

JUDGMENT OF THE COURT (Second Chamber)  
23 September 2004.\*

In Case C-150/03 P,

APPEAL under Article 56 of the Statute of the Court of Justice,

lodged at the Court on 31 March 2003,

**Chantal Hectors**, residing at Mont-sur-Rolle (Switzerland), represented by G. Vandersanden and L. Levi, avocats, with an address for service in Luxembourg,

appellant,

the other party to the proceedings being:

**European Parliament**, represented by H. von Herten and J.F. de Wachter, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

\* Language of the case: French.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), J.N. Cunha Rodrigues and N. Colneric, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,  
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 February 2004,

after considering the observations submitted on behalf of the parties,

after hearing the Opinion of the Advocate General at the sitting on 11 March 2004,

gives the following

**Judgment**

- 1 By her appeal, Ms Hectors requests the Court to set aside the judgment of 23 January 2003 of the Court of First Instance of the European Communities in Case T-181/01 *Hectors v Parliament* [2003] ECR-SC I-A-19 and II-103 (hereinafter 'the judgment under appeal'), which dismissed her application for, first, annulment of the decisions of the authority competent to conclude contracts of employment

(hereinafter 'the competent authority') appointing Mr B to the post of Dutch-language administrator in the European People's Party (Christian Democrats) and European Democrats Group within the European Parliament (hereinafter 'the EPP-ED Group') and rejecting the appellant's candidature for that post, as well as of the decision rejecting her complaint (hereinafter 'the contested decisions'), and, second, an order that the Parliament pay her damages.

### **Legal background**

- 2 Under Article 2 of the Conditions of Employment of other servants of the European Communities (hereinafter 'the Conditions of Employment'):

'For the purposes of these Conditions of Employment "temporary staff" means:

...

- (c) staff, other than officials of the Communities, engaged to assist either a person holding an office provided for in the Treaties establishing the Communities, or the Treaty establishing a Single Council and a Single Commission of the European Communities, or the elected President of one of the institutions or organs of the Communities or one of the political groups in the European Parliament;

...'

- 3 Article 11 of the Conditions of Employment states, among other things, that Articles 11 to 26 of the Staff Regulations, concerning the rights and obligations of officials of the European Communities (hereinafter 'the Staff Regulations') are to apply by analogy to the temporary staff and that decisions relating to individual members of the temporary staff are to be published as provided for in the second paragraph of Article 25 of the Staff Regulations.
  
- 4 The Internal Rules on the recruitment of officials and other servants, and on change of grade or service, adopted by the Bureau of the Parliament on 15 March 1989 (hereinafter 'the Rules of 15 March 1989'), provide, in particular:

'Section II. Temporary Staff

...

#### Article 8

Temporary staff employed within the political groups shall be recruited on the basis of the recommendations of an *ad hoc* committee, to be appointed by the authority competent to conclude contracts of employment, one of whose members shall be appointed by the Staff Committee.

#### Article 9

Vacancy notices for posts with the political groups shall be published within the institution and outside it. After examining the candidates' files on the basis of the

criteria laid down in accordance with the regulatory provisions by the political group concerned in order to define the post to be filled, the *ad hoc* committee shall draw up a list of the candidates who meet the requirements of an administrative nature set out in the vacancy notice. That list shall be transmitted to the authority competent to conclude contracts of employment.'

- 5 Under Rules 5 and 6 in the document drawn up by the Secretary General of the EPP-ED Group in February 2000, entitled 'Staff Recruitment Procedures' (hereinafter 'the document relating to the EPP-ED's recruitment procedure'):

'5. The Selection Board shall be responsible for managing the recruitment procedure and shall consist of a chairman, who will normally be the head of the service concerned, at least two other members of the group's secretariat whose grade shall be equal to or higher than that to which the candidate is to be appointed, a representative of the Group's Staff Committee and a representative of the Parliament's Staff Committee. The Chairman of the Selection Board shall be responsible for compliance with the procedures described in the annexes. The Selection Board shall, in accordance with the annexes, establish written and oral tests, the pass mark, the number of candidates to be placed on the list [of suitable candidates] and the period of that list's validity.

