

- appointing authority has committed a manifest error, especially since events subsequent to the disputed appointment cannot be invoked in support of such an allegation.
2. According to the first paragraph of Article 27 of the Staff Regulations, the appointing authority must ensure that recruitment is carried out on as wide a geographical basis as possible amongst nationals of the Member States. However, that objective must be secondary to the requirements of the interests of the service and to consideration of the ability, efficiency and integrity of officials, which are also referred to in that provision. Only where the merits and qualifications of the various candidates are equal may the appointing authority take into consideration the nationality of a candidate as one factor amongst others in its choice.
 3. When, by a decision of an internal nature, the appointing authority voluntarily institutes a compulsory consultative procedure for recruitment which is not prescribed by the Staff Regulations, it is obliged to abide by such procedure, which cannot be regarded as lacking any legal validity.

In Case 282/81,

SALVATORE RAGUSA, an official of the European Communities at the Ispra branch of the Joint Research Centre, represented by Cesare Ribolzi, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Victor Biel, 18A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Eugenio de March, a member of the Commission's Legal Department, acting as Agent, assisted by Paolo De Caterini, of the Rome Bar, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of a decision appointing the Head of Division in charge of the "Super Sara" project within the Projects Directorate of the Ispra branch of the Joint Research Centre,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, G. Bosco and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the submissions and arguments of the parties may be summarized as follows:

I — Summary of the facts

1. In May 1980, the post of Head of Division for the "Super Sara" project in the Projects Directorate of the Ispra branch of the Joint Research Centre was declared vacant by Vacancy Notice No COM/R/522/80. The duties of the post were to include drawing up plans for the execution of the programme, allocation of the necessary resources, management of research contracts, monitoring the technical and financial progress of the research, collecting and checking progress reports and final reports, drafting summaries and proposals, taking charge of relations with other bodies relating to the objective of the

programme in question, organizing meetings and the work of committees and groups of experts representing Member States, non-member countries and international organizations and organizing the dissemination and exchange of information. Candidates were required to have qualifications of university level or equivalent practical experience, extensive knowledge in the field of reactor safety, a good general scientific training, preferably multi-disciplinary, good knowledge of the rules of administrative procedure and the ability to direct a major programme and deal with both technical and financial aspects.

Five applications were made for the post before the closing date, 6 June 1980. Of the candidates four were from the establishment at Ispra and one from one of the other branches of the Joint Research Centre. The four candidates from Ispra included the applicant, aged 52, of Italian nationality, who had joined

the establishment at Ispra in 1965 and had been in Grade A 4 since 1971, and Mr Randles, aged 50, of British nationality, who joined the establishment at Ispra in 1964 and who had been in grade A 4 since 1973.

2. For the appointment of an official in Grade A 3 at the Ispra establishment, the powers conferred on the appointing authority by the Staff Regulations of Officials are exercised by the Director General of the Joint Research Centre.

In a memorandum of 23 October 1979, sent by the Director General of the Joint Research Centre to the Directors of the various establishments, it is stated that an agreement had been reached between the Joint Research Centre and the representatives of the staff on an outline recruitment procedure for the various stations of the Joint Research Centre. In that note the outline procedure was described as follows:

“The selection of candidates considered capable of carrying out the required duties will be made by a local recruitment committee.

At each establishment that committee will be composed of:

One member representing the department in which the vacancy has arisen;

One member representing the administration;

One independent member (that is, not from the department concerned);

One member appointed by the local Staff Committee.

That consultative body will act following a preliminary review of the applications carried out by the administration, in collaboration with the relevant departments. A summary of the applications considered and of the assessments of them will be drawn up and submitted to the members of the recruiting committee.

That committee will decide which candidates to invite for interview; such interviews shall be carried out upon reasoned request, even by a single member of the committee.

Following its deliberations, the committee shall inform the competent authority of the candidate or candidates considered suitable for the post (if appropriate in order of merit), adding thereto any comments which its members deem relevant to the decision of the appointing authority.

