

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
18 February 1993<sup>\*</sup>

In Case T-45/91,

**Helen McAvoy**, an official of the European Parliament, residing in Brussels, represented by Aloyse May and Méréte Turlin, of the Luxembourg Bar, with an address for service in Luxembourg at their Chambers, 31 Grand-Rue,

applicant,

v

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, acting as Agents, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 22 Côte d'Eich,

defendant,

APPLICATION for the annulment of the implied decision rejecting the applicant's complaint of 7 November 1990 and the decision of the European Parliament of 11 September 1990 promoting Mr Tonelotto to the post of Principal Administrator in the Directorate General for Research, Library Service,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: R. García-Valdecasas, President, R. Schintgen and C. P. Briët, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 18 March 1992,

gives the following

<sup>\*</sup> Language of the case: French.

## Judgment

### Facts and procedure

- 1 The applicant, Mrs Helen McAvoy, entered the service of the European Parliament in October 1979 as a translator in Grade LA 7. Following promotion to Grade LA 6 in January 1982, she was appointed a Grade A 7 Administrator in October 1982 and assigned to the Directorate General for Research and Documentation as head of the Press Evaluation, Library and Reference Service and Administrative Management in Luxembourg.
  
- 2 On 24 September 1984 the Director in the Directorate General for Research and Documentation issued a memorandum for the attention of the staff of the Reference, Information and Documentation Division concerning the distribution of duties between Mrs McAvoy and another administrator, Mr Tonelotto, in the following terms:

‘Following Mr Tonelotto’s appointment to a Grade A 7/A 6 post in the Library, I wish to inform you that the following decisions have been taken concerning the distribution of duties between Mrs McAvoy and Mr Tonelotto:

1. In the absence of a head of division, Mrs McAvoy will be in charge of the general coordination of all Library services. In particular, she will be responsible for:

(a) press evaluation;

(b) the secretariat of the head of division;

(c) document researchers, particularly with regard to the allocation of important work;

(d) photocopying;

(e) the reference room;

(f) the reading room in Brussels.

2. Mr Tanelotto will be responsible for:

(a) cataloguing and acquisitions;

(b) periodicals;

(c) Community documents;

(d) the purchasing unit;

(e) the new lending branch situated at Compactus;

(f) the data-processing project (until the arrival of the new computer expert).'

3. By decision of the President of the Parliament of 4 June 1985, the applicant was posted to Brussels with effect from 1 July 1985. From that date she was responsible for the administrative management of the branch of the Parliament Library in Brussels. By decision of 30 October 1986 she was promoted, with effect from 1 January 1986, to Grade A 6 and, with effect from 1987, carried out the duties of Head of the Library in Brussels.

- 4 On 2 April 1990 the Parliament published Vacancy Notice No 6262 with the object of filling by promotion or transfer the post of principal administrator (IV/A/1539-RP/90), career bracket A 5/A 4, in the Directorate General for Research, Library Service, Luxembourg. The vacancy notice stated that the official to be promoted or assigned must be a 'highly qualified official responsible, under the authority of the Director or the Director General, for carrying out executive duties in an administrative unit and for supervising and coordinating work in connection with the smooth running of a parliamentary library'. Two of the qualifications required were 'university degree or equivalent professional diploma' and a 'university-level diploma in librarianship'.
- 5 On 19 April 1990 the adviser to the Directorate General for Personnel, the Budget and Finance sent a memorandum for the attention of the Director General for Research concerning the vacancy notice in question, in which he referred to the applications received as a result of the publication of the notice. The adviser distinguished between the applications which were acceptable under the promotion rules and those which were not, the former including the applications from Mrs McAvoy and Mr Tonelotto.
- 6 By memorandum of 3 May 1990 the Director General for Research proposed to the Director General for Administration, Personnel and Finance the promotion of Mr Tonelotto to the post of Principal Administrator, as he was 'the only candidate possessing both a university-level diploma in librarianship and twelve years' experience in the field in question'.
- 7 In June 1990 the Directorate General for Research distributed a detailed list of posts which was marked '(not revised by the Directors)' and which showed, under the heading '12. Library':

