OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 26 MAY 1971[1]

Mr. President,
Members of the Court,

The applicant in the case before the Court today entered the service of the Commission of the European Communities in 1958. At first an official in Category B, he was promoted to Grade A 6 on 1 April 1963. In October 1966 he was assigned to the Publications Division of the Joint Press and Information Department as an Italian language editor, replacing an official who had been appointed head of the New York office. The applicant remained in this post even after the merger of the executives, that is to say, after the Press and Information department had become the Directorate-General for Press and Information. It is not possible in order to define his functions to refer to a vacancy notice. But the periodic reports regularly issued in respect of the applicant do furnish important indications. Thus the periodic report relating to the period from 1 January 1966 to 30 June 1967 describes his main tasks as follows: 'Editing in the Italian language: periodic and non-periodic publications'. The report covering the period from 1 July 1967 to 30 June 1969 defines the applicant's activity by adding 'editing in the Italian language of periodic and non-periodic publications published by the division and/or the Rome office; revision of editorial texts; selection and preparation of information on Community activities'. According to the undisputed allegations of the applicant, he was apparently for the most part concerned in editing the magazine 'Comunità Europee' which is published by the Commission's Rome office. His real duties were those of chief editor, although since July 1967 this publication no longer described him as such. In this capacity he was in particular required to participate in the monthly meetings of the editorial board. During 1970 there was a change in the department to which the applicant belonged. Another Italian official who previously belonged to the Spokesman's Group (that is to say, the group in charge of current information on events within the Commission) and who had been classified in Grade A 4 but who since 25 July 1969 had become Deputy Chief Executive Officer, in Grade A 3, in the Office of a Member of the Commission, was by decision of the Commission of 6 May 1970 after the dissolution of that Office appointed Italian language editor in the Publications Division of the Directorate-General for Press and Information. It is this official —assigned to Rome—who since 1 July 1970 has been concerned with editing the magazine 'Comunità Europee', whilst the applicant was no longer invited to the meetings of the editorial board and is no longer receiving the relevant documentation.

The applicant sees this as damaging his position. This is why on 7 July 1970 he wrote to the Director-General of the Directorate-General for Press and Information, protesting against his situation which he considered to be irregular. In particular he complained about the fact that he had not been entrusted with new tasks after his former duties with the editorial department of the beforementioned magazine had come to an end and he asked that this situation be remedied in order to avoid his suffering non-material damage. On 13 July 1970 the applicant further made a formal complaint to the Commission of the European Communities in accordance with Article 90 of the Staff Regulations. In it he requested the annulment of the illegal procedure which forced him to abandon his duties without receiving equivalent duties in their stead.

1 — Translated from the German.

Since he had not received a reply to his complaint, the applicant brought an action before the Court which was received at the Registry on 4 November 1970. In his application he seeks:

— the annulment of the implied refusal of his administrative complaint of 13 July 1970;
— a declaration that the decision by which the Commission appointed another official as Italian language editor in the Publications Division of the Directorate-General for Press and Information is null and void;
— the annulment of the decision by which the applicant was relieved of his duties.

I shall now give my opinion on these facts and on these claims which the Commission considers inadmissible or at least unfounded.

I — As regards admissibility

Let us first examine the questions of admissibility to which the nature of the claims and the arguments of the Commission give rise. They will not keep us long, however.

1. This applies in particular to the last-mentioned head of claim, that is to say, the decision which changed the applicant's sphere of duties. In this respect one could think in terms of a purely internal act, not subject to legal action, involving the organization of the department to which the applicant belongs. But all things considered, such argumentation would not take into account as it ought to, the official's rights under the Staff Regulations which make it possible to determine whether there is an act adversely affecting him. Besides, we already have a case-law which says that to withdraw from an official one or more of the departments for which he was previously responsible may in certain circumstances amount to an infringement of his rights. (Case 16/67 [1968] ECR 293). Looked at from this point of view the admissibility of the application cannot therefore be questioned.

