17 However, by virtue of Article 70 of the Rules of Procedure, the costs incurred by institutions in actions brought by servants of the Communities are to be borne by the institutions.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dimisses the application;**

2. **Orders the parties to bear their own costs.**

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 1 December 1983.

For the Registrar

H. A. Rühl

Principal Administrator

Y. Galmot

President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 20 OCTOBER 1983 [1]

Mr President,
Members of the Court,

1. The application of 7 February 1983 giving rise to the present action is based on a number of claims made against the Parliament by Domenico Morina, an employee thereof, seeking the annulment of two decisions, the first of which relates to the cancellation of a vacancy

1 — Translated from the Italian.

notice and the other to the transfer of a post within the institution.

By Notice No 3285 of 3 November 1981, the Parliament indicated that there was a vacancy for a post of principal administrator, in Career Bracket A 5/A 4, in the Directorate General for Research and Documentation (DG V). The applicant, an administrator in Grade A 6 in that directorate also eligible for promotion as from January 1979, applied for the post. During the procedure the Secretary General of the Parliament decided, by memorandum of 6 May 1982, that the post in question should be transferred to the Treasury and Accounts Division (Directorate General IV). As a result, the administration cancelled Notice No 3285 and informed the applicant. Morina lodged an objection through official channels against that decision and asked to be informed of the reasons for the cancellation. By letter of 3 November 1982 the President of the Parliament rejected his complaint, stating that since the post had been transferred for reasons relating to the service which were unconnected with the applicant, it had become impossible to continue with the recruitment procedure.

2. The defendant institution objects in the first place that the application is inadmissible from two standpoints: the absence of any measure adversely affecting the applicant and the fact that the subject-matter of the application to the Court is different from that of the complaint through officials channels. It maintains that Morina is not entitled to bring an action since the transfer of a post is a measure of an organizational nature, which does not affect the applicant's occupational situation; it observes in the second place that the claim that that measure should be annulled appears only in the application. In response thereto, Morina contends that he is nevertheless in a situation for which there is legal protection and that entitles him to bring an action.

His reply seems to me to be valid. By submitting an application for the vacant post, Morina became entitled to expect that recruitment would proceed in accordance with the provisions of the Staff Regulations and, in particular, that the discretionary power of the administration would not be vitiated by misuse of powers. In a similar case, the Court held that "the consideration of these submissions [infringement of the Staff Regulations and misuse of powers] involves an examination of the substance of the case. The objection of inadmissibility cannot therefore be upheld" (judgment of 24 June 1968 in Case 26/68 *Fux* v *Commission* [1969] ECR 145, paragraphs 6 and 7 of the decision). The first objection raised by the Parliament therefore fails. As regards the other, I am of the opinion that the complaint and the application have the same subject-matter. The decision to transfer the post logically entails, and in fact gave rise to, the decision to cancel the competition. The request annulment of the latter decision, as Morina did in his complaint, therefore implies the request that the first decision should be annulled.

3. I shall now examine the criticisms relating to matters of substance. The applicant puts forward various arguments against the transfer of the post: infringement of the Staff Regulations, contravention of the general principles prevailing in the civil service (legitimate expectation and good administration) and misuse of powers.

The first submission. According to the applicant, the administration is not

entitled to transfer a post when the recruitment procedure has commenced; in any case, the decision to cancel the vacancy notice did not include a statement of the reasons on which it was based. Both criticisms are without foundation. There is no provision in the Staff Regulations which compels the administration to complete the recruitment procedure: it may therefore be interrupted, for example if required by the interests of the service (cf. the judgment in *Fux* cited earlier). The cancellation of the notice is, moreover, a measure of a general nature which falls within the discretionary powers of the administration and is not capable of having an adverse effect: the defendant institution was not therefore under any obligation to state the reasons for it (judgment of 31 March 1965 in Joined Cases 12 and 29/64 *Ley* v *Commission* [1965] ECR 107).

Nor does it seem to me that the principle of legitimate expectation has been contravened. Morina considers that his response to a vacancy notice placed him in a position of "near certainty" or gave him a "vested subjective right" to promotion. But his view is without foundation. There are innumerable decided cases which show that under the Community civil service system there is no right properly so-called to promotion from one post to another.

Nor has the principle of good administration been contravened, inasmuch as the institution was under no duty to disregard the requirements of the service on the ground that Morina had a future contingent interest in securing the post; and there is no evidence to support the complaint of misuse of powers. The applicant has not shown that the contested decision was not actually based on the interests of the service and was a subterfuge to favour another official. Moreover, the explanations given by the defendant institution during the oral proceedings have, I believe, dispelled any doubt or concern which might be harboured in that regard. At the most, the Parliament might be reproached for not having given those explanations earlier.

4. In view of all the foregoing considerations, I suggest that the Court should dismiss the action brought against the European Parliament by Domenico Morina, by application of 7 February 1983. I also consider that the parties should bear their own costs.