On the basis of the list of suitable candidates thus drawn up, the administration will consult the staff representatives in order to make a proposal with regard to the assessments made.

At the same time the opinion of the Personnel Department of the Joint Research Centre will be sought by the competent administrative officer of the establishment concerned in order to ensure consistency of the assessments.

Finally, all the opinions expressed by the above-mentioned bodies shall be submitted to the competent authority together with the file upon which the latter is required to make a decision.”

3. On 11 June 1980, the applicant was invited to meet the Deputy Director

General of the Joint Research Centre, who was also the director of the Ispra establishment, to discuss his application.

In a letter dated 12 June 1980 the Deputy Director General informed the Director General of the Joint Research Centre that he had seen separately each of the four internal candidates who had applied for the post in question, and that, as they were internal candidates, he had not felt obliged to follow the procedure set out in the Director General's memorandum quoted above. He went on to say that "having thus given the candidates an opportunity to give their views unreservedly, having weighed up the technical and political circumstances as a whole and having assessed the candidates on both the technical level (ability and experience) and that of character (personality)" he favoured Mr Randles and suggested that he be appointed.

In a memorandum dated 1 July 1980, the Director of the establishment at Ispra asked three of the senior officers of that establishment to meet the fifth candidate who came from another branch, in order to assess his candidature, adding that exceptionally a member of the local Staff Committee of a grade at least equal to that of the candidate might attend that interview. He added that in an organization where each person had responsibilities of his own, such a candidature could only be considered by the senior members of the Joint Research Centre.

On 14 July 1980 the recruiting committee drafted a report. The committee was composed of Mr Klersy, an official in Grade A 3 from the scientific and technical staff as a senior member of the staff, Mr Chambaud, an

official in Grade A 4 from the administration representing the Administration and Personnel Division, Mr Ardente, an official in Grade A 5 from the scientific and technical staff from a department not directly concerned with the post in question and representing the staff, and of Mr Ooms, an official in Grade B 3 from the technical staff and Chairman of the Executive Committee of the Ispra Staff Committee. In the report it was stated that the Committee consisted: "(1) Of a senior member of the staff (Mr Klersy); (2) of a representative of the Administration and Personnel Division; (3) of staff representatives." The Committee decided that "having studied the files of the five candidates and in view of the special requirements of the vacancy notice" it appeared that Mr Randles and two other candidates were considered the most suitable for that post with a preference for Mr Randles whose special knowledge in the field under consideration gave him a definite advantage. The applicant's name did not appear on that list.

By an internal memorandum of 22 August 1980 the Deputy Director General informed the staff of the Ispra establishment that, with effect from 1 August 1980, Mr Randles had been appointed Head of Division for the post in question.

4. On 21 November 1980 the applicant made a complaint, pursuant to Article 90 (2) of the Staff Regulations of Officials, against the appointment of Mr Randles, stating that the appointment was vitiated by illegality because the decision had been taken in advance, that that had been done by reason of the nationality of the candidate, and that, furthermore, the recruiting committee's procedure had not been followed.

The applicant was informed in a letter dated 5 June 1981 which he received on 22 July 1981 that the Commission had rejected his complaint. In so far as concerned the choice made by the appointing authority, that decision was grounded on the fact that "as a subsidiary matter and in circumstances where qualifications and experience are recognized as being comparable (the appointing authority being the sole judge in this area), the administration is not prohibited from having recourse to the criterion of nationality in a subsidiary role as a criterion to distinguish between the candidates". The letter continued that although it was true that the procedure as set out in the memorandum of the Deputy Director General had not been strictly observed, the application of that procedure was not mandatory and, moreover, the spirit of that memorandum had not been overlooked in the way in which the candidates concerned had been selected.

5. During 1981, the applicant was entrusted with important coordination duties for the accomplishment of the "Super Sara" project. He drafted several studies on the reliability of the project and on the problems which it raised. In the summer of 1981, an internal "task force" was established in charge of an official with the rank of director in order to give priority to the "Super Sara" project and to accelerate its completion as far as possible. Important duties within that administrative unit were entrusted to the applicant.