6. In all cases in which a normal full procedure takes place, the Selection Board shall pass to the Presidency of the Group the list of the candidates who have been successful in the competition with the number of marks they have obtained. When a single [vacancy] is to be filled, the Presidency shall choose one of the top three candidates on the list. When two posts are to be filled, the Presidency shall choose from the top five candidates.'

### Facts giving rise to the proceedings

6 The facts which gave rise to these proceedings are set out, in paragraphs 5 to 16 of the judgment under appeal, in the following terms:

'5 The vacancy notice for a post as a member of the temporary staff of Dutch mother-tongue was published by the EPP-ED Group in the Parliament's Summary of recruitment notices No 14/2000 for the period from 29 May to 14 June 2000.

6 The terms of the vacancy notice relating to that post were:

"The Group's appointing authority has decided to open a selection procedure in order to fill a post of administrator or assistant administrator (M/F) of Dutch mother-tongue, in grade A 8 or A 7/A 6 (temporary agent).

...

Nature of functions:

Qualified official responsible, under the authority of his/her hierarchical superiors, for conceptual and research tasks in relation to the activities of the EPP-ED Group. Such tasks require the ability to work as a member of a team.

Qualifications and knowledge required:

- University degree or equivalent professional experience;
  
- Excellent knowledge of the institutional structure of the European Union and of its activities;
  
- Ability to carry out, on the basis of general guidelines, work of conception, analysis and synthesis;
  
- In-depth knowledge of one of the official languages of the European Union and working knowledge of another of its languages.

Particular qualifications:

For functional reasons, the following are required:

- In-depth knowledge of Dutch and working knowledge of German and French or English; knowledge of other Community languages will also be taken into consideration;

- Working knowledge of the structure and activities of the institutions of the EU;
  
- Knowledge of and background in keeping with the programmatical aims and activities of the EPP-ED Group and of Community policy; knowledge of the EU's agriculture policy and/or professional experience in that sector will be an advantage;
  
- Proven professional experience of 2 years will justify recruitment into grade A 7/A 6."

- 7 A notice of the vacancy was also published in several Dutch-language newspapers.
  
- 8 By letter of 21 June 2000, the applicant lodged her candidature for the position at issue, which was duly acknowledged.
  
- 9 The applicant participated in the written selection tests on 9 October 2000 and then the oral tests on 19 October 2000.
  
- 10 The *ad hoc* committee, provided for under Article 8 of the Rules of 15 March 1989, acting as the selection board, as provided for in rule 5 of the document



relating to the EPP-ED's recruitment procedure (hereinafter "the board"), on 19 October 2000, delivered its report on the filling of the post at issue. That report states, among other things:

"Establishment of the list of suitable candidates

On conclusion of its work, the [board] decided to place on the list [of suitable candidates] the names of the following candidates:

— Ms Chantal Hectors (83.50 marks)

— Ms L (73.50 marks)

— Mr B (65.25 marks)

In accordance with the provisions of Article 9 of the [Rules of 15 March 1989], any decision is left to the European People's Party and European Democrats Group's authority competent to conclude contracts of employment for members of the temporary staff as regards the choice of candidate for the post in question."

11 On 7 November 2000, each of the three selected candidates were interviewed by four members of the Dutch delegation of the EPP-ED Group.

- 12 On 22 November 2000, the Chairman of the board informed the appellant that her name was on the list of suitable candidates.
  
- 13 Having received no further information concerning the outcome of the recruitment procedure in question, the appellant wrote, on 16 January 2001, to the Chairman of the board.
  
- 14 By letter of 31 January 2001, the Chairman of the board informed the appellant that Mr B had been selected. That letter also stated:

“In the oral and written tests on 9 and 19 October, you received 83.5 marks (out of 100). Thus, you are in first place on the list [of suitable candidates].