*'12a. Library, acquisition, cataloguing:*

A/1539 [notification A 5 (2 April)] Mario Tonelotto A 7/A 6'

and, in July 1990, a new list of posts, also marked '(not revised by the Directors)' and showing, under the heading '11.5. Library':

*'5.1. Library, acquisition, cataloguing:*

A/1539 (proposal A 5 03.05.90) Mario Tonelotto A 7/A 6, reopening of file 23.07.90 for DG V'.

- 8 By decision of the President of the Parliament of 11 September 1990, Mr Tonelotto was appointed by way of promotion to the post declared vacant on 2 April 1990.
- 9 On 7 November 1990 the applicant submitted to the Secretary General of the Parliament a complaint pursuant to Article 90(2) of the Staff Regulations of Officials of the European Communities, against the decision of 11 September 1990. In essence, the applicant contended that her seniority, length of service and other merits were greater than those of the candidate appointed. In addition, she observed that the requirement in the vacancy notice of a diploma in librarianship for the work she had been doing for some years might suggest that this new condition had been imposed in order to exclude the maximum number of candidates.
- 10 In a memorandum of 8 April 1991 to the Secretary General of the Parliament concerning Mrs McAvoy's complaint, the Director General for Research confirmed that Mr Tonelotto held a diploma in library science, adding that 'the form of the diploma may be misleading, but the document does certify that the holder was successful in the specialized examination in the subjects indicated in the summary' and that he, the Director General, did not 'share the opinion of the Legal Service'. The memorandum contains a career profile of Mr Tonelotto and Mrs McAvoy. With regard to the latter, the memorandum states as follows: '1979: Recruitment LA 7 — Translator; 1982: Translator LA 6 — Administrator A 7 — Head of Press Evaluation Service; 1983/84: Administrator A 7 — Head of Press Evaluation Service — Library, Reference and Administrative Management Services; 1985/86: Administrator A 6 — Press evaluation until 1.7.85; 1.7.85: Administrative manage-

ment of the branch Library of the European Parliament in Brussels — Decision of President Pflimlin of 4.6.85; 1987/89: Administrator A 6 — Head of Library in Brussels'. In conclusion there is the following summary of Mrs McAvoy's career: 'Mrs McAvoy has had a career in stages with different professional profiles, namely  $\pm 2$  years as a linguist; then  $\pm 3$  years as manager of the Press Documentation Service, then Press Evaluation; finally  $\pm 5$  years as manager of the Library/Documentation in Brussels'.

- 11 On 6 June 1991 the Director General for Research sent another memorandum to the Secretary General of the Parliament, stating: 'You asked me to reply to the opinion expressed by the Legal Service concerning the value of the certificate entitled "Introduction to Philosophical Research" (which covers, in brief, library science, classification and cataloguing; bibliography, documentation and research; palaeography) produced by Mr Tanelotto. We have been unable to obtain, within the required period, an expert opinion from the competent authorities with regard to the exact comparative value attributed to this document in relation to the qualifications generally recognized in the occupation of librarian'. After discussing the definition of the word 'diploma' given in the main French-language dictionaries, the Director General concluded 'I adhere to my view that this supporting document in Mr Tanelotto's file actually fulfils the specifications in the notice of competition'.
- 12 By application lodged at the Registry of the Court of First Instance on 7 June 1991, Mrs McAvoy brought this action, which was registered under number T-45/91.
- 13 By letter of 13 June 1991 the Secretary General of the Parliament replied to the applicant's complaint in the following terms:

'... I can assure you that your application was carefully examined, as were your merits and seniority, which you mention in your memorandum.