II — Conclusions of the parties and written procedure

1. By an application lodged at the Court Registry on 28 October 1981 the applicant brought an action against the

Commission. The applicant claims that the Court should:

- "(1) Annul, by reason of the defects described in the application, the decision whereby the appointing authority appointed Jack Randles to the post of Head of Division for the "Super Sara project" within the Projects Directorate of the Ispra establishment;
- (2) Invite the Commission to re-open the procedure for appointment to the said grade and post;
- (3) Order the defendant to pay the costs."

The Commission contends that the Court should:

"Dismiss the application as unfounded;
Order the applicant to pay the costs."

2. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry. However, the Commission was requested to answer certain questions relating to the recruitment procedure and to submit the relevant documents to the Court.

III — Submissions and arguments of the parties during the written procedure

1. Failure to follow the correct procedure

(a) The *applicant* states that the appointment procedure in this case was carried out contrary to the outline

procedure laid down for that purpose in the Director General's memorandum of 23 October 1979.

It is essential to follow that procedure, he claims, even though it was not expressly laid down by the Staff Regulations of Officials, because the provisions in question were drawn up by joint agreement with the staff organizations and because "simplifications" left to the discretion of the administration would deprive the procedure of any meaning and furthermore because, in this case, those "simplifications" had been made by the Deputy Director General personally — the Director of the establishment — who is not the appointing authority. In a letter dated 12 June 1980 he made it clear that he was not intending to follow the procedure laid down.

In this case, all the applications should have been submitted to a committee constituted, by analogy with Article 3 of Annex III to the Staff Regulations, of members of a grade equal to or higher than that of the post to be filled. In fact only one of the members of the committee who reported on the candidates actually satisfied that requirement. Furthermore the committee should have interviewed the candidates in person and should not have decided on the basis of the files alone.

The Deputy Director General's letter of 12 June 1980, it is alleged, made it practically impossible for the recruiting committee to take a decision other than the one suggested by the head of the establishment. The procedure thus consisted of pointless formalities whose sole purpose was to approve a decision which had already been taken in principle.

(b) The *Commission* believes that such a procedure, which is not laid down by the Staff Regulations, can only be regarded as an internal measure which is not in the nature of a strict rule and the failure to abide by which cannot be regarded as the breach of essential procedural requirements as long as there has been no failure to observe the guarantees contained in the Staff Regulations.

In addition it emphasizes that the procedure in question, which was drawn up primarily in order to simplify and standardize the selection procedure for posts in lower grades, is ill-adapted for posts involving management functions, for which the personal qualities of each candidate must be compared with the requirements of the duties to be carried out. In this case however, the appointing authority had tried to follow that procedure as closely as possible, contrary to the suggestion by the director of the establishment to make the appointment forthwith.

The decision not to interview the candidates was freely taken by the recruitment committee itself and not by the director of the establishment. That possibility is, moreover, expressly provided for in the outline procedure.

2. *Choice of a candidate made in advance*

(a) According to the *applicant*, it appears from all the circumstances that the decision to appoint Mr Randles had been taken in advance for political and nationality reasons, and that the only purpose of the selection procedure was to approve that choice.

On that point, the applicant refers in particular to the contents of the letter from the Deputy Director General dated 12 June 1980 and also to the discussion which he had had with him on 11 June 1980. According to the applicant, during that discussion the Deputy Director General more or less informed him openly that, for political reasons, his application could not be considered and that the candidate suggested to the appointing authority was Mr Randles of British nationality. The letter of 12 June 1980 therefore constituted a premature assumption of the appointment of Mr Randles. In those circumstances it would have been almost impossible for the actions of the Deputy Director General to be publicly repudiated either by the recruiting committee or by the Director General.

(b) The *Commission* denies that the decision to appoint Mr Randles was taken in advance. Any statements made by the Deputy Director General during a private meeting, if they were in fact made, at least in such categorical terms, could only represent an expression of the strictly personal point of view of the person making them. The letter of 12 June 1980 had no binding effect upon the appointing authority. Furthermore, the suggestion of the Deputy Director General that the internal procedure should not be observed was not adopted by the appointing authority.

