/A) with effect from 1 December 1978. That transfer took place at a time when the Court of Auditors was setting up its departments, in particular its Translation Division. On 24 October 1978, in order to fill the vacant post of Head of that Division, the Court of Auditors published Vacancy Notice No CC/LA/27/1978 in accordance with the procedure laid down in Article 29 (1) (c) of the Staff Regulations. However, that procedure was unsuccessful owing to an absence of applications meeting the conditions set in the vacancy notice.

3 Subsequently, by decision of 1 March 1979 the appointing authority made the applicant acting Head of the Translation Division of the Court of Auditors for a period of three months starting on 1 March 1979. That decision was adopted under Article 7 (2) of the Staff Regulations which states:

"An official may be called upon to occupy temporarily a post in a career bracket in his category or service which is higher than his substantive career bracket. From the beginning of the fourth month of such temporary posting, he shall receive a differential allowance equal to the difference between the remuneration carried by his substantive grade and step, and the remuneration he would receive in respect of the step at which he would be classified in the starting grade if he were appointed to the career bracket of his temporary posting.

The duration of a temporary posting shall not exceed one year, except where, directly or indirectly, the posting is to replace an official who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave".

4 By decision of 21 June 1979 the appointing authority extended that temporary posting by one month, from 1 to 30 June 1979, and at the same time granted the applicant the differential allowance provided for by the second subparagraph of Article 7 (2).

5 That decision was extended three times until 29 February 1980 when the applicant had occupied the post for one year, which is the maximum period laid down in the second subparagraph of Article 7 (2) for a temporary posting.

6 The last decision extending the temporary posting from 1 January 1980 until 29 February 1980 was not adopted until 28 February 1980 and stated that the differential allowance granted to the applicant "shall come to an end" on that date.

7 On 28 February 1980 the appointing authority adopted another decision by which it appointed another official, Mr E., of Danish nationality and a reviser in Grade L/A 5, as acting Head of the Translation Department from 1 March to 30 August 1980. That decision was extended until 30 November 1980.

8 As a result, on 3 April 1980 the applicant submitted a complaint to the appointing authority under Article 90 of the Staff Regulations in which, although accepting that by virtue of Article 7 (2) of the Staff Regulations his temporary posting could not be extended again, he contended that the appointment of Mr E. was unlawful because it was clear from the wording of Article 7 (2) that the appointing authority may not fill a post left vacant for a period exceeding one year by making successive temporary appointments to it. What is more, the appointing authority is also prohibited under that provision from calling upon an official to occupy temporarily a post in a career bracket higher than his own, which is what the appointing authority had done. Finally, the appointment of Mr E. was not in the interests of the service which required that the post in question be filled by means of one of the procedures laid down in Article 29 of the Staff Regulations.

9 The complaint met with no reply and the applicant lodged the present appeal with the Court.

10 It should also be noted that on 2 September 1980 the appointing authority published, in accordance with Article 29 (2) (b) of the Staff Regulations, a Notice of Competition No CC/LA/3/80, relating to an internal competition for the post in question. In September 1980 the applicant indicated to the Selection Board that he would not be a candidate for the reasons expressed in his complaint and in his application to the Court but nevertheless he later submitted his formal application before the closing date. During the oral procedure the applicant stated, without being contradicted, that none of the candidates succeeded in the competition.

11 In support of his application the applicant makes the following submissions:

— As the decision terminating his temporary posting did not state the reasons on which it was based, it should be annulled;

— The Court of Auditors had no right to appoint another official on a temporary basis since under Article 7 (2) of the Staff Regulations the duration of a temporary posting is not to exceed one year;

— The Court of Auditors was bound to advertise a vacant post and examine the possibility of filling that post by promotion in accordance with Articles 4 and 29 of the Staff Regulations.

12 The Court of Auditors contests the admissibility of those submissions for the following reasons:

— Since the applicant accepted in his complaint that his temporary posting could not be renewed he may not raise that issue in his application;

— The decision terminating the applicant's temporary posting has not affected him adversely as the applicant has accepted that that situation is the result of Article 7 (2) of the Staff Regulations;

— The applicant's final submission is inadmissible on the ground that it was not raised in his complaint;

— The appointment of Mr E. may not be challenged unless the official is joined as a party.

13 The first two arguments put forward by the Court of Auditors in support of its contention that the application is inadmissible cannot be upheld as they concern issues relating to the substance of the case. As to the third argument, it follows from the wording of the complaint, or at least by necessary implication, that the applicant's third submission is covered by it, so that that

argument must be rejected as well. Finally, it must be stated, with regard to the Court of Auditors' final argument, that the applicant had an obvious interest in the temporary appointment of Mr E. being annulled for the reasons he puts forward in so far as the annulment of Mr E.'s appointment would open the way to one of the procedures laid down in Article 29 of the Staff Regulations in which the applicant would be able to participate.