As is customary, the board sent the names of the top three candidates to the Group's Presidency. The Presidency's decision was as stated above.

For the sake of completeness I refer to the following provision:

In accordance with the provisions of Article 9 of the [Rules of 15 March 1989], any decision is left to the European People's Party and European Democrats Group's authority competent to conclude contracts of employment with temporary staff as regards the choice of candidate for the post in question.”

- 15 On 11 April 2001, the appellant lodged a complaint against the decisions appointing Mr B and rejecting her candidature. In the terms of that complaint, it is, among other things, stated:

“By letter of 31 January 2001, the Chairman of the [board] informed me that the [board] had placed me in first position in order of merit on the list of selected candidates (with 83.5 marks out of 100), but that the EPP-ED [Group] had appointed Mr [B] to the vacant post. No grounds for that decision were given, nor for its non-compliance with the order of merit established.

In my view, when an appointing authority decides to have recourse to a competition procedure in order to recruit staff to a specific post, even a temporary post, the settled case-law of the Court of First Instance shows that the appointing authority is obliged to comply with the results of the competition, as well as the order of merit established by the [board], save in properly reasoned exceptional circumstances which permit it to act otherwise.”

- 16 By letter of 28 May 2001, the President of the EPP-ED Group rejected that complaint. He states, amongst other things, in that letter:

“I have taken full account of all your comments and submissions. However, I refer to [Article] 30 of the Staff Regulations which stipulates that, for each competition, a selection board is to be appointed by the appointing authority. That board is to draw up a list of suitable candidates and the appointing authority is to decide which of those candidates to appoint to the vacant posts. There is therefore no doubt that the [appointing authority] is not required to follow the order of merit on the list of suitable candidates.

In those circumstances, you will understand that your complaint cannot be accepted and is rejected”.

**The application to the Court of First Instance and the judgment under appeal**

- 7 By application lodged at the Registry of the Court of First Instance on 6 August 2001, Ms Hectors brought an action for annulment of the contested decisions.
  
- 8 In support of that action, Ms Hectors pleaded a procedural ground, alleging failure to fulfil the duty to state reasons, and four pleas in law concerning the substance of the decisions, alleging first a manifest error of assessment and an error of law, disregard of the interest of the service and infringement of Article 12 of the Conditions of Employment; secondly, infringement of Articles 29 and 30 of the Staff Regulations, non-compliance with the vacancy notice and breach of the principle 'abide by the laws which you yourself have made'; thirdly, breach of the principle of equal treatment of men and women, and, fourthly, breach of the duty to have regard to her interests. In addition, Ms Hectors alleged that those wrongs had caused her material and non-material damage and that, as such, they constituted faults justifying compensation.
  
- 9 By the judgment under appeal, the Court of First Instance, having rejected as unfounded all the pleas in law raised by Ms Hectors, dismissed in its entirety the action before it.
  
- 10 On the first plea in law, alleging breach of the duty to state reasons, the Court held, in paragraphs 35 to 46 of the judgment under appeal, that sufficient reasons had been given for the decision not to select Ms Hectors for the post, since she had been informed of the stages of the selection procedure followed and therefore of the conditions establishing the lawfulness of that procedure. It considered that the decision to appoint Mr B, which required no particular statement of reasons in addition to that of the first decision, was therefore also sufficiently reasoned.