The Director General alone has authority to take a decision such as that in the present case and, as far as the procedure is concerned, the director of the establishment does not even have the power to make a proposal. There is nothing to suggest that the Director General did not take his decision completely independently, following an objective and careful examination of all

of the necessary factors for the assessment of the merits of the various candidates with reference to the requirements of the post to be filled.

3. *Disregard of selection criteria*

(a) According to the *applicant* the appointing authority placed too much emphasis on the criterion of geographical or national distribution and disregarded the merits and qualifications of the applicant as compared with those of Mr Randles.

While Mr Randles, as a specialist in thermo-hydraulics and in the behaviour of nuclear fuels, possessed only a few of the very wide range of skills which were necessary for the task of managing the Super Sara project, the applicant, for his part, had a proven multi-disciplinary training and detailed knowledge in the field of reactor safety and in the various subjects and branches of science with which the person appointed to that post would need to be conversant. The applicant's qualifications for the post were therefore, he claims, not only equal, but superior to those of Mr Randles.

Moreover, he states, subsequent events demonstrated that Mr Randles's appointment had effects which were detrimental to the smooth running of the department because, in order to rectify the problems and inadequacies which appeared following his appointment, it was necessary to create a "task force" within which the applicant was called upon to carry out extremely important duties, which were in fact more important than those of Mr Randles. The creation of that "task force" was substantially based on studies and ideas developed by the applicant.

In these circumstances, the appointing authority cannot give priority to the entirely secondary criterion of geographical balance without disregarding Articles 5 (3), 7, 27 and 45 (1) of the Staff Regulations of Officials.

(b) The *Commission* first of all denies that the criterion of geographical distribution played a decisive or important role in this case. It was quite normal for the Deputy Director General, giving his personal opinion in his letter of 12 June 1980, to express his views on all matters concerning both the merits of the various candidates and the requirements and circumstances of the department concerned in general, including its geographical balance.

Moreover, in this case geographical balance was a valid concern because the statistics of staff at the Ispra establishment on 30 November 1981 show that, of 26 officials of Grade A 3, of whom 23 belonged to the technical or scientific staff, only one, namely Mr Randles, was of British nationality whereas 10 were Italian.

Contrary to the applicant's statements, Mr Randles was selected solely on the basis of a rigorous comparative study of his merits in relation to those of the other candidates. Moreover the recruitment committee unanimously reached the same conclusion. That consideration of the comparative merits of the candidates falls exclusively within the domain of the discretionary power of the administration, which was not obliged to give reasons for its assessment.

Arguments cannot be based on facts which arose after the appointment of Mr Randles. On the one hand, if the Commission had decided to give priority to the Super Sara project and, to that end, to create a "task force" within which, temporarily, both Mr Randles and the applicant were to carry out duties and tasks other than those they had previously performed, but of equal importance, it cannot be thereby concluded that Mr Randles had shown himself unsuited to taking on the duties assigned to him. On the other hand, from a legal point of view, it is impossible for a decision on the legality of the appointment of the holder of a post to be based on an assessment of the way in which he carried out his duties after his appointment.

IV — Answers to questions put by the Court

In reply to the question put by the Court after the end of the written procedure, the Commission first explained the origin of the outline procedure contained in the memorandum of 23 October 1979, from the Director General of the Joint Research Centre to the directors of the various establishments. It appears from the memorandum that the procedure was drawn up in the course of a series of meetings with the staff representatives of the Joint Research Centre in order to harmonize the recruiting procedures which were in operation in the various establishments. The minutes of those meetings show that at one stage in the negotiations the intention had been to provide that the member nominated by the Staff Committee should, in principle, belong to the category within which the post in question was graded, and that an

interview with the candidates was to be compulsory. Those rules no longer appear in the Director General's memorandum of 23 October 1979.

