Staff Regulations if the authority decides what these conditions should be only after the Notice has been published and the candidates are known, and if an interpretation is placed on the wording of the Notice of Vacancy which, in the authority's view, seems to be in the best interests of the service.

If, after the event, the appointing authority finds that the conditions of eligibility required in the Notice of Vacancy are more exacting than the needs of the service demand, it is entitled to re-open the promotion procedure after withdrawing the original Notice of Vacancy and putting an amended one in its place.

In Case 188/73

DANIELE GRASSI, official of the Secretariat-General of the Council, 55, Reeboklaan, Tervueren, represented by Marcel Slusny, advocate at the Brussels Cour d'Appel, with an address for service in Luxembourg at the chambers of Ernest Arendt, 34b IV, rue Philippe II,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonio Sacchettini, acting as Agent, with an address for service in Luxembourg at the office of Mr Van den Houten, Director of the Legal Department of the European Investment Bank, 2, place de Metz,

defendant,

in the matter of the annulment of the express decision of the Secretary-General of the Council on 13 September 1973 rejecting the complaint lodged by the applicant on 9 July 1973 concerning the appointment of Mr X to the post of Head of the Italian Language Division; the annulment of this appointment, which took place on 25 May 1973,

THE COURT (First Chamber)

composed of: C. Ó Dálaigh, President of Chamber, A. M. Donner (Rapporteur) and J. Mertens de Wilmars, Judges,

Advocate-General: J. P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

The facts of the case, the subject-matter of the application and the views of the parties may be summarized as follows:

I — Facts and procedure

1. In Notice of Vacancy No 31/73 of 29 March 1973, the Council announced vacancies in five posts of Head of Translation Division at Grade LA 3.

The notice, which contained no requirement as to age, included the following details:

2. *Nature of duties*

To be Head of the Translation Division;

3. *Conditions of eligibility*

— .....

— Perfect command of one of the languages of the Communities, including knowledge of economic and legal terminology with particular reference to the fields concerning the European Communities, and a thorough knowledge of (the) *three* other languages of the Communities;

— Experience of several years as head of an administrative unit of some importance.'

The applicant, an official of Italian nationality at present employed as a reviser at Grade LA 4 in the Language Department of the Secretariat of the Council, applied for the post by note dated 6 April 1973.

On 28 May 1973, the applicant became aware of the appointment of Mr X as Head of the Italian Translation Division.

On 9 July 1973 the applicant addressed a complaint to the competent authority in which he claimed that the appointment of Mr X was illegal in that he did not fulfil the conditions of eligibility in the Notice of Vacancy, and more particularly that Mr X did not possess a thorough knowledge of (the) three other languages of the Communities. The second part of this same document contained a request that the applicant should be placed on Grade LA 3, there being at that time three LA 3 posts vacant.

By note of 13 September 1973 the Secretary-General of the Council expressly rejected the first head of the complaint without making any reply on the second.

2. By application of 5 December 1973, registered at the Court on 11 December 1973, the applicant initiated the present proceedings.

The written procedure followed the normal course.

On the report of the Judge-Rapporteur and after hearing the opinion of the Advocate-General, the Court (First Chamber), by order of 20 June 1974, decided

I. 1. to hear as witnesses:

Mr Heinz Noack, retired Director of the Language Department of the Council,

Mr Guillaume Battin, retired Assistant Head of the Language Department of the Council,

Mr Giannino Ballesina, a member of the Language Department of the Council,

on the following questions:

What is the meaning of the

expression 'thorough knowledge' in Notice of Vacancy No 31/73? To the best of their knowledge, did Mr X possess a thorough knowledge of German and English in May 1973?

2. to fix the hearing of the witnesses for the day, 11 July 1974, set for the oral procedure;

II. to invite Mr X, Head of a Language Division of the Council, to appear before the Court at the hearing on 11 July 1974 in order that, subject to his consent and if the Court considers it necessary, he may furnish proof of his knowledge of German and English;

III. 1. to put the following questions to the defendant:

(a) Do the levels of attainment assessed as 'very good', 'good' and 'fair' in the biennial reports correspond to the levels of requirement described in Notices of Vacancy as 'perfect knowledge', 'thorough knowledge' and 'adequate knowledge' of a language?

(b) On what grounds did the appointing authority consider that Mr X possessed a thorough knowledge of German and of English when, according to his reports, his knowledge of these languages had been described as fair?

