OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 30 JUNE 1983 [1]

Mr President,
Members of the Court,

1. The application of 22 April 1982 which originated these proceedings contains a number of claims made by Mr Enrico Angelini against the Commission regarding a measure retiring him and a number of subsequent decisions regarding reassignment.

I shall summarize the facts. The applicant entered the service of the Commission in 1959 as a principal administrator in the Directorate General for Transport. As from 1963 he was assigned to Directorate General IX for Personnel and Administration where, until 1968, he was head of the Recruitment Division, from 1968 to 1970 head of the division dealing with Staff Regulations and disputes procedures and from 1970 to 1980 director of the General Services and Office Equipment Directorate. In 1980 Directorate General IX was reorganized on the basis of the Spierenburg and Ortoli reports: in particular the Directorate headed by the applicant was merged with the Welfare, Training and Staff Information Directorate into a new Directorate B (Infrastructure and Services) and the director of the former Directorate B was appointed as its director. Angelini remained within Directorate General IX as chief adviser. In that capacity he was reponsible for relations with the European Schools and for in-service traineeships, exchanges with officials of national administrations, the organization of seminars for civil servants of the Member States and advanced vocational training for employees of the Directorate General to which he was attached.

That situation did not last long. By letter of 4 May 1981 the President of the Commission informed the applicant that the Commission intended retiring him under Article 50 of the Staff Regulations of Officials. Eleven days later the applicant submitted his observations and stated that he fulfilled the requirements for any of three posts in the list of posts for Directorate General IX: the post of Deputy Director General created in spring 1981, that of director of Directorate A or that of director of Directorate B. In a further letter of 24 June 1981 the President confirmed the Commission's intention to apply Article 50 to him and declared that the retirement could take effect from 1 November 1981. He added that the applicant's candidature for further available posts would be considered, as would that of another candidate "in accordance with the procedure now in force regarding appointments to Grade A 2".

On 8 July 1981 the measure retiring the applicant was finally adopted. It provided moreover that if the applicant was not assigned to an available post by 1 November 1981 he would be entitled to the allowances provided for in Article 50 of the Staff Regulations. By letter of 8 July 1981 the applicant reaffirmed his particular suitability for the post of director of Directorate A (Director of

1 — Translated from the Italian.

Personnel) and formally submitted an application not only for that post — declared vacant by Notice No COM/ 839/81 — but also for the post — declared vacant by Notice No COM/ 1234/81 — of director of Directorate B (although he did not apply for the post of Deputy Director General since the relevant notice had been published in an issue of the "Staff Courier" distributed after his retirement from the service). However, his applications were unsuccesful. The posts were allocated to other persons: that of director of Directorate A by decision of 28 July 1981 and that of director of Directorate B by decision of 22 October 1981.

When that fact came to his notice, Angelini submitted two complaints to the appointing authority. In the first, dated 29 September 1981, he requested annulment of the measure retiring him or, in the alternative, of the two decisions whereby his application for the post of director of Directorate A was rejected and that post was filled. In the second complaint, dated 27 October 1981, he made a similar request regarding the post of director of Directorate B.

Having received no reply within the prescribed period (both complaints were expressly rejected on 11 May 1982), the applicant brought an action before the Court on 22 April 1982. He requested primarily annulment of the decision of 8 July 1981 and of the implied rejection of his complaint of 29 September 1981. In the alternative he requested annulment of: (a) the decision not to assign him to another post in his category corresponding to his grade; (b) the decisions rejecting his applications for the post of director of Directorate A and the post of director of Directorate B in Directorate General IX; (c) the decisions whereby those posts were filled; (d) the implied rejection of his complaints of 29 September and 27 October 1981.

