REPORT FOR THE HEARING
delivered in Case 280/87 *

I — Facts and procedure

1. *Background to the dispute*

André Hecq has worked in the technical departments of the Commission since 1967. He was originally a member of the local staff and was established in 1975 and classified in Grade B 5 in the post of technical assistant. With effect from 1 August 1982 he was assigned to the Buildings and Equipment Management Department; since February 1984 he has occupied the post of a senior technical assistant in Grade B 3. Following an incident which occurred at the end of 1984, Mr Hecq's relations with his colleagues and with his immediate superior, Mr Brusset, deteriorated. The situation gave rise to an exchange of memoranda of a somewhat personal nature.

After receiving two memoranda from Mr Brusset on the situation in the section, Mr Pratley, Director for Administration, informed Mr de Hoe, Head of the Buildings and Equipment Management Department, that the exchange of memoranda should cease immediately. Mr Pratley proposed that Mr Hecq should be removed from the buildings section and given responsibility for heating and sanitation in certain new Commission buildings. Mr de Hoe adopted that proposal by decision of 23 January 1986, in which he also defined Mr Hecq's new duties. After hearing Mr de Hoe and Mr Hecq, Mr Pratley set out in a memorandum dated 5 March 1986 the buildings for which Mr Hecq was to be responsible. On 11 March 1986 Mr Hecq sent to Mr Pratley a memorandum requesting him to place a team of technicians at his disposal because it was impossible for him to carry out his work conscientiously and efficiently on his own. On 24 March 1986 Mr Pratley decided to take some buildings out of Mr Hecq's charge in order to make it easier for him to carry out his duties. On 2 April 1986 Mr Hecq submitted a complaint against the decisions of 3 January, 23 January and 5 March 1986. On 30 October 1986 the Commission rejected Mr Hecq's complaint. On 26 January 1987, Mr Hecq lodged an application seeking the annulment of the abovementioned decisions and his own reinstatement in all his rights under the Staff Regulations as they stood before 1 February 1986. That action was registered under No 19/87 at the Court Registry. By judgment of 23 March 1988 the Court (Fourth Chamber) dismissed the application.

A few days after lodging the application in Case 19/87, Mr Hecq learned of the existence of a memorandum of 27 January 1987 from Mr Brusset to a certain Mr Scocci, according to which one of the five buildings for which he was responsible, the building in Square Frère Orban (hereinafter referred to as 'the Orban building'), was taken out of his charge. On 18 February 1987, Mr Hecq submitted a complaint against that decision, which had never been notified to him. Since the Commission

* Language of the Case: French.

delayed in responding to that complaint (to which it replied on 29 September), Mr Hecq brought the present action.

2. *Procedure*

Mr Hecq's application was lodged at the Court Registry on 22 September 1987.

By decision of 18 November 1987 the Court (Fourth Chamber) refused the Commission's request that this case be joined with Case 19/87.

Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Court (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry. However, it requested the Commission to answer certain questions.

II — Conclusions of the parties

Mr Hecq, the applicant, claims that the Court should:

(i) annul the decision adopted by an unknown person on an unknown date withdrawing from the applicant responsibility for heating and sanitation in the Commission's building in Square Frère Orban, Brussels;

(ii) annul the implied decision rejecting the complaint submitted through official channels as a result of that decision and registered on 23 February 1987 under No 2331;

(iii) in any event, order the defendant to pay the costs.

The *Commission,* the defendant, contends that the Court should:

(i) declare the application unfounded;

(ii) rule on costs in accordance with the law.

III — Submissions and arguments of the parties

The applicant claims, first, that the contested decision was adopted contrary to Article 5 (4) of the Staff Regulations. The decision forms part of the previous 'illegal measures' contested in Case 19/87 on the ground of failure to observe a correspondence between the applicant's grade and basic post.

Secondly, he alleges that Article 7 (1) of the Staff Regulations has been infringed. The decision was in no way based on the interests of the service, which is the only criterion applicable under that provision. It is, moreover, impossible to ascertain the real object of the decision inasmuch as, being an implied decision, it did not state the grounds on which it was based; any administrative measure adversely affecting an official must state the grounds on which it is based, under Article 25 of the Staff Regulations.

Finally, the applicant maintains that the decision seriously damages his interests because it reduces the responsibilities attaching to his grade. It is contrary to the principle of sound administration and the administration's duty to have regard to the interests of its officials inasmuch as it was

adopted without giving the applicant an opportunity of putting his point of view and without taking his interests into account.

The Commission observes first of all that, by virtue of the Court's judgment in Case 19/87, the measures of which the applicant claims the contested decision forms a part are not illegal.

Secondly, it claims that the decision is merely a management decision which could not adversely affect the applicant and which did not alter his position. The applicant remained responsible for the proper functioning of the other buildings whose management was assigned to the administrative unit to which he then belonged. The Commission explains that certain instances of the applicant's behaviour had disturbed the working atmosphere in the Orban building. It was therefore in the interests of the service that it became necessary to withdraw from the applicant responsibility for that building. There was no need to state the grounds on which the decision was based because it did not adversely affect the applicant's interests.

Initially, the Commission claimed that the action was reckless and vexatious. However, after the judgment in Case 19/87, in which the Court dismissed the Commission's request to apply Article 69 (3) of the Rules of Procedure, the Commission leaves the question of the reckless and vexatious nature of the present action to the judgment of the Court.

T. Koopmans
Judge-Rapporteur