2. to invite the defendant to lodge at the Court Registry:

(a) The biennial reports of Messrs Ballesina and Grassi and of Mrs Rosani, the other servants eligible for promotion to the post in question;

(b) The official text, in the six languages, of Notice of Vacancy No 31/73 which appeared on notice boards.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. declare null and void the express rejection on 30 September 1973 of the complaint submitted by the applicant;

2. declare null and void the appointment of Mr X to the post to be filled under Notice of Vacancy No 31/73;

3. order the other party to pay the costs of the action;

4. take note that the applicant reserves the right, on completion of the formalities provided for under Articles 90 and 91 of the Staff Regulations, to bring an action before the Court in the matter of the express or implied rejection of the request contained in his letter of 9 July 1973.

The *defendant* contends that the Court should:

1. declare the fourth head of the applicant's claim inadmissible;

2. dismiss the first and second heads of the applicant's claim;

3. order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. In his application, the *applicant* deploys three separate arguments in support of his claim:

(a) The grounds for rejection of the first head of complaint were insufficient as they referred only to Article 45 of the Staff Regulations. An express reply to a complaint must, under Article 90 (2) of the Staff Regulations, be a reasoned one, as a decision which is not reasoned does not allow the person concerned to bring the whole of his case before

the Court. Failure to state the reasons for the decision is also a breach of Article 25 of the Staff Regulations, the effect of refusal to deal with the applicant's complaint being that it is impossible for the applicant to be appointed to the post, whereby he is thus adversely affected.

(b) The applicant maintains that Mr X does not possess the required knowledge of languages. It is common knowledge in the Language Department of the Council that Mr X has a thorough knowledge only of French.

(c) Mr X does not, moreover, satisfy the condition set out under the third head of Notice of Vacancy No 31/73, viz. experience of several years as head of an administrative unit of some importance.

It is clear from the second and third submissions that the Council did not abide by the conditions laid down by itself in Notice of Vacancy No 31/73. In this connexion, the applicant requests that witnesses be called to prove the facts referred to in these submissions and that one or more expert witnesses be appointed to decide whether Mr X has a thorough knowledge of three other languages of the Communities apart from that of which he claims to have a perfect command.

2. The *defendant* emphasizes, in the first place, that the wording of Article 45 of the Staff Regulations clearly indicates that the decision relating to the promotion of an official is among those decisions which, by their very nature, are inherent in the discretionary powers of the appointing authority.

On this point, the Council draws attention to the consultative character of the tasks of the 'Advisory Committee on Promotion' set up by the Secretariat of the Council in order to advise the appointing authority in its consideration, pursuant to Article 45 (1) of the Staff Regulations, of the comparative merits of officials eligible for promotion. Suggestions from this committee are merely guidelines for the appointing authority, which retains in their entirety the discretionary powers conferred on it by the Staff Regulations.

As for the submissions made by the applicant, the Council accepts that the wording of Article 90 (2) of the Staff Regulations requires the express rejection of a complaint to be a reasoned one. Nevertheless, although the appointing authority is obliged to communicate 'its reasoned decision' to the person concerned within the prescribed time limit, the authority has a large measure of discretion in deciding the substance and scope of the reasons which it is under an obligation to give. This applies particularly in fields where the appointing authority has wide discretionary powers, such as those provided for under Article 45 of the Staff Regulations. Against this background the reason given for rejection of the applicant's complaint, though brief, is entirely in order. This contention is supported by precedents established by the Court: the appointing authority is not obliged to justify its *promotion decisions* in respect of candidates not promoted. On this point the Council cites a number of judgments of the Court, including those of 13 July 1972 in Case 90/71 *(Bernardi v Parliament,* Rec. p. 609) and of 6 May 1969 in Case 21/68 *(Huybrechts v Commission,* Rec. p. 97). Although this case law refers only to justification of decisions to promote, it is obvious that the principles which it enshrines apply with equal force to justification of an express decision rejecting a complaint.

The applicant is wrong to base his argument on Article 25 of the Staff Regulations. The Council scrupulously observed the procedure provided for in that Article. Nor, moreover, has the applicant alleged that the rules of that procedure were not complied with. On the requirement to justify decisions

covered by Article 25, the defendant refers to decisions of the Court according to which the assessment factors of which the appointing authority can avail itself in taking individual decisions 'are ill-suited for inclusion in a statement of reasons': judgments of 9 March 1964 in Case 27/63 *(Raponi v Commission,* Rec. p. 268) and of 9 June 1964 in Joined Cases 94 and 96/63 *(Bernusset v Commission,* Rec. p. 612).