It would seem, however, that in the course of that examination some aspects concerning certain applications submitted for the said post were not properly evaluated. For this reason I have asked the Directorate General for Research to give me all the relevant explanations and information so that the President of the European Parliament, the competent appointing authority, may take his decision in full knowledge of the facts.

As it has not so far been possible to establish the aspects in question with all the clarity required, I in turn have been unable to form a conclusive opinion on this question which, I repeat, does not directly concern your application'.

14 On 3 July 1991 the Director General for Research sent a further memorandum to the Secretary General of the Parliament in reply to a memorandum from the latter, in which, after various observations on the value of Mr Tonelotto's certificate and after stating again his opinion that it did amount to 'documentary evidence of specialized studies, in this case library science, issued by a university faculty', he carried out a further analysis of the applications which led him to conclude that three of them were 'inadequate' in relation to the vacancy notice, one was 'insufficient' and two, those of Mrs McAvoy and Mr Tonelotto, merited 'more detailed examination'. After reproducing the same career profiles as those in the memorandum of 8 April 1991, the memorandum ended with the following conclusion: 'I stand by the original choice submitted to the appointing authority. If, however, any doubt of a terminological nature were to induce the appointing authority to dispose of all the conjectures concerning this appointment, I will submit to you a new draft notification'.

15 The Court decided, on the basis of Article 64 of the Rules of Procedure, to take measures for the organization of the procedure consisting in requesting the Parliament to lodge, *inter alia*, the file relating to the filling of the post in question, exact information concerning the scope and the result of the investigation of the value of the diploma in library science held by Mr Tonelotto and all the documents relating thereto.

16 On 10 February 1992 the Parliament lodged the documents requested. They included, *inter alia*: (a) a certificate of 13 July 1970, signed by the President of the Higher Institute of Philosophy of the Catholic University of Louvain, which certifies that on 23 June 1966 Mr Tonelotto took an examination relating to a course on 'Introduction to Philosophical Research'. That course covered the following subjects: library science, classification and cataloguing, bibliography, documentation and research, palaeography; (b) a certificate of 21 March 1991, signed by the administrative secretary of the Higher Institute of Philosophy of the Catholic University of Louvain, stating as follows: 'The Higher Institute of Philosophy of the Catholic University of Louvain certifies that the document issued on 13 July 1970 to Mr Tonelotto is a certificate awarded on his passing an examination in the subjects indicated following a two-year university course'; (c) a letter of 23 April 1991 from the said administrative secretary to the Legal Service of the Parliament in reply to a letter from the latter, stating that '1. The duration of the Introduction to Philosophical Research course followed by Mr Tonelotto was thirty hours. 2. I do not know what subjects were studied by the person concerned before he qualified for university entrance. However, he must have pursued such studies because that was an essential condition of admission to that year of the course. The person concerned could surely inform you on this point. 3. The course in question formed part of a whole — the curriculum for that first year of the course — but there was no test as such for Introduction to Philosophical Research. Admission to the course for the *licence en philosophie* was conditional on success in the whole curriculum for the *baccalauréat*; 4. The degree of *licence en philosophie* (final) was conferred on Mr Tonelotto on 13 July 1970.' In addition, it appears from information supplied by the defendant that at that time, in Belgium, university education in philosophy comprised a two-year course leading to a *baccalauréat en philosophie*, which had to be obtained in order to take two further years leading to the *licence en philosophie*. The certificate produced by Mr Tonelotto relates to one of the subjects in the curriculum for the second year of the *baccalauréat en philosophie*.

17 The applicant submitted her observations on 17 February 1992.

18 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

19 The oral procedure took place on 18 March 1992. The parties' representatives presented oral argument and gave their replies to the Court's questions.