As for the disputed recruitment procedure, the Commission stated that the director of the establishment at Ispra held meetings with the four candidates from Ispra on 11 and 12 June 1980 and, following those meetings, wrote his letter of 12 June 1980. Thereafter he learned that there was a fifth application from an official in the establishment of Karlsruhe whom he interviewed on 4 July 1980.

When the director of the Ispra establishment expressed the view in his letter of 12 June 1980 that it was not necessary to follow the procedure laid down in the memorandum of 23 October 1979, the Staff Committee of the establishment referred to the Director General of the Joint Research Centre who confirmed the need to convene a recruiting committee in a memorandum sent to the director of the establishment on 1 July 1980.

The recruiting committee was therefore constituted and convened. It examined the applications and the files of the candidates but did not consider it necessary for the candidates to be interviewed.

The opinion drawn up by the committee on 14 July 1980, the personal files and the applications were then sent to the Director General who took the decision to appoint Mr Randles to the post in question.

V — Oral procedure

At the sitting on 3 February 1983, the applicant, represented by G. Marchesini of the Milan Bar, and the Commission, represented by its agent, E. de March, and by P. de Caterini of the Rome Bar, presented oral argument.

The applicant drew particular attention to the fact that, in the report of the recruiting committee of 14 July 1980 there was no mention of an "independent member (that is, not from the department concerned)" and that it showed that two staff representatives were present and also to the fact that the copy of the report submitted to the Court did not bear the signature of Mr Ardente. He did not however dispute that Mr Ardente had in fact taken part in the committee's deliberations.

On being invited to submit the original of that document after the hearing, the Commission informed the Court that it had been lost. The carbon copy of the document, submitted by the Commission, did not bear the signature referred to. In addition the Commission submitted a statement by Mr Ooms and Mr Ardente dated 8 February 1983 declaring that "as staff representatives" on the recruiting committee in question, their presence on the committee was limited essentially to ensuring the observance of the rules of the Staff Regulations and that the absence of Mr Ardente's signature from the report did not mean that he was not in agreement with the conclusions which it contained.

The Advocate General delivered his opinion at the sitting on 3 March 1983.

Decision

- 1 By an application lodged at the Court Registry on 28 October 1981, Salvatore Ragusa, an official of the Commission of the European Communities at the Ispra branch of the Joint Research Centre, brought an action seeking the annulment of the appointment of Jack Randles to the newly created post of Head of Division of the "Super Sara" project.
- 2 The post in question, which was in Grade A 3, was advertised in Vacancy Notice No COM/R/522/80. Four officials from Ispra and one official from another branch applied for the post. Among the candidates from Ispra were the applicant, of Italian nationality, and Mr Randles, of British nationality.
- 3 For recruitment procedures within the competence of the local branches amongst the various places of employment of the Joint Research Centre the Director General of the Centre, as the appointing authority, had drawn up a scheme after a meeting with the staff representatives. In a memorandum of 23 October 1979 to the directors of the various branches he stated that under that scheme decisions of the appointing authority were to be taken after consultation with a local recruiting committee. According to that memorandum, at each establishment the committee was to be composed of
 - "One member representing the department in which the vacancy has arisen;
 - One member representing the administration;
 - One independent member (that is, not from the department concerned);
 - One member appointed by the local Staff Committee."
- 4 On 11 and 12 June 1980 the director of the Ispra establishment held interviews with the four candidates from Ispra. In a letter of 12 June 1980 he informed the Director General of the Joint Research Centre that he had not

felt obliged to follow the procedure laid down by the memorandum of 23 October 1979. He said that "having thus given the candidates an opportunity to give their views unreservedly, having weighed up the technical and political circumstances as a whole and having assessed the candidates on both the technical level (ability and experience) and that of character (personality)" he had decided in favour of Mr Randles who he suggested should be appointed to the post in question. Having subsequently learned of the existence of a fifth application, from an external candidate, he also invited that candidate for an interview on 4 July 1980.