2. I shall begin by examining the applicant's main claims. The applicant disputes the lawfulness, in several respects, of the decision retiring him. In the first place it lacks the statement of reasons required by Article 25 of the Staff Regulations for all measures adversely affecting officials. In particular it lacks details of the reasons for which the post occupied by Angelini had, from the point of view of the interests of the service, become unnecessary. The applicant points out that Directorate General IX had been reorganized only a year earlier and on that occasion, in implementation of the suggestions contained in the Spierenburg report, the post of chief adviser to which he was assigned had been created. It is therefore manifestly inappropriate for the letter of 4 May 1981 to justify the abolition of his post by reference once again to the Spierenburg and Ortoli reports.

The line followed by the Court regarding statements of reasons for measures adopted under Article 50 of the Staff Regulations is clear, at least since the judgment of 11 May 1978 in Case 34/77 *Oslizlok* v *Commission* [1978] ECR 1099. The statement of reasons is certainly necessary but is required to meet only certain minimum requirements: for example, it is sufficient to state in general terms that the qualifications of the officials considered for retirement were examined comparatively (paragraphs 20 to 23 of the decision).

The letters written to Angelini by the President of the Commission on 4 May and 24 June 1981 contain a succinct but adequate statement of the reasons for the decision to retire him, and because the decision itself also refers to the general reorganization of the departments, the requirements laid down in the case-law of this Court seem to me to have been largely satisfied in this case.

Nor can the fact that the post occupied by Angelini was created only one year earlier justify the demand for a more detailed statement of reasons for the measure. In that regard the defendant's argument to the effect that Directorate General IX was reorganized in 1980 and 1981 for different purposes seems to me to be convincing. The first reorganization was intended to distribute the responsibilities more efficiently among the various directorates (see the note of 20 June 1980 from Commissioner Tugendhat, Annex 1 to the rejoinder) and in that context the creation of the post of chief adviser was, so to speak, merely a side-effect. The second reorganization on the other hand was intended above all to achieve a reasonable balance between the various administrative units (see note of 22 July 1981 from Commissioner O'Kennedy, Annex 3 to the rejoinder). It should be added that the accession of Greece and the new organizational criteria adopted by the Commission which had been appointed in the meantime may have affected the way in which the later reorganization was carried out.

3. According to Angelini the inadequate statement of reasons is not the only reason for the unlawfulness of the contested measure. It was in fact adopted within the framework of an operation which affected 20 % of all A 2 posts. The Commission cannot therefore have carried out a sufficiently rigorous examination of every individual case and certainly not one capable of giving rise to the conclusion that in order to cater for the interests of the service it was necessary to abolish in particular the post held by the applicant.

This criticism is manifestly without foundation. It seems to me to be wholly reasonable to conclude, in the context of a wide-ranging reorganization such as that carried out in Directorate General IX in 1981, that it is no longer useful to maintain certain posts and therefore to decide to abolish them. In other words, it is not true that the interests of the service may be invoked only in individual cases and are not to apply to multiple retirement measures. As regards the lack of a rigorous examination, the applicant has furnished no evidence in support of his claim. Conversely, the minutes of the various meetings (15 April, 29 and 30 April, 8 July 1981) show that the Commission had been discussing the problem for some time. In particular it emerged in the oral procedure that, it was in fact appropriate, in order to avoid any imbalance in Directorate General IX, to abolish the department directed by the applicant which, among other things, was extremely small — it was possible rationally to distribute the duties discharged by Angelini with the collaboration of another official in Grade A and a number of employees in Grade B amongst other departments within Directorate General IX and the Secretariat General.

Finally, the applicant maintains that the reorganization to which such frequent reference is made was motivated by

concealed reasons of an unworthy nature. Far from satisfying objective requirements, it reflected the logic of the American "spoils system"; in other words, in manifest infringement of Article 50, it was intended to get rid of a number of old officials in order to make room for men favoured by the new Commission. The notes from Commissioner O'Kennedy on the reorganization of Directorate General IX and the measures associated therewith were in fact dated 22 and 28 July 1981 — therefore, they did not precede but rather followed the notification of retirement. In other words, the first decision was adopted in order to remove Angelini and the decision to abolish his post was adopted afterwards.