2. As regards the head of claim in which the applicant contests the appointment of another official one wonders what interest he has in making such an application. In principle, measures of this kind can only be contested by officials who are themselves eligible for appointment. If they are not eligible they have no interest in bringing an action for naturally no official without personal grounds has the right to set in motion a general review of whether the requirements of the Staff Regulations have been observed.

In this respect the present case might give rise to objections, for it is concerned with the filling of an A 4 post whilst the applicant is only classified in Grade A 6. His appointment can therefore only take place as the result of an internal competition, that is to say, after a preliminary consideration of the possibility of promotion or transfer within the institution as laid down by Article 29 of the Staff Regulations. Consequently, the applicant's chances of being appointed to the post in question are relatively small. This becomes still clearer if one bears in mind that after this official had temporarily carried out duties of a member of the staff in the Office of a Commissioner—with Grade A 3—he had a prior claim to be assigned to a post corresponding to his initial grade, that is to say, to Grade A 4 and if moreover one considers that the applicant did not contest the ability of the official appointed (which in any event would hardly have been conceivable in view of the fact that the previous posting of this official had been to the Spokesman's Group).

Nevertheless, I should not like to think in terms of inadmissibility of the second claim, although the applicant clearly had no chance of being appointed to the post in question instead of the official who was appointed. In the final analysis the decisive factor in this respect is that there is a close relationship between the

appointment in question and the reduction in the duties initially entrusted to the applicant which, as we have seen, was properly made the subject of an application. The admissibility of the two claims therefore derives from their connexion and there is nothing to stand in the way of an examination of the arguments presented in support, that is to say, an examination of the substance of the case.

II — As to the substance of the case

1. As regards the substance of the case we shall first consider the measure which altered the scope of the applicant's activities.

(a) The basic legal element which is in the first place important is quite clear: according to the Staff Regulations nobody has the right to insist upon scientific duties being granted to or preserved for him; what is crucial is solely the relationship between grade and duties. In the applicant's case one must moreover bear in mind that the periodic reports which alone contain a description of his duties, only refer to the work of editor and not of chief editor with the magazine 'Comunità Europee'. Even if the applicant in fact exercised this last-mentioned activity, the withdrawal thereof as such cannot adversely affect him; we can only enquire whether the duties remaining to him constitute a sphere of activity which appear to be appropriate to an editor and to his classification in Grade A 6.

To anticipate my final conclusion, I am satisfied that the Commission has succeeded in furnishing sufficient justification on this point. It has argued in a convincing manner that the normal task of an editor is the production of periodic publications, and that it does not therefore necessarily mean working for the said magazine as chief editor. This is corroborated by the fact that another editor from the division to which the applicant belongs only deals with periodic publications but not with the editing of a magazine such as 'Comunità Europee'. Furthermore, the Commission has pointed out that after the adoption of the criticized organizational measure the applicant in no way remained inactive, as he alleges. Thus in the autumn of 1970 he was entrusted with editorial tasks in connexion with the publication of a brochure entitled 'Les consommateurs et le Marché common' (Consumers and the common market) and at the beginning of 1971 in connexion with the preparation of an article for the Rome office. Furthermore, it was his task to undertake an 'examination of the final reactions of various socio-professional groups to the implementation of the common market'. According to the Commission he must also in future expect in the main to have similar tasks entrusted to him. If, moreover, one bears in mind that any restructuring of a service involves a certain period of transition it is not possible to arrive at a final conclusion on the basis of the quantity of work to be accomplished during this period (especially when the latter coincides in part with the holiday period), the answer to the question whether the Commission entrusted the applicant with an adequate range of duties cannot in the last analysis succeed in proving that the criticism made by him is well-founded. The foregoing considerations therefore give no cause to speak of an infringement of the Staff Regulations.

(b) This is also the case, moreover, with the two other considerations which according to the applicant are relevant.

When the applicant complains of the absence of written and reasoned instructions concerning the modification of his sphere of activity and of the failure to notify such instructions to him, one is forced to reply that Article 25 of the Staff Regulations which he has in mind certainly does not cover his case. On this point, as we have seen, where certain alterations are made to a sphere of

activity without a change of post there is no decision adversely affecting the person concerned and there is therefore no duty to provide reasons for or to notify the measure in question. On the other hand, similarly there is no merit in the assertion that the criticized measure in reality constitutes a disguised disciplinary measure. In fact not only has the applicant failed to produce facts and pointers to establish this complaint but—and this is decisive—the contested measure does not constitute an act adversely affecting him.