### Forms of order sought by the parties

20 The applicant claims that the Court of First Instance should:

- primarily, declare the application admissible and well founded as regards its substance;
- declare null and void the implied decision rejecting the applicant's complaint of 7 November 1990 and, so far as necessary, the express decision of 13 June 1991, also rejecting it;
- declare unfounded the Parliament's decision of 11 September 1990 promoting Mr Tonelotto to the post of Principal Administrator in the Directorate General for Research, Library Service, (career bracket A 5/A 4) and, consequently, annul that decision;
- as far as necessary, annul the promotion which was made;
- order the defendant to pay the costs.

21 The Parliament contends that the Court should:

- declare the application unfounded and dismiss it;
- make an order as to costs in accordance with the provisions applicable.

## Admissibility

- 22 Although the Parliament has not raised a formal objection of inadmissibility, at the hearing it raised a question of admissibility which the Court must examine of its own motion because it relates to the applicant's legal interest in bringing proceedings.

### *Arguments of the parties*

- 23 At the hearing the Parliament contended that, as the applicant does not possess a diploma in librarianship and therefore does not meet the conditions required by the vacancy notice for the post in question, her application contesting Mr Tonelotto's appointment is inadmissible. Even assuming that the latter's qualifications do not fulfil the requirements of the notice either, the applicant has no interest in seeking to avail herself of that fact, as her candidature could not succeed in any case.
- 24 The applicant, who admits that she does not possess a diploma in librarianship, but contends that the applicant appointed himself does not hold a diploma fulfilling the requirements of the vacancy notice, has not replied specifically to the Parliament's allegation that she has no legal interest in bringing proceedings.

### *Findings of the Court*

- 25 The Court observes, first, that the Court of Justice has declared on several occasions that 'a candidate in a competition may bring an action contesting a decision appointing another candidate to the post to be filled' (see Case 257/83 *Williams v Court of Auditors* [1984] ECR 3547, paragraph 11), but that an official 'is not entitled to act in the interests of the law or of the institutions' and that, in support of an action for the annulment of an appointment, he may bring 'only such claims as relate to him personally' (Case 83/82 *Schlob v Council* [1983] ECR 2105 and Case 204/85 *Stroghili v Court of Auditors* [1987] ECR 389, paragraph 9). The Court of Justice has also declared that 'only acts which directly and immediately affect the applicant's legal situation can be regarded as adversely affecting him' (*Stroghili* judgment); that assessment should not be of an abstract nature but be made in the light of the applicant's personal situation (Case 15/67 *Bauer v Commission* [1967] ECR 397).

26 In this case the Court of First Instance considers that the applicant has indeed shown a legal interest in bringing proceedings. In the memorandum of 3 July 1991 to the Secretary General of the Parliament (see above, paragraph 14), the Director General for Research observed that, of the applications received as a result of the publication of the vacancy notice, which were admissible by reference to the rules governing promotion, both Mrs McAvoy's application and that of Mr Tonelotto — and they alone — merited 'more detailed examination'.

27 However, assuming that neither the applicant, as alleged by the Parliament during the procedure before the Court, nor Mr Tonelotto, as alleged by the applicant, could validly seek appointment to the post declared vacant as they did not hold an appropriate diploma, the procedure for filling the post could not have led to an appointment. In this situation, it was open to the authority to publish a new vacancy notice, the terms of which might have differed from those of the original notice, in order to fill the post in question (see the judgment of the Court of Justice in Case 188/73 *Grassi v Council* [1974] ECR 1099). That was the possibility to which the Director General for Research appears to have referred in his memorandum of 3 July 1991 in which he stated that he was prepared to submit a 'new draft notification', that is, a new vacancy notice if there were any doubt as to the interpretation to be given to one of the conditions set out in the vacancy notice, namely the condition concerning the diploma in librarianship. The administration might also have followed the procedure for filling a post declared vacant in accordance with the order of priority laid down by Article 29 of the Staff Regulations.

28 In any case, in these circumstances the applicant does indeed have a legitimate, certain and existing interest in seeking the annulment of Mr Tonelotto's appointment in order that her qualifications may be reassessed in relation to his.