But that argument is not valid either. No proof has been adduced to corroborate the applicant's serious accusation to the effect that the officials who were retired were men without political support in the new Commission; and the information contained in the communications from the Staff Committee which the applicant produced in his reply certainly cannot be regarded as such. In the second place, the chronological order which he purports to detect with regard to the decisions concerning his retirement is belied by several facts. On 14 May 1981 the President of the Commission had already given notice that "the abolition of a number of posts of chief adviser, including the post to which you were assigned" was under way. Similar words appear in the minutes of the meeting held on 29 and 30 April 1981 and in those of the meeting of 8 July 1981 mention is made of confirmation of the "approach already adopted in the past regarding the abolition of posts of chief advisers". That, it seems to me, provides a sufficient basis for the view that by retiring Angelini the Commission gave effect to a decision which dated back a considerable time and that it was lawful to state the reasons for that decision in those terms.

4. Since the main claims are unacceptable, it is appropriate now to consider the complaints made in the alternative which, as will be recalled, relate to the decisions not to assign Angelini to other posts corresponding to his grade. I should mention at the outset that according to this Court (cf. judgment in *Oslizlok*, already cited), measures reassigning officials also involve a considerable degree of discretionary power. However, such measures cannot follow automatically from the retirement decision itself; they must be based on specific considerations and enable the official concerned to defend his interests (paragraphs 27 to 30 of the decision).

The criticism which gives rise to fewer problems is the accusation that the Commission, in breach of a specific duty, did not on its own initiative examine the possibility of assigning the applicant to the new post of Deputy Director General of Directorate General IX for which he expressly declared himself to have the necessary skills. Article 50 refers to assignment "to another post in his category or service corresponding to his grade"; in other words the provisions thereof relate only to the possibility of a transfer. The post in question, which is classified in the list of posts as Grade A 1

ad personam, clearly does not fall within that category. The applicant could only have obtained that post by promotion and in his case it is clearly inappropriate to base a claim to that post on Article 50.

As regards the post of Director of Personnel in Directorate General IX (the subject of Vacancy Notice No COM/839/81), it is established that on 20 July 1981 the Consultative Committee examined the various applications and considered that the applicant did not have "the required experience in general personnel management required by the vacancy notice". Consequently, eight days later, the Commission chose one of the other three candidates proposed by the Committee and, since he was an official in Grade A 3, promoted him to the vacant post with effect from 1 August 1981.

Angelini asserts that that choice is vitiated by an insufficient statement of the grounds on which it is based. In my opinion, it may be argued on the basis of the case-law of the Court that when an official is assigned to a post it is unnecessary to give a specific statement of reasons with respect to the other candidates (judgments of 31 March 1965 in Case 16/64 *Rauch* v *Commission* [1965] ECR 135; 13 July 1972 in Case 90/71 *Bernardi* v *Parliament* [1972] ECR 603; and 30 October 1974 in Case 188/73 *Grassi* v *Council* [1974] ECR 1099). They, in fact, are not the victims of a measure adversely affecting them but are merely persons who are notified of a rejection which is implicit in the measure by which the appointment is made.

Nor can I agree with the applicant's argument to the effect that the Commission unlawfully failed to consider whether he was suitable for the post in question and that, in any case, his suitability ought to be acknowledged. In the opinion of the Consultative Committee it is expressly stated that Angelini's application was the subject of "special consideration"; nor is there anything to show that the Committee applied inconsistent criteria or that, in assessing the applicant's skills, it made any manifest error — the only defect which, in the case of an assessment which entails a value judgment, can be established by the Court.