- 11 To reach those findings, the Court first of all noted, in paragraphs 36 and 37 of the judgment under appeal, that, in the case of decisions involving a choice between several candidates, the competent authority was bound to give a statement of reasons, at the very least when it rejected an unsuccessful candidate's complaint (Case T-25/92 *Vela Palacios v ESC* [1993] ECR II-201, paragraph 22, and Case T-60/94 *Pierrat v Court of Justice* [1995] ECR-SC I-A-23 and II-77), and that the extent of that obligation to state reasons was to be determined, in each case, in relation to its own facts.
- 12 It then pointed out, first, that, by virtue of rule 6 of the document relating to the EPP-ED's recruitment procedure, if there was a single vacancy, the Group Presidency, in its capacity as competent authority, chose one of the top three candidates on the list of suitable candidates established by the board responsible for drawing up proposals. Secondly, it held that the appointment of a member of the temporary staff by a political group of the Parliament, based on Article 2(c) of the Conditions of Employment, presupposed, as an essential matter, a relationship of mutual confidence.
- 13 The Court concluded therefrom, in paragraphs 41 to 45 of the judgment under appeal, that in the case of a post as a member of the temporary staff in a political group of the Parliament, to fill which the Group Presidency is completely free to select anyone on the list of suitable candidates, the statement of reasons need cover only observance of the legal requirements governing the appointment procedure. In the Court's view, that information had been properly communicated to Ms Hectors, first by the Chairman of the board's letter of 31 January 2001, then by the letter of 28 May 2001 from the President of the EPP-ED Group, rejecting her complaint.
- 14 So far as concerns the second plea in law, the Court held, in paragraphs 65 to 78 of the judgment under appeal, that the Presidency of the EPP-ED Group, in its capacity as competent authority, had not made a manifest error of assessment by appointing Mr B rather than Ms Hectors, to the post, nor, and more conclusively, had it infringed the interest of the service or Article 12(1) of the Conditions of Employment.

- 15 Noting that the competent authority has, in the appointment of members of the temporary staff, an even wider discretion than that of the appointing authority which is under no obligation to follow the precise order of merit of those on a list of suitable candidates, the Court held that the Group Presidency was entitled, in the exercise of its freedom to choose the candidate to be recruited, to take more particularly into account the professional experience of the candidates considered suitable to fill the post in question.
- 16 The Court thus held that the competent authority had not exceeded the limits of its very broad discretion by deciding that Mr B had sufficient experience of European questions, and greater professional experience regarding the common agricultural policy than Ms Hectors, even though she had been awarded higher marks in the written selection tests.
- 17 The Court also rejected, in paragraphs 93 to 107 of the judgment under appeal, the third plea in law invoked by Ms Hectors.
- 18 So far as concerns the alleged infringement of Articles 29 and 30 of the Staff Regulations, the Court held that the recruitment procedure for temporary staff was governed solely by the relevant provisions of the Conditions of Employment and of the internal implementing rules adopted by the Parliament, and not by the rules in the Staff Regulations relating to the recruitment of officials.
- 19 It held that the fact that the decision rejecting the complaint, as well as the letter of 14 June 2001 from the President of the Parliament to the Chairman of the Committee on the recruitment procedure for temporary staff in the political groups, refer respectively to Article 30 of the Staff Regulations and to recruitment of

members of the temporary staff 'in accordance with procedures similar to those put in place for the recruitment of officials' did not enable it to be established that the relevant provisions of the Staff Regulations applied to temporary staff.

20 As regards the holding of interviews between the members of the Dutch delegation and the candidates on the list, which contravened, according to Ms Hectors, both the statutory rules and the Parliament's internal implementing rules, the Court held that the competent authority was entitled to hold such interviews.

21 The Court in effect held that that entitlement, which is set out neither in the Rules of 15 March 1989 nor in the document relating to the EPP-ED's recruitment procedure, arises from the competent authority's very broad discretion in the choice of the detailed rules for the organisation of the selection procedure and in the conduct thereof. In accordance with the requirement for a relationship of mutual confidence determining the engagement of a member of the temporary staff by a political group of the Parliament on the basis of Article 2(c) of the Conditions of Employment, that entitlement could not, moreover, contravene the provisions of the Staff Regulations on the recruitment of officials, since they do not apply to members of the temporary staff.