## Substance

29 In support of the forms of order she seeks, the applicant relies upon four pleas in law: (1) infringement of Article 45 of the Staff Regulations; (2) infringement of the principle of equal treatment; (3) infringement of the principle of the protection of legitimate expectations; (4) infringement of Article 24 of the Staff Regulations.

— *First and second pleas: alleged infringement of Article 45 of the Staff Regulations and of the principle of equal treatment*

*Arguments of the parties*

- 30 In her first plea, the applicant contends that the decision of the President of the Parliament of 11 September 1990 and both the implied and the express decisions rejecting her complaint infringed Article 45(1) of the Staff Regulations. This submission consists of two parts, the first based on the existence of a procedural defect, and the second on a manifest error.
- 31 With regard to the first part, the applicant contends that there was a procedural defect in the promotion procedure. She observes that, whilst the procedure was still under way and no decision could yet have been taken on filling the contested post, two detailed lists of posts distributed in June and July 1990 in the Directorate General for Research already showed Mr Tonelotto's name as that of the candidate selected (see above, paragraph 7).
- 32 The applicant considers that such information, of an official nature, obviously shows the existence of irregularities. In the absence of a some entry indicating that the post in question was vacant and that a recruitment procedure was under way, such announcements indicate, according to the applicant, that a decision to make an appointment had been taken without awaiting the termination of the procedure laid down by the Staff Regulations.
- 33 The Parliament replies that, on examination of the applications which had been received and which were admissible, it appeared that only Mr Tonelotto had a university diploma in librarianship and he had therefore been proposed for appointment. That is said to be the reason why the first detailed list of posts contained the comment 'notification A 5 (2 April)' and the second 'proposal A 5 03.05.90'. The Parliament adds that such lists are only internal documents which do not have the force of administrative measures and that even though they show the name of the candidate who was proposed and then selected, that does not prejudice the final decision, which may be taken by the appointing authority alone. While accepting that this may be a 'clumsy' way of doing things, the Parliament refuses to regard it as proof of a procedural defect.

- 34 With regard to the second part of the plea, alleging manifest error, while the applicant agrees that the appointing authority has a wide discretion in the matter of promotion, she contends that in this case it was not exercised in the proper manner, by carrying out a detailed examination of the situation on the basis of correct factual information. If that had been done, she adds, her seniority in the post of librarian and her merits would have been taken into account, which ought to have led to a more favourable outcome for her candidature.
- 35 The applicant contends that her statements are confirmed by the letter of 13 June 1991 written to her by the Secretary General of the Parliament, in which he admits that 'it would seem ... that some aspects concerning certain applications submitted for the said post were not properly evaluated.'
- 36 More specifically, the applicant observes that the administration ought to have checked that the candidate promoted possessed the qualifications required by the vacancy notice. Relying on the opinion of Advocate General Rozès in Case 280/81 *Hoffmann v Commission* [1983] ECR 907, she adds that, even assuming that the applicant promoted possessed the diploma in librarianship required in this case, the level of such a diploma is of only secondary, not to say negligible, importance for a promotion ten years later, and that other factors, such as the general level of service during the years immediately preceding the promotion procedure, must carry much greater weight in an assessment of the merits of applicants.
- 37 At the hearing, the applicant pointed out that the doubts she had expressed in her pleadings, namely that the applicant promoted did not possess a university-level diploma in librarianship, had been confirmed by the documents produced by the Parliament at the Court's request. She observed that the document regarded by the Parliament as the diploma required by the vacancy notice was only a certificate attesting that the person concerned had passed an examination in one of the subjects forming part of the curriculum for the *baccalauréat en philosophie*. According to the applicant, such an interpretation amounts to a presumption that all students who have passed examinations requiring knowledge of the various subjects comprising the curriculum for a degree hold university diplomas in all those subjects.

38 The Parliament considers generally that the applicant's pleas are designed to call in question the selection made by the appointing authority among the applicants for promotion, that is, its assessment of their comparative merits which, according to settled case-law, is discretionary and unchallengeable.