The Council maintains that it meticulously observed the provisions of the Regulations in promoting Mr X. It is obvious that, in making an appointment or a promotion, the appointing authority is under an obligation to abide by the conditions which it has itself laid down. In this connexion the defendant emphasizes that it followed the procedure provided for in its Decision No 344/73 concerning the Committee on Promotion. But the report of the Committee, who knew the contents of Notice of Vacancy No 31/73, clearly stated that it was 'after having given careful consideration to the merits of the various candidates fulfilling the seniority qualifications for promotion' that it reached unanimous agreement on the list of officials worthy of promotion into Grade LA 3.

According to the defendant, the Court is not competent to review the decision in dispute because, in this case, the question in issue is an assessment made by the administrative authorities not only of ability and performance but also of the overall personality of each candidate for the vacancy. The Court can go into the facts on which the decision was based only if it considers itself to be capable of substituting its own assessment for that of the administration. The Court would therefore be right to refrain from sitting in judgment on the way in which the power of appointment provided for under Article 45 has been exercised, in the absence of anything manifestly questionable revealed by examination of the file and its contents. As there is nothing of this kind in the present case, there is no justification for adopting the measures of inquiry requested by the applicant.

The Council goes on to give a brief summary of the professional careers of Messrs X and Grassi, from which it is clear (according to the Council) that the decision was justified. In particular there is said to be no question of Mr X's competence to manage a Division in the Language Department of the Council in view of the fact that he has been head of the Italian Section of the Department since 1 January 1962.

3. In his reply, the *applicant* states that the Council's interpretation of the Staff Regulations' rules on promotion, with its emphasis on the administration's discretionary power, is too simplistic. In fact, it follows from the wording of Article 45 of the Staff Regulations that this discretion is also limited.

As to the role of the Committee on Promotion in the disputed appointment, the applicant contends that its creation must be regarded as illegal because Decision No 344/73 of the Council setting up the Committees on Promotion was adopted without the prior consultation with the Staff Committee which is required under Article 110 of the Staff Regulations.

Consequently, its opinion is irrelevant. If the assumption were made that the Committee on Promotion was competent to offer an opinion, the report it produced would still be illegal for four reasons:

(a) Notice of Vacancy No 31/73 was not available to the Committee when it drew up its report;

(b) it deliberately confined its consideration to officials serving as Heads of Section;

(c) it failed to submit *several* candidates for each vacancy as required by Article 6 of Decision No 34/73)

(d) it ought to have given reasons for its opinion.

Finally, even supposing the opinion to be legally valid, it is doubtful whether the competent authority paid any attention to it. The applicant draws the conclusion that the disputed decision is illegal for failure to comply with the rules of the promotion procedure.

Mr Grassi maintains that, in its reply to his complaint, the Council offered an explanation which was inadequate. The obligation to give a reasoned reply to the complaints referred to under Article 90 of the Staff Regulations is inherent in the purpose of the preliminary procedure, which is to avoid unnecessary appeals to the Court. This purpose can be fulfilled only if the official who makes the complaint receives a reply which is duly reasoned and might, therefore, satisfy him. To constitute a reasoned decision, a decision must reply to each particular item in the complaint; in any case a mere formal reason, such as that given in this case, is insufficient. The fact that the appointing authority has some discretion in making its decision has no bearing on the matter. Besides, it is not, on this occasion, a question of the exercise of a discretionary power, based on a 'value judgment' of some kind, but the practical question whether Mr X does or does not fulfil the conditions laid down by the authority itself in the Notice of Vacancy.

The precedents established by the Court in the matter of appointments and promotions are on the following lines:

(a) the Court will not look into value judgments, because it believes that it should not put itself in the place of the administrative authority when the latter is discharging a responsibility falling within its competence;

(b) on the other hand, it will establish the truth of the facts on which the appointing authority is relying as well as assessing the conclusions which it draws from them.

In this connexion reference is made to the judgments of 8 July 1965 in Joined Cases 27 and 30/64 *(Fonzi v Commission,* Rec. p. 637) and of 14 June 1972 in Case 44/71 *(Marcato v Commission,* Rec. p. 427).