22 Furthermore, so far as concerns the alleged lack of a comparative examination of the candidates' qualifications by the Group Presidency, the Court held that, in the light of the Parliament's contentions that the competent authority had adopted its decision on the basis of the board's comprehensive file, the files on the candidates and the Dutch delegation's recommendation, and in the absence of any proof or evidence adduced by Ms Hectors capable of substantiating her line of argument, the competent authority could not be considered to have confined itself to confirming that delegation's proposal without undertaking any comparative examination.

- 23 Finally, the Court held that the matters relied upon by Ms Hectors concerning the conduct of the interview with the national delegation, namely the absence of a member of the Staff Committee, or the lack of any formal record or reasoned report as a result of the discussion, also came within the competent authority's freedom of choice in laying down the detailed rules for the organisation of the selection procedure and its conduct. It was not therefore a case of essential formalities having a decisive effect on the conduct of the recruitment procedure.
- 24 In relation to the fourth plea in law, alleging breach of the principle of equal treatment of men and women, the Court found, in paragraphs 117 to 125 of the judgment under appeal, that Ms Hectors had not been able to establish a presumption of direct or indirect discrimination, so that it was not for the defendant to prove that there was no breach of the principle of equal treatment of men and women. Discrimination cannot be presumed from the sole matter put forward by Ms Hectors, namely the fact that she was, at the time of the relevant events, as the Dutch delegation was informed, six months pregnant.
- 25 Moreover, the Court decided that, in any event, the competent authority had not infringed the principle of equal treatment of men and women, since it had not made a manifest error of assessment in appointing Mr B to the post.
- 26 So far as concerns the fifth plea in law, the Court held, in paragraphs 131 to 135 of the judgment under appeal, that the competent authority had not disregarded its duty to have regard to the interests of Ms Hectors. It noted that the possible limits to the obligations arising from such a duty cannot prevent the administration adopting the measures as regards the assignment to posts of officials and members of staff which it considers necessary in the interest of the service.



- 27 The Court considered that, in the light of the competent authority's very broad discretion in the evaluation of that interest in the recruitment of temporary staff, its review should be limited to the question whether that authority had acted within reasonable limits and had not exercised its discretion in a manifestly erroneous way. Since the Parliament made no manifest error of assessment in not appointing Ms Hectors to the post in question, the appointment of Mr B was in the interest of the service and the interests of Ms Hectors cannot prevail over that of the service.
- 28 Finally, the Court rejected the claim for damages. It held that it followed from its consideration of the claims for annulment that Ms Hectors had not proved that the competent authority has acted unlawfully as alleged.

### **Forms of order sought by the parties**

- 29 Ms Hectors' appeal seeks, first, to have the judgment under appeal set aside and the contested decisions annulled and, secondly, an order that the Parliament pay her damages of EUR 60 554.70 subject to increase, as well as the costs at first instance and on appeal.
- 30 The Parliament asks the Court to dismiss the appeal.

## The appeal

- 31 In support of her appeal, the appellant relies, in essence, on four grounds of appeal. The first alleges infringement of the principles of legality and legal certainty and procedural irregularity; the second, infringement of the duty to state reasons; the third, disregard of Article 12 of the Conditions of Employment and of the concept of the interest of the service, and the fourth, infringement of the principle of equal treatment of men and women.

### *The ground of appeal alleging infringement of the duty to state reasons*

#### Arguments of the parties

- 32 The appellant complains that the Court of First Instance, by not penalising the competent authority's failure to state its reasons, failed to apply the principle that there is a duty to state reasons. That authority is obliged to give specific reasons for its decision if it departs from the order of merit established by a selection committee on the list of suitable candidates for a post as a member of the temporary staff.
- 33 The appellant submits that such obligation follows clearly from the case-law, in particular Joined Cases 44/85, 77/85, 294/85 and 295/85 *Hochbaum & Rawes v Commission* [1987] ECR 3259; *Pierrat v Court of Justice*, cited above, paragraphs 38 and 39, and Case T-117/01 *Roman Parra v Commission* [2002] ECR-SC I-A-27 and II-121, paragraph 31. That case-law requires the competent authority to provide a statement of specific reasons going beyond a statement of general reasons or a reference to the lawful conduct of the procedure. Thus, in the case of the appellant,

who had stated in her complaint that she was placed top on the list of suitable candidates and that the candidate appointed had a lower mark than she had, the competent authority should have given specific reasons for its decision.