39 Regarding the difficulty referred to by the Secretary General of the Parliament in his letter of 13 June 1991 to the applicant, the Parliament explains that, following the publication of the vacancy notice in question, it appeared that, of the six persons whose applications were acceptable under the promotion rules, only one, Mr Tonelotto, had both the diploma and the experience required. Therefore he was proposed and appointed to the vacant post. However, on later inquiries, it was found that the value of this diploma was questionable and contradictory opinions had been expressed on the subject. Nevertheless, as the Secretary General pointed out in his letter of 13 June 1991, that problem, which still remained to be resolved, did not affect the assessment of the applicant's candidature.

40 With regard to the value of Mr Tonelotto's diploma, the Parliament, in reply to a question from the Court during the hearing, merely stated that the discussions to which this question led when it arose were reflected in the documents in the file, that the administration had gone so far as to consult the university which issued the diploma and that it was possible that the administration might still have reservations with regard to the diploma.

41 In support of the second plea alleging infringement of the principle of equal treatment, the applicant observes that Article 5(3) of the Staff Regulations provides that 'identical conditions of recruitment and service career shall apply to all officials belonging to the same category or the same service'. She adds that, as the Court of Justice has consistently held, the principle of equal treatment of officials must be understood as prohibiting the different treatment of similar situations and the identical treatment of different situations unless the difference is actually justified. The applicant is of the opinion that the Parliament did not consider the comparative merits of the candidates on a basis of equality in the light of comparable sources of information and that the candidates were not all treated in the same manner.

- 42 The applicant contends that her merits are superior to those of Mr Tonelotto because she has greater seniority in Category A and was promoted to Grade A 6 one year before him. She points out that since 1984 she has had high-level responsibilities as the person responsible for the general coordination of all the services of the Library of the Parliament in Luxembourg as well as the administration of the branch Library in Brussels, which cannot be said of Mr Tonelotto, whose duties were limited to the acquisition and cataloguing of books, periodicals and newspapers and to matters relating to the data-processing system.
- 43 The applicant also observes that it is significant that the vacancy notice in question suddenly required a diploma in librarianship for work which she had been performing for nine years. According to her, that new requirement amounts to a difference in treatment which was bound to place certain officials at a disadvantage by comparison with others.
- 44 The Parliament repeats that the appointing authority has a discretion to assess the merits of candidates for promotion, which can be challenged only in cases of manifest error or infringement of procedural rules, which the applicant has not shown to have occurred. With regard to the alleged discrimination against the applicant in relation to other colleagues, the Parliament considers that there are no circumstances of the case showing an infringement of the principle of equality.

### *Findings of the Court*

- 45 With regard to the procedural defect alleged in the first part of the first plea, the Court considers that the detailed lists of posts of the Directorate General for Research published in June and July 1990 are not, in themselves, proof of a procedural defect although, as the Parliament admits, it is regrettable that the name of a candidate for a post should appear in the list of posts before his appointment. The Court takes the view, first, that a list of posts is an internal document which does not possess the characteristics of an administrative measure, does not produce legal effects and is intended purely for purposes of information. Secondly, the Court finds that in the present case the June list of posts referred to the vacancy notice of 2 April 1990 and that the July list referred to the existence of a proposal. Conse-

quently these documents showed that a procedure for filling the post in question was under way. Therefore, contrary to the applicant's argument, the fact that they were distributed in this form before the decision to appoint Mr Tonelotto was published is not proof that the decision had in reality already been taken, without complying with the stages of the proper procedure for promotion.