- 5 Following action by the Staff Committee of the Ispra branch, the Director General of the Joint Research Centre reminded the director at Ispra of the need to convene a meeting of the recruiting committee, as provided in his memorandum of 23 October 1979. A recruiting committee was therefore constituted and, having examined the files of the five candidates and taking account of the special requirements of the post in the vacancy notice, decided that Mr Randles and two other candidates (not including the applicant) must be regarded as the most suitable for the post, with a preference for Mr Randles because of his more specific knowledge in the field concerned.
- 6 The opinion of the recruiting committee with the personal files and applications of each of the candidates was sent to the Director General of the Joint Research Centre who, in a memorandum dated 22 August 1980, appointed Mr Randles to the post in question.
- 7 The applicant's complaint against that decision pursuant to Article 90 (2) of the Staff Regulations was rejected and he then brought this action.
- 8 In support of his application he relies on several submissions which are directed on the one hand at the lawfulness of the choice made by the appointing authority and, on the other hand, at the procedure leading to the disputed appointment.
- 9 Since the case involves a decision to promote an official it must first be emphasized that, in assessing the interests of the service and the qualities to be taken into consideration in the context of the decision referred to in

Article 45 of the Staff Regulations, the appointing authority possesses a wide discretion and that, in that connection, the Court must restrict itself to consideration of the question whether, regard being had to the various considerations which have influenced the administration in making its assessment, the latter has remained within reasonable limits and has not used its power in a manifestly incorrect way.

- 10 In disputing the choice made by the Director General of the Joint Research Centre, the applicant first claims that the decision to appoint Mr Randles had already been taken in advance.
- 11 On that point it may be observed that, if the director of the Ispra establishment had formed a view before referring the matter to the recruiting committee and before interviewing the fifth candidate of whom he was not aware at that stage, those facts could not affect the validity of the decision taken by the Director General of the Joint Research Centre, who is the appointing authority. He was in no way bound by the views of the director of the establishment. There is nothing in the file to suggest that he did not take his decision in the light of all relevant factors and after a consideration of the comparative merits of the various candidates as provided by Article 45 of the Staff Regulations.
- 12 The applicant further claims that his abilities and his merits and qualifications are superior to those of Mr Randles as is demonstrated moreover by the fact that subsequently the applicant was called upon to remedy certain problems and inadequacies which appeared in the framework of the project concerned. Mr Randles was preferred to him for political reasons, because of his nationality.
- 13 In this respect it should be recalled that the Court cannot substitute its assessment of the merits and qualifications of the candidates for that of the appointing authority. Nothing in the file suggests that in assessing the merits and qualifications of the applicant and of the candidate appointed, the Director General of the Joint Research Centre committed a manifest error. Moreover, events subsequent to the disputed appointment cannot be invoked in support of such an allegation.

- 14 According to the first paragraph of Article 27 of the Staff Regulations, the appointing authority must ensure that recruitment is carried out on as wide a geographical basis as possible amongst nationals of the Member States. However, that objective must be secondary to the requirements of the interests of the service and to consideration of the ability, efficiency and integrity of officials, which are also referred to in that provision. Only where the merits and qualifications of the various candidates are equal may the appointing authority take into consideration the nationality of a candidate as one factor amongst others in its choice. In this case, however, there is nothing to suggest that the Director General of the Joint Research Centre disregarded those principles and gave too much weight to the criterion of the nationality of the candidates.
- 15 It follows from the foregoing that the submissions relating to the legality of the choice made by the Director General of the Joint Research Centre are unfounded.
- 16 The applicant further claims that the promotion procedure did not follow the outline procedure laid down for that purpose by the memorandum of the Director General of 23 October 1979.
- 17 According to the Commission such a procedure, which is not laid down by the Staff Regulations, does not have any legal validity and failure to observe it cannot therefore be regarded as an infringement of an essential procedural requirement.
- 18 In that respect it should be observed that when, by a decision of an internal nature, the appointing authority voluntarily institutes a compulsory consultative procedure which is not prescribed by the Staff Regulations, it is obliged to abide by such a procedure, which cannot be regarded as lacking any legal validity. However, even though the director of the establishment at Ispra stated in his letter of 12 July 1980 that he did not wish to follow the procedure, the Director General, for his part, expressly insisted on the need to follow it and took his decision after receiving the opinion of the recruiting committee.
- 19 As to the course of the procedure in this case, the applicant claims that the recruiting committee was not constituted, by analogy with Article 3 of Annex