14 It follows from those considerations that the application is admissible.

Consequently the submissions put forward by the applicant must be examined as to their substance.

15 The applicant's first submission seeks the annulment of the decision terminating his temporary posting on the ground that the reasons on which the decision is based are insufficient.

16 That submission cannot be upheld. Even though that decision of 28 February 1980 did not expressly provide that the applicant's temporary posting would terminate definitively on 29 February 1980 by virtue of Article 7 (2) of the Staff Regulations, that is the implicit result of the decision which states that the differential allowance awarded to the applicant on account of his temporarily occupying the post in question "shall come to an end" on that date. It is also apparent from the text of the complaint that the applicant knew that in view of the terms of Article 7 (2) his temporary posting could not be extended again. It follows that the reasons on which the decision is based, even though not wholly appropriate, were therefore sufficient in law.

17 The applicant then contends that the appointing authority was not entitled to appoint Mr E. as Head of the Translation Division on a temporary basis on the ground that under Article 7 (2) the duration of a temporary posting may not exceed one year. The applicant further claims that the appointment of Mr E. is in any event unlawful. He argues that it follows from Article 7 (2)

that an official may be called upon to occupy temporarily only a post in or immediately above his own grade.

18 That submission, too, cannot be upheld. It is apparent from Article 7 (2) that the maximum duration of a temporary posting relates to the maximum period in which an official may temporarily occupy the post in question. It does not impose a limit of one year on the temporary occupation of the post. That limitation applies only to the period in which the post may be occupied by the same official. Therefore, at the end of that period, the appointing authority has the right to fill the post by appointing another official who fulfils the conditions laid down in the first subparagraph of Article 7 (2).

19 What is more, it in no way follows from the first subparagraph of Article 7 (2) that an official may be called upon to occupy temporarily only a post corresponding to a grade no higher than that immediately above his own. The wording of that provision in fact shows that it envisages the temporary appointment of an official to a post "in a career bracket . . . which is higher than his substantive career bracket". It follows that the appointing authority had the right to appoint Mr E., who was in a career bracket comprising Grades L/A 4 and L/A 5, as Head of the Translation Division which is a post corresponding to Grade L/A 3.

20 According to the file on the case the main submission which the plaintiff makes against the appointing authority is that it did not commence a new promotion procedure in accordance with Articles 4 and 29 of the Staff Regulations in good time, that is to say, from the moment when it ought to have established, with regard to the applicant and during his temporary posting, that the procedure commenced on 24 October 1978 with the advertising of the vacant post in Vacancy Notice No CC/LA/27/78 had failed. In the applicant's view, if the appointing authority had acted in this way he would have had a good chance of being successful in such a competition.

21 The Court of Auditors has told the Court that the reason for the delay in starting a new procedure to recruit a Head of the Translation Division resided in the fact that after the unsuccessful outcome of the first vacancy notice of 24 October 1978 it decided to organize a competition for the post in question. At that time, however, the Court of Auditors, which was a new institution established on 25 October 1977, was in the process of setting up its departments which entailed in particular the organization of some 157 competitions including that for the post of Head of the Translation Division, No CC/LA/3/80, which was one of the last. On 28 February 1980 the notice of competition had not yet been published. That was why the administration had to decide to make a new temporary posting in order not to leave the post in question vacant.

22 As those reasons have not been seriously contested they should be accepted and it should be stated that the Court of Auditors did not act against the interests of the service by postponing out of necessity the implementation of the procedures laid down in Article 29.

23 For those reasons the applicant's third submission should therefore be rejected.

24 In the result the appointing authority has not harmed the applicant by its omission and the applicant's claim for compensation for any damage must therefore also be rejected.

Costs

25 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 the institutions are to bear their own costs incurred in proceedings brought by servants of the Communities. That provision must apply by analogy in this case.

On those grounds,

THE COURT (Third Chamber),

hereby:

1. **Dismisses the application as unfounded;**

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

Mackenzie Stuart Touffait Everling

Delivered in open court in Luxembourg on 9 July 1981.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Third Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 4 JUNE 1981

My Lords,

The Court of Auditors was created in 1975. In the course of organizing its translation service, it published, on 24 October 1978, a vacancy notice (No CC/LA/27/1978) relating to the post of Head of its Translation Division. This post was graded L/A 3. No one then employed by the Court of Auditors was considered eligible for promotion in Grade L/A 3. Candidates holding the position of a head of division L/A 3 in the Community and who considered that they were qualified were invited to apply.