- 46 This first part of the plea must therefore be rejected.
- 47 With regard to the second part of the plea, alleging a manifest error, the Court observes first that, as has been held many times, in evaluating the interests of the service and the merits to be taken into account in connection with a promotion decision under Article 45 of the Staff Regulations, the appointing authority has wide discretion, and in that respect the Court's review must be confined to the question whether, regard being had to the various considerations which may have influenced the administration in making its assessment, it has remained within reasonable bounds and has not used its authority in a manifestly incorrect manner (judgment of the Court of Justice in Case 26/85 *Vaysse v Commission* [1986] ECR 3131). It should also be observed that there is an assumption that the exercise by the appointing authority of its discretion will include careful examination of the files and meticulous regard to the requirements laid down in the vacancy notice (judgment in *Grassi*) and that, while the administration has a discretion, it will also have exercised it lawfully, making a detailed examination of the situation on the basis of the correct facts (judgment of the Court of Justice in Case 219/84 *Powell v Commission* [1987] ECR 339).
- 48 Secondly, it should be observed that the Court of Justice has held that the essential purpose of the vacancy notice is to inform those concerned as accurately as possible of the nature of the conditions required to occupy the post in question. Therefore the vacancy notice is the legal framework which the appointing authority lays down for itself. However, if it finds that the conditions required in the vacancy notice are more exacting than the needs of the service demand, it is entitled to reopen the promotion procedure after withdrawing the original vacancy notice and putting an amended one in its place (judgments in *Grassi* and Case C-343/87 *Culin v Commission* [1990] ECR I-225).

49 Regarding the question whether the selected candidate fulfilled the conditions required by the vacancy notice in this case, it should be observed, first, that the notice required a 'university degree' and a 'university-level diploma in librarianship'. Having regard, first, to the proper meaning to be given to the expression 'diploma' and, secondly, to the wording of the second requirement by comparison with the first, which clearly refers to the completion of university studies, the Court takes the view that the requirement of a 'university-level diploma in librarianship' cannot be interpreted as referring solely to a document certifying the completion of university studies in librarianship.

50 Nevertheless, the Court considers that the document produced by Mr Tonelotto does not fulfil the conditions required in order to be described as a 'university-level diploma in librarianship'. It appears from the certificate issued on 13 July 1970 by the President of the Higher Institute of Philosophy of the Catholic University of Louvain, the certificate issued on 21 March 1991 by the Administrative Secretary of the Institute and his letter of 23 April 1991, all of them documents produced before the Court (see above, paragraph 16), that the document produced by Mr Tonelotto is only a certificate to the effect that the person concerned was successful in an examination in one of the subjects, Introduction to Philosophical Research, consisting of a course totalling 30 hours forming part of the curriculum for the *baccalauréat en philosophie*, a diploma which is necessary for admission to studies leading to the *licence en philosophie*. As the applicant has rightly observed, to regard such a diploma, as did the Parliament, as equivalent to a 'university-level diploma in librarianship', amounts to a presumption that students who pass the different examinations in various subjects in their curriculum hold a university-level diploma in each of those subjects.

51 It follows that, in so far as the appointing authority considered that Mr Tonelotto fulfilled the conditions required by the vacancy notice as published, the authority exceeded the limits which it had itself laid down with regard to its powers of selection and by which it ought to have been bound. As it did not withdraw the original notice and replace it by a notice in expressly amended terms, the appointing authority could only reject Mr Tonelotto's candidature.

52 The Court considers that the foregoing findings are sufficient in themselves to establish that there was a manifest error in the consideration of the candidates' merits. Furthermore, the Court finds that, in the memorandum of 8 April 1991 from the Director General for Research to the Secretary General of the Parliament (see above, paragraph 10), there is a contradiction in the concluding summary of Mrs McAvoy's career. In the summary it is stated that the applicant was for three years manager of the 'Press Documentation' Service and then of the 'Press Evaluation' Service and, for five years, manager of the Library/Documentation in Brussels. So far as those five years are concerned, the information is correct. However, with regard to the three preceding years, these particulars do not accord with the applicant's career profile as outlined in the same memorandum and as presented by the Parliament in its defence. It appears in fact that from October 1982 to June 1985 Mrs McAvoy was head of the 'Press Evaluation Service, Library and Reference Service and Administrative Management' and, from 24 September 1984, in the absence of a head of division, 'responsible for the general coordination of all the services of the Library', including those for which Mr Tonelotto was responsible following his appointment to the Library. That contradiction is an indication raising a doubt whether the candidates' files were examined with the care and precision required of the appointing authority according to the case-law when it exercises its discretion in the matter of promotions.