- 34 The appellant maintains also that the need for a relationship of mutual confidence between the member of the temporary staff to be recruited and the members of the national political group does not affect the competent authority's duty to state specific reasons.
- 35 The Parliament contends that the judgments in *Hochbaum & Rawes v Commission* and *Pierrat v Court of Justice*, cited above, are irrelevant given that they concerned different situations, namely, in the former case, a promotion procedure vitiated by several procedural defects and, in the latter case, an appointing authority's decision to recruit someone who was not on the list of suitable candidates.
- 36 By contrast, in this case, the EPP-ED Group's internal rules expressly state that the competent authority may select one of the top three on the list of suitable candidates, so that the statement of reasons for the decision taken in this case could have referred only to the observance of legal requirements governing the appointment procedure, as the judgment under appeal correctly recognised.
- 37 Moreover, it is established that an insufficient statement of reasons in the reply to a complaint can be made good by explanations provided in the course of the court proceedings. The Parliament claimed before the Court of First Instance that Mr B was appointed because of his greater experience regarding the common agricultural policy.

## Findings of the Court

- 38 Under the third paragraph of Article 11 of the Conditions of Employment, decisions relating to individual members of the temporary staff are to be published as provided for in the second paragraph of Article 25 of the Staff Regulations, which states that: '[a]ny decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based'.
- 39 The duty to state reasons imposed by the second paragraph of Article 25 of the Staff Regulations and, as regards decisions taken as a result of a complaint, that imposed by the second subparagraph of Article 90(2) thereof, are intended, on the one hand, to provide the persons concerned with sufficient details to enable them to assess whether the decision was well founded and whether it would be expedient to bring legal proceedings to contest its legality and, on the other hand, to enable the Court to review the decision (see, inter alia, Case 195/80 *Michel v Parliament* [1981] ECR 2861, paragraph 22).
- 40 As the Court of First Instance correctly pointed out, in paragraphs 36 and 37 of the judgment under appeal, the competent authority, by analogy with the appointing authority, is bound to give a statement of reasons, at the very least when rejecting a complaint made by an unsuccessful candidate against the decision rejecting his candidature and/or against that appointing another candidate (see, in particular, with regard to the rejection of an official's candidature, Case C-115/92 P *Parliament v Volger* [1993] ECR I-6549, paragraph 22). The extent of that duty must be determined on the basis of the particular facts of each case (Case C-169/88 *Prelle v Commission* [1989] ECR 4335, paragraph 9).
- 41 In the judgment under appeal, the Court of First Instance held that the competent authority could confine itself to stating that the statutory requirements governing the legality of the appointment procedure had been observed, because it was free to

select one person from the list of suitable candidates available to it. By so doing, the Court of First Instance applied to this case by implication its case-law relating to promotion procedures according to which, where promotion is a matter of selection, it suffices that the statement of reasons for the rejection of the complaint refers to the legal conditions laid down by the Staff Regulations for the procedure to be lawful (see, particularly, *Vela Palacios v ESC*, paragraph 22, and *Roman Parra v Commission*, paragraph 27).

42 In this case, the recruitment procedure for a member of the temporary staff is certainly based, ultimately, on the competent authority's freedom of selection under the internal rules of the EPP-ED Group set out in paragraph 6 of the document relating to the EPP-ED's recruitment procedure. It cannot, however, so far as the duty to state reasons is concerned, be treated in the same way as the promotion procedure for officials, covered by Article 45 of the Staff Regulations, which is 'exclusively by selection'.