III to the Staff Regulations, of members who were all of a grade equal or superior to that of the post to be filled and that the committee did not subject the candidates to an interview. The applicant further claims that the report of the recruiting committee was not signed by its fourth member, Mr Ardente, and that, contrary to the memorandum of the Director General of the Joint Research Centre of 23 October 1979, the committee was not properly constituted.

- 20 On this subject it should be pointed out that Article 3 of Annex III to the Staff Regulations, on selection boards, does not apply to a recruiting committee not provided for by the Staff Regulations, whose purely consultative functions are not comparable to those of a selection board for a competition. In view of the fact that the provisions establishing such a recruiting committee do not lay down special requirements for its constitution, the fact that its members did not at least belong to the grade of the post concerned cannot constitute a procedural defect.
- 21 Since it was not compulsory under the provisions of the memorandum of 23 October 1979 for the candidates to be interviewed, it was for the recruiting committee to assess the need for such an interview, the absence of which cannot therefore constitute a procedural defect either.
- 22 It is true that a member of the recruiting committee did not sign the committee's report. Regrettable as such an irregularity may be, it does not, however, constitute, in itself, a substantial procedural defect since it is common ground that that member did in fact take part in the deliberations of the committee.
- 23 The remaining question to be considered is therefore whether the composition of the recruiting committee was in accordance with the memorandum of the Director General of the Joint Research Centre of 23 October 1979, which provided that the committee should be composed, in addition to representatives of the department concerned in which the vacancy had arisen and of the administration, of "one independent member (that is, not from the department concerned)" and of "one member appointed by the local Staff Committee".

- 24 In this case it appears both from the report of the recruiting committee and from a statement by Mr Ooms and Mr Ardente, submitted to the Court by the Commission after the hearing, that those two members sat on the committee as staff representatives. However, it has not been disputed that Mr Ardente was also qualified to be the independent member of the committee and that consequently a person fulfilling the conditions laid down by the memorandum of 23 October 1979 was present.
- 25 Regard being had to the purely consultative nature of that committee, the fact that its composition was stated wrongly in the report to the appointing authority does not, in itself, constitute a substantial procedural defect and is not of such a nature as to invalidate the disputed decision of the Director General of the Joint Research Centre.
- 26 The subsequent statement of Mr Ardente, according to which, in his capacity as a representative of the staff, he confined himself to ensuring that the relevant rules of the Staff Regulations were observed, is not, supposing it to be correct, of such a nature as to vitiate the legality of the opinion given by the recruiting committee. The procedure established by the memorandum of 23 October 1979 does not limit the right either of the staff representative or of any other member of the committee to assess freely all the factors to be taken into consideration in clarifying the choice of the appointing authority. Mr Ardente's error in voluntarily abstaining from expressing his opinion on some of those factors cannot therefore be attributed to the Commission.
- 27 For those reasons the application must be dismissed.

Costs

- 28 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. However, pursuant to the second subparagraph of paragraph (3) of that article, the Court may order even a successful party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.

- 29 It follows from the matters set out above relating to the procedure of the recruiting committee that it was vitiated by a number of unfortunate irregularities and ambiguities which, even though they do not constitute sufficient reason for annulling the disputed decision of the Director General of the Joint Research Centre, were of such a nature as to throw serious doubt on that decision and might reasonably induce the applicant to bring this action.

It is therefore appropriate that the costs which the applicant has thus been caused by the Commission to incur in these proceedings should be held to be unreasonable and to order the Commission to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Dismisses the application;
2. Orders the Commission to pay the costs.

Everling

Bosco

Galmot

Delivered in open court in Luxembourg on 21 April 1983.

J. A. Pompe
Deputy Registrar

U. Everling
President of the Third Chamber