53 It follows from the foregoing considerations that the second part of the first plea and the second plea are well founded.

— *Third plea alleging infringement of the principle of the protection of legitimate expectations*

#### *Arguments of the parties*

54 The applicant observes that the concept of 'legitimate expectations' embodies the principle that an official must be able to rely on continuity in the practice of the administrative authority, which must give rise to a right to the exercise of its discretion under equal conditions. She adds that the Court of Justice has declared that an administrative authority cannot arbitrarily depart from a previous practice without giving reasons, otherwise the principle of equal treatment will be infringed. The

applicant points out that in this case, regard being had to the responsibilities which she has had since 1982, she might legitimately expect a decision of the appointing authority in favour of her application.

- 55 The Parliament considers that the question at issue does not lend itself to application of the principle of the protection of legitimate expectations. In the Parliament's opinion that concept cannot be relied upon in a dispute which merely concerns a consideration of the comparative merits of two officials who are both eligible for promotion.

### *Findings of the Court*

- 56 The Court observes that the right to claim protection of legitimate expectations extends to any individual in a situation in which it appears that the administration's conduct has led him to entertain reasonable expectations (see the judgment of the Court of Justice in Case 289/81 *Mavridis v Parliament* [1983] ECR 1731). In this case it must be said that no undertaking or assurance which could have caused the applicant to have reasonable expectations of being promoted to the post in question was given to her by the administration, nor could it have been given, because promotion takes place only on selection after careful consideration of the candidates' merits by the appointing authority.

- 57 That plea must therefore be rejected.

### *— Fourth plea alleging infringement of Article 24 of the Staff Regulations*

#### *Arguments of the parties*

- 58 The applicant alleges, without amplifying this plea, that, in breach of the third and fourth paragraphs of Article 24 of the Staff Regulations, her institution did not give her the assistance due to her.

59 The Parliament considers that in this case there can be no question of neglect of the duty to have regard to the interests of officials.

### *Findings of the Court*

60 It has been consistently held that the obligation of assistance laid down by Article 24 of the Staff Regulations is concerned with the defence of officials by the institution against the acts of third parties and not against acts emanating from the institution itself, the review of which is governed by other provisions of the Staff Regulations (see the judgments of the Court of Justice in Case 178/80 *Bellardi-Ricci and Others v Commission* [1981] ECR 3187; Case 98/81 *Munk v Commission* [1982] ECR 1155; and in Case 191/81 *Plug v Commission* [1982] ECR 4229). In this case, however, the applicant seeks the application of Article 24 of the Staff Regulations precisely in relation to a decision of her own institution.

61 In addition, the third and fourth paragraphs of Article 24 of the Staff Regulations upon which the applicant relies refer to the duty of the Communities to facilitate such further training and instruction for officials as is compatible with the proper functioning of the service and to take account of such training and instruction for purposes of promotion in their careers. The Court considers that the problem arising in this case has nothing to do with the provisions relied upon, and that they have not been infringed in this case.

62 It follows that the fourth plea must be rejected.

**Costs**

- 63 Pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- 1. Annuls the decision of the European Parliament of 11 September 1990 promoting Mr Tonelotto to the post of Principal Administrator in the Directorate General for Research, Library Service, following the publication of Vacancy Notice No 6262;**
- 2. Orders the European Parliament to pay the costs.**

García-Valdecasas

Schintgen

Briët

Delivered in open court in Luxembourg on 18 February 1993.

H. Jung

R. García-Valdecasas

Registrar

President