43 The procedure for the selection of a member of the temporary staff, as provided for by the rules of the EPP-ED Group, includes the initial selection of the candidates to be invited to take part in the oral and written tests, the drawing up by the board of the list of suitable candidates based on the results of those tests and then the comparative examination by the competent authority of the candidates' files and of the list established by the board.

44 The competent authority's decision, which is founded, in principle, on a comparative assessment that is by its nature subjective, is therefore based also on objective data, namely a comparison of the candidates' files with the qualifications required by the vacancy notice and the taking into consideration of the board's proposal in the light of the results of the tests.

45 The competent authority thus had available the board's opinion on the candidates' capacities and abilities with regard to the qualifications required. That opinion was intended to give the competent authority a basis for comparing the candidates' merits and it was one of the factors on which it based its own assessment of the candidates.

- 46 Inasmuch as the competent authority departed from the board's opinion and, therefore, from the order of merit based on the result of the qualifying tests and communicated to the appellant, a general statement of reasons or one taking the form of a mere reference to the fact that the recruitment procedure had been properly conducted did not enable the appellant to ascertain the reasons why she was overlooked.
- 47 In the circumstances of this case, a statement of specific reasons was all the more justified in order to reply to the appellant's complaint that she had taken part in an individual interview for which no provision was initially made, that she had received no information as to the result of the recruitment procedure before she requested it and that she had made express reference, in her complaint of 11 April 2001, to the content of the list of suitable candidates and their order of merit.
- 48 It is clear from the Court of First Instance's findings of fact that, first, the Chairman of the board's reply of 31 January 2001 to the appellant's letter of 16 January 2001 was confined to informing the appellant of the procedure followed by the competent authority in making its choice. Secondly, the letter of 28 May 2001 from the President of the EPP-ED Group rejecting the appellant's complaint was confined to indicating the stages of the appointment procedure followed.
- 49 Thus, in the course of the pre-litigation procedure, the appellant received no information specific to her case, but only general information on the procedure followed.
- 50 Since a total failure to state reasons prior to the commencement of proceedings cannot be remedied by explanations provided before the Court by the competent authority, by analogy to the appointing authority (see, to that effect, Case C-343/87 *Culin v Commission* [1990] ECR I-225, paragraph 15), it must be held that the competent authority failed in its duty to state reasons.

51 Consequently, by holding, in paragraph 41 of the judgment under appeal, that the statement of reasons for the decision not to appoint the appellant could refer simply to the fact that the applicable statutory requirements had been complied with and by deciding, as a result, in paragraph 46 of that judgment, that the reasons for the decision had been sufficiently stated, the Court of First Instance made an error of law. Therefore, the judgment under appeal must be set aside on that ground and there is no need to consider the appellant's other grounds of appeal.

### **Substance**

52 In accordance with Article 61 of the Statute of the Court of Justice, since the state of the proceedings so permits, it is appropriate to rule on the merits of the appellant's claims for annulment of the contested decisions and for an order that the Parliament pay her damages.

### *The claims for annulment of the contested decisions*

53 In the light of the above considerations, it must be held that the competent authority was in breach of its duty to state reasons for its decisions, since its reply to the appellant's complaint gave no reasons.

54 It follows that the appellant's plea in law alleging disregard of the obligation to state reasons must be upheld. Therefore, the decision rejecting the appellant's complaint must be annulled as must, as a result, the other contested decisions, without there being any need to examine the other pleas in law.