As this case is concerned with establishing the truth of the Council's finding that Mr X has a thorough knowledge of three Community languages, the defendant cannot pretend that the subject-matter lies outside the purview of the Court. Nor, by protesting that the correct procedure was followed, may the Council hide behind the opinion of the Committee on Promotion. The information provided by the Council on the careers of Mr X and of the applicant is misleading and incomplete. It does not bear out the statement that Mr X has, since 1 January 1962, actually served as a Section Head in the Language Department. On the contrary, it was the applicant who, together with Mr Ballesina, acted in this capacity during recent years. This is the basis of Mr Grassi's third submission.

The applicant concludes by asking the Court to order the Council to produce everything on the file relating to the promotion of Mr X and particularly the record of the whole administrative procedure properly speaking; the file sent to the Committee on Promotion for the LA grades; the documents to which the Committee on Promotion refers in its report; and the administrative file of Mr X.

In its rejoinder the *defendant* states that it complied with the conditions laid down in Article 45 limiting the exercise of the administration's powers.

The reference to Article 110 of the Staff Regulations as the reason why the creation of the Committees on Promotion was improper is seen to be without substance when viewed against the judgment of the Court of 8 July 1968 in the Joined Cases 27 and 30/64 *(Fonzi v Commission,* Rec. p. 637). The question whether the list of candidates

for promotion submitted in its report by the Committee on Promotion should contain any particular number of officials is entirely a matter for its own discretion and judgment. Moreover there is no obligation to give reasons for *proposals* in a purely consultative context. It is clear both from the report of the Committee on Promotion and from the decision appointing Mr X that the competent authority did in fact take the Committee's opinion into account.

As to the obligation to give a reasoned reply to the complaints of officials, the Council reiterates that the precedents established by the Court on the principle of the appointing authority's discretionary powers are of general application and are consequently applicable to Article 90 (2) of the Staff Regulations.

As regards the second and third submissions of the applicant, the Council repeats, generally speaking, the arguments adduced in its statement of defence.

After concluding the written procedure the Court proceeded on 11 July 1974 to examine the witnesses and hear the oral arguments.

The applicant was represented by Maître Marcel Slusny and the Council by its Legal Adviser, Antonio Sacchettini, acting as Agent.

The Advocate-General delivered his opinion at the hearing on 9 October 1974.

Grounds of judgment

1 By application of 5 December 1973, the applicant brought an action before the Court under Article 91 of the Staff Regulations for annulment of the express decision of the Secretary-General of the Council of 13 September 1973 rejecting the applicant's complaint of 9 July 1973 concerning the appointment of Mr X to the post of head of a Language Division and for annulment of that appointment, which took place on 25 May 1973.

2 The applicant also claimed 'that the Court should: . . . 4. take note that the applicant reserves the right, on completion of the formalities provided for under Articles 90 and 91 of the Staff Regulations, to bring an action before the Court in the matter of the express or implied rejection of the request contained in his letter of 9 July 1973'.

3 The appointment took place as part of a reorganization of the Language Department designed to convert its Sections into Divisions and was made pursuant to Notice of Vacancy No 31/73 of 29 March 1973 announcing five posts of head of Translation Division at grade LA 3.

4 Among the conditions of eligibility contained in the notice were the following: 'Perfect command of one of the languages of the Communities, including knowledge of economic and legal terminology with particular reference to the fields concerning the European Communities, and a thorough knowledge of (the) three other languages of the Communities' and 'Experience of several years as head of an administrative unit of some importance'.

As to admissibility

5 The defendant pleads that the fourth part of the applicant's claim, as cited above, is inadmissible because it does not arise out of the subject-matter or which the Court is being asked to rule in the present action.

6 The applicant leaves it to the wisdom of the Court.

7 The meaning of the fourth part of the claim is, to say the least, obscure and its relevance to a solution of the dispute has not been established.

8 This claim must therefore be treated as inadmissible.

9 No objections have been raised against the admissibility of the applicant's remaining claims.

As to substance

First submission

10 The applicant relies on Articles 25, 45 and 90 (2) of the Staff Regulations to challenge the decision of 13 September 1973 rejecting his complaint, because no reasons were given and a decision which is not reasoned prevents the person concerned from bringing the whole of his case before the Court.

11 As regards Articles 25 and 45 there is no need for a decision promoting an individual to be reasoned as it does not adversely affect the person to whom it is addressed, viz. the official whose candidature has been successful.

12 The appointing authority is not obliged to give reasons for promotion decisions insofar as they affect candidates who have not been promoted; a statement of these reasons might harm some if not all unsuccessful candidates.

13 As for Article 90 (2), the obligation to give reasons for a decision rejecting a complaint also applies in the case of a disputed promotion.