Admittedly, the vacancy notice, under the heading "Description and nature of the duties" speaks of "personnel management" and does not use the phrase which appears in the opinion of the Committee, namely "general personnel management". In other words the Committee applied a stricter criterion. But I consider that the adoption of that criterion is justified by the duties inherent in the office and in particular by the other, stringent requirements specified in the vacancy notice ("thorough knowledge of personnel policy and management; proven experience appropriate to the post"). As regards the assessment of his skills the applicant refers to the duties carried out by him from 1963 to 1967 as head of division and the courses which, as chief adviser, he gave to senior officials of the Member States on personnel management at the Commission; but failure to take account of those circumstances to the extent desired by Angelini certainly does not constitute a manifest error. The fact is that he was concerned only with specific aspects of personnel management whereas, as the Commission has explained, the holder of the

post in question must be able "to manage the human resources of the Commission in a coherent fashion".

The applicant also complains of the failure to apply to him a principle which may be inferred from Article 50, namely that for the filling of a similar post a retired official is entitled to priority over candidates of lower rank who could be appointed to such a post only be means of promotion. It is doubtful whether Article 50 provides for such entitlement. However, the theory is interesting and I shall deal with it in detail in my opinion in Case 148/82. It would however be inappropriate to do so here because even if that theory were to be considered well founded no grounds for annulment could be derived from it. At the very least, that theory presupposes that the retired official is suitable for the new post, whereas in this case he does not appear to be suitable, or, if he is, he is less suitable than the candidate who was promoted.

5. There remains to be analysed the request made by the applicant regarding the decision not to assign him to the post of director of the Directorate for General Administration (Directorate B) in Directorate General IX (Vacancy Notice No COM/1234/81). In this case also Angelini asserts that his suitability for that post was not considered and, once again, his criticism cannot be upheld.

There is no doubt that the Consultative Committee failed to assess the applicant's skills. In the opinion which it issued on 19 October 1981 mention is in fact made of his previous activities; but thereafter, it having been established that the reorganization of Directorate B involved "a significant number of new responsibilities", it confines itself to stating that "when that reorganization was carried out" the Commission "did not choose Mr Angelini as head of the new unit" and concludes "that the conditions for a recommendation that the Commission appoint Mr Angelini are not satisfied". Nevertheless, it must be added that since the Consultative Committee's participation is not compulsory, its silence must be regarded as irrelevant. On the other hand, if the Commission did not carry out a proper examination that would be important or, rather, decisive.

But that is not the case. It can be seen from the minutes of the meeting of 28 July 1981 that there was a tacit intention not to assign the applicant to the post. On that occasion the duties for which he was responsible were allocated among various departments and, in a decision which is eloquent as regards its implied assessment of Angelini's suitability for the post of director of Directorate B, it was decided to declare that post vacant. Moreover it is apparent from the minutes of the meeting of 21 October 1981 that, after describing in detail the qualifications and merits of the applicants who were considered and after noting that by virtue of the reorganization of July 1981 a "significant number of new responsibilities" were entrusted to Directorate B, the Commissioners confirmed the decision which they had already taken not to reassign the applicant to Directorate B. "Finally" — the minutes conclude — "the Commission, following

the line previously adopted by it, considers that the conditions for the acceptance of Mr Angelini's application are not fulfilled".

I would add that the value judgment expressed on that occasion regarding the suitability of the applicant does not appear to be open to criticism. Following the reorganization, Directorate B became responsible for "financial and administrative rights, sickness insurance, building loans, welfare, buildings, technical services and office equipment" and "house services". On the other hand, the applicant could claim to have had responsibility as director of the old Directorate C only for "buildings, technical, services, telecommunications, office equipment" and "house services". Clearly, it was not considered that he had the necessary knowledge and experience to manage the remaining areas or, in view of the importance of those areas, that he could be regarded as having the skills required for the post. It is difficult to disagree with that assessment.

6. Therefore the claims submitted in the alternative are also unacceptable. I therefore propose that the Court dismiss the action brought on 22 April 1982 by Mr Enrico Angelini and order the parties to bear their own costs in accordance with Article 70 of the Rules of Procedure.