*The claim for damages*

## Arguments of the parties

- 55 The appellant claims to have suffered material and non-material damage as a result of the unlawful conduct relied upon which constitutes, as such, faults justifying compensation. The material damage lies in the fact that access to the public service was denied her in spite of the fact that the competent authority had to appoint her. She has thus lost all the rights and interests connected to a career within the Community public service. Whilst fully recognising that the fact of being included on the list of suitable candidates does not automatically entail appointment, she still states that, in the light of her personal circumstances, there was no question but that she should have been appointed.
- 56 As regards non-material damage, this flows, according to the appellant, from the complete lack of transparency in the appointment procedure. Although the Parliament declined to announce the decisions taken in the recruitment process and to give reasons for rejecting her candidature, the competent authority did not, for its part, reply to her complaint, thus forcing her to bring proceedings before the Court of First Instance.
- 57 At the date of her reply before the Court of First Instance, 10 December 2001, the appellant claimed material damage corresponding to the remuneration which she should have received if she had been selected, that is EUR 5 055.47 (monthly salary) x 10 (Mr B having been employed since February 2001), to which sum should be added monthly salary payments. She claims EUR 10 000 as compensation for the non-material damage suffered.
- 58 The Parliament contends that the appellant is not entitled to compensation. The competent authority was not at fault and gave sufficient reasons for the decision at issue, which were supplemented moreover in the course of the proceedings at first instance.



59 Alternatively, the Parliament refers to the case-law of the Court of First Instance to the effect that annulment of the act concerned constitutes adequate compensation for the damage (Case T-376/94 *Otten v Commission* [1996] ECR-SC I-A-129 and II-401, paragraph 55, and Case T-136/98 *Campogrande v Commission* [2000] ECR-SC I-A-267 and II-1225, paragraph 68).

60 The Parliament contends also that the appellant did not quantify the material damage until her reply, which is contrary to Article 44(1) of the Rules of Procedure of the Court of First Instance, since she could have done so at the time of commencing her action and that she has not put forward any special circumstances justifying that omission. In that regard, it refers to Case T-37/89 *Hanning v Parliament* [1990] ECR II-463, paragraph 82).

### Findings of the Court

61 First, as regards the non-material damage resulting from the failure to state reasons for the contested decisions, it must be held that their annulment is in itself adequate compensation for the damage which the appellant has suffered in this case. The claim for compensation for that head of damage must, as a result, be dismissed (see, to that effect, *Hochbaum & Rawes v Commission*, paragraph 22).

62 Secondly, so far as concerns the alleged material damage, it must be pointed out that the appellant did not particularise in her application the extent of the damage allegedly suffered but did so only in her reply. As a result, she did not comply with the requirements of Article 44(1) of the Rules of Procedure of the Court of First

Instance. The Court of Justice has, admittedly, accepted that, in certain special cases, particularly where the alleged loss is difficult to calculate, it is not absolutely necessary to particularise its exact extent in the application nor to calculate the amount of the compensation claimed (see, particularly, Case 74/74 *CNTA v Commission* [1975] ECR 533 and Case 90/78 *Granaria v Council and Commission* [1979] ECR 1081, 1090). However, in these proceedings, the appellant has not established, nor even claimed, the existence of special circumstances justifying the omission to calculate, in the application, that head of loss. Therefore, the claim for compensation for the material damage is inadmissible and must be dismissed.

63 It follows from the foregoing that the claim for damages cannot be upheld.

### Costs

64 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which by virtue of Article 118 thereof, applies to appeal proceedings, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant has applied for costs against the Parliament and the Parliament has been substantially unsuccessful in its arguments on the appeal, with the exception of its arguments for dismissing the claim for damages, it must be ordered to bear its own costs and to pay all the costs incurred by Ms Hectors before the Court of Justice and half of her costs before the Court of First Instance.

On those grounds, the Court (Second Chamber) hereby:

1. **Sets aside the judgment of 23 January 2003 of the Court of First Instance of the European Communities in Case T-181/01 *Hectors v Parliament*;**
  
2. **Annuls the decisions of the authority competent to conclude contracts of employment appointing Mr B to the post of Dutch-language administrator in the European People's Party (Christian-Democrats) and European Democrats Group of the European Parliament and rejecting Ms Hectors' candidature for that post, as well as the decision rejecting her complaint;**
  
3. **Dismisses the remainder of the appeal;**
  
4. **Orders the European Parliament to pay the costs of the appeal and, in addition to its own costs, half of Ms Hectors' costs before the Court of First Instance of the European Communities.**

Signatures.