14 As, however, in the words of Article 45 of the Staff Regulations, promotion shall be 'by selection', the reasons to be given will be concerned only with fulfilment of the legal conditions on which, under the Staff Regulations, the validity of the promotion depends.

15 A restriction of this nature cannot hamper the person concerned in framing his appeal to the Court, as the subject of such an appeal must be the act or omission which gave rise to the complaint and, in making their submissions and arguments to the Court, the parties are not bound by the wording of the complaint or of the decision rejecting it.

16 The reasons given for the decision of 13 September 1973 state that the disputed decision to promote 'was taken after the comparative merits of the officials eligible for promotion had been considered and after all assessments of their ability, work and conduct in the department, as they appear in the periodical reports rendered pursuant to Article 43 of the Staff Regulations, had been taken into account'.

17 While this statement of reasons is undoubtedly concise, it nevertheless meets there requirements indicated above.

18 It would, moreover, have been difficult to amplify it without discussing the merits of the various candidates on the basis of their personal files.

19 This submission must, accordingly, fail.

Second submission

20 The applicant alleges that, in promoting Mr X, the Secretary-General of the Council ignored the linguistic conditions of eligibility published in Notice of Vacancy No 31/73, since the promoted official does not possess 'a thorough knowledge of (the) three other languages of the Communities in addition to perfect command of his mother tongue'.

21 In fact, he has a thorough knowledge only of French and only an imperfect knowledge of the other languages.

22 While recognizing that, in making a promotion or appointment, it is bound to abide by the conditions fixed by itself, the defendant maintains that, in this case, it acted on the basis of an assessment made not only of the ability and work but also of the overall personality of each of the candidates for the vacancy.

23 The Court can go into the facts on which the decision was based only if the personal file and its contents reveal something manifestly questionable.

24 As there was nothing of this kind in the present case, the submission should be rejected without adopting the measures of inquiry requested by the applicant.

25 Article 45 provides that promotion shall be exclusively by selection after consideration of the comparative merits of the officials eligible for promotion and of the reports on them.

26 While the appointing authority enjoys wide discretion in this matter, there is *ipso facto* an assumption that the exercise of this discretion will include careful examination of the files and meticulous regard to the requirements laid down in the Notice of Vacancy.

27 The applicant's objections, which have not been dispelled by the defendant, are concerned particularly with the physical accuracy of factual statements whose correctness can be objectively assessed.

28 From the biennial reports on Mr X, it appears that his knowledge of two languages has been described as 'very good', of another as 'good', and of a fourth as 'fair'.

29 It is not disputed that, to make comparison easier, the levels 'very good', 'good' and 'fair' are in current use to classify knowledge of languages in the biennial reports.

30 On the other hand, there is equally no dispute that, in the qualifications required in Notices of Vacancy, the levels of attainment required in languages are described by the expressions 'perfect command', 'thorough knowledge', and 'adequate knowledge'.

31 In the circumstances, the question is whether Mr X satisfied the condition laid down in the Notice of Vacancy: 'Perfect command of one of the languages of the Communities ... and a thorough knowledge of (the) three other languages of the Communities'.

32 On this point Mr H. Noack, former director of the Language Department of the Council, who appeared as a witness, declared .. 'the expression' 'thorough knowledge' is to be regarded as a practical expression whose meaning depends on the other two expressions, 'perfect command' and 'adequate knowledge'. 'Perfect command' is intended to indicate 'the highest possible level' of knowledge of a language. The two expressions, 'thorough knowledge' and 'adequate knowledge', represent levels below that of perfect knowledge. The expressions 'very good', 'good' and 'fair' make these levels easier to understand. The three classifications cannot be precisely equivalent in each case: their meaning varies according to the person using them; the significance of thorough knowledge must be assessed in comparison with the other expressions'.

33 Mr G. Battin, a former Assistant Head of the Language Department of the Council, who also appeared as a witness, declared: 'the expression' 'thorough

knowledge' is meant to indicate knowledge which is the opposite of 'superficial' but ... this vague expression was used to give the candidate an indication of the level of knowledge required and to serve as a guideline for the Selection Board ... As a general rule, the level of attainment in a language indicated by 'thorough knowledge' is higher than that which the reports describe as 'fair' ... the distinction may not be so clear in individual cases where the candidate's knowledge of languages is regarded as sufficient to equip him for the job'.

34 The view of this witness was that 'the wording of Notice of Vacancy No 31/73 required more than was necessary because it did not pay sufficient regard to the extent to which every translator's familiarity with languages varies', but he agreed that a thorough knowledge of three languages had been required on several previous occasions.

35 The conclusion to be drawn from these comments is that these two methods of classification, although not fully equivalent, have sufficient in common to make it impossible to regard knowledge described by the word 'fair' to be regarded as 'thorough knowledge'.

36 Both the defendant and the witnesses have, it is true, qualified their remarks by commenting that, in the assessment of requirements, the overall personality of the candidate and the nature of the job to be filled must be taken into account.

37 The Court does not share this view.

38 In fact, though the appointing authority has wide discretion in comparing the candidates' merits and reports, especially with a view to the post to be filled, it must exercise it within the self-imposed limits contained in the Notice of Vacancy.

39 When the appointing authority has to fill a post, it must, when drawing up the Notice of Vacancy, take account of the special conditions of eligibility required of the holder; it does not satisfy the provisions of Staff Regulations if the authority decides what these conditions should be only after the Notice has been published and the candidates are known, and if an interpretation is

placed on the wording of the Notice of Vacancy which, in the authority's view, seems to be in the best interests of the service.

40 To interpret the wording of the Staff Regulations otherwise would be to deprive the Notice of Vacancy of its basic function in the recruitment procedure, which is to give those interested the most accurate information possible about the conditions of eligibility for the post to enable them to judge whether they should apply for it.

41 As the appointing authority had, in Notices of Vacancy No 31/73 required 'a thorough knowledge of (the) three languages of the Communities', it was bound by the terms of Article 45 to reject any candidate who, according to his reports, did not meet this requirements.

42 It infringed Article 45 when it decided that the published requirement was met by a candidate whose biennial reports stated that his knowledge of languages was (apart from his mother tongue) only 'very good' or 'good' for two languages and 'fair' for a third.

43 If, after the event, the appointing authority found that the conditions of eligibility required in the Notice of Vacancy were more exacting than the needs of the service demanded it was entitled to re-open the promotion procedure after withdrawing the original Notice of Vacancy and putting an amended one in its place.

Third submission

44 In this submission the applicant challenges the appointment of Mr X on the ground that the latter did not meet the condition of eligibility published in the Notice of Vacancy, viz. experience of several years as head of an administrative unit of some importance.

45 The fact is that, although Mr X had been a Section Head in the Language Department since 1962, he had been continually absent on Staff Committee

business and associated activities, with the consequence that a substitute had frequently to act for him as Head of the Language Section.

46 The last paragraph of Article 1 of Annex II to the Staff Regulations states: 'The duties undertaken by members of the Staff Committee and by officials appointed by the Committee to organs set up under the Staff Regulations or by the institution shall be deemed to be part of their normal service in their institution. The fact of performing such duties shall in no way be prejudicial to the person concerned'.

47 Consequently, even if the applicant's allegations were proved, which is not the case, the alleged absences could not be taken into account in determining whether Mr X did or did not satisfy the requirements of Notice of Vacancy No 31/73.

48 This submission must therefore be rejected.

Conclusion

49 It follows from the foregoing that the disputed decision to appoint Mr X must be annulled.

Costs

50 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must bear the costs.

51 The defendant has failed in its plea.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Annuls the decision in dispute.**

2. **Orders the defendant to pay the costs.**

Ó Dálaigh Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 30 October 1974.

A. Van Houtte
Registrar

C. Ó Dálaigh
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 9 OCTOBER 1974

My Lords,

It appears that the budget of the Secretariat-General of the Council for 1973 provided for five of the Sections of its Translation Service — namely the Dutch, English, French, German and Italian Sections — to become Divisions. Each of these Divisions was to be headed by an official of grade L/A 3 instead of, as the Sections had been, by one of grade L/A 4.

Thus it was that, on 3 April 1973, the Council, pursuant to Article 4 of the Staff Regulations, published Notice of Vacancies No 31/73, relating to five posts of Head of Translation Division of grade L/A 3. (The text of the Notice, as published, is among the Annexes to the Answers, dated 28 June 1974, given by the Council to Questions put by the Court at the close of pleadings).

The conditions of eligibility for the posts were stated in the Notice to be as follows:

'— University education ... or equivalent professional experience;

— Perfect command of one of the languages of the Communities, including knowledge of economic and legal terminology with particular reference to the fields concerning the European Communities, and a thorough knowledge of three other languages of the Communities;