All told therefore, the claim which I have just examined must be dismissed as unfounded.

2 (a) As regards the claim for the annulment of the appointment of another official the applicant alleged in the first place that to entrust to that official the task of editor of the magazine 'Comunità Europee' is illegal because there was no corresponding post available and because no vacancy notice had been published beforehand.

In fact—and here the applicant is correct—it was not a matter of the Commission's filling a vacant post but of reintegrating the appointed official in his former post with the Spokesman's Group after the Office of the Member of the Commission where he had temporarily worked had been dissolved, and of transferring him *together with* his post to the Publications Division of the Directorate-General for Press and Information. Since the post in question with the Spokesman's Group had meanwhile been occupied by a temporary servant it had moreover become necessary—but this point no longer concerns us—to transfer an A 5—A 4 post from another Directorate-General to the Spokesman's Group in order to enable the temporary servant to be posted in the normal way and, apparently, to be established.

Taking these facts into account one is certainly obliged to concede that this is not an ideal system of organization and of allocating posts. Nevertheless and whilst it is desirable that such measures should remain limited to rare exceptional cases, it is not possible to say that there has been an infringement of the provisions of the Staff Regulations. This at any rate is the case if the duties attaching to the post transferred—as is the case here—have a strong resemblance to those of the post in the enlarged administrative unit. The essential point is that it is not a matter of filling a vacant post and that the Staff Regulations do not require a notice of vacancy where officials are transferred together with their posts. Looked at from the point of view of their purpose, these notices of vacancy would also seem virtually pointless since they are not intended to produce applications. This was certainly so in the present case where the appointed official was entitled to be appointed to a post in Category A 4 and where his ability to perform the duties entrusted to him was not in doubt.

There therefore remains the fact that in a case such as the present a notice of vacancy would amount to an unnecessary formality, giving rise to false hopes, and its omission does not therefore constitute an appropriate ground for annulling the contested appointment.

(b) Another argument according to which the Commission wrongly failed to give the applicant any reasons for the measure in question and omitted to notify him thereof must also receive a negative answer. As similar cases have taught us, appointments and comparable measures do not require a statement of the reasons on which they are based so far as the actual persons to whom they are addressed are concerned since they do not amount to acts adversely affecting them. Neither is notification to third parties prescribed. The contested appointment cannot therefore be annulled by virtue of reliance upon an infringement of essential procedural requirements.

(c) There therefore only remains to be examined the complaint of misuse of powers. As we know, in making this complaint the applicant argues that the

contested measure was not taken in the interests of the service but as a reward for services which the official appointed rendered in the Office of a Member of the Commission.

As regards this complaint, I can also be quite brief. First, it is certainly not possible to say that temporarily performing duties in a post in Grade A 3 an official who is classified in Grade A 4 is rewarded by the fact that the Commission, in accordance with the provisions of the Staff Regulations, re-assigns him to a post in Grade A 4. On the other hand, it does not seem to have been established that the measure was not adopted in the interests of the service. In my opinion—but a consideration of the details of this is not a matter for the Court—it is perfectly possible that there had been a need to strengthen the Publications Division within the framework of the Directorate-General for Press and Information in order thus to have available an editor for tasks other than those involved in the publication of the monthly magazine. Apparently the Commission—at any rate according to its uncontradicted statements—had already made similar attempts in previous years and it seems that it has now achieved its aim after completing all the changes in its Publications Division and in the Rome office. Finally, I also fail to see how one could dispute that it was justified in deciding upon Rome as the appointed official's place of employment. It is clear that his duties call for close co-operation with the Rome office. Besides, some other editors entrusted with similar tasks reside, at any rate *de facto*, in the different capitals.

All these considerations allow us to conclude that there has been no misuse of powers. At the same time it has been established that none of the complaints made in connexion with the second claim can succeed.

III — Summary

My opinion is therefore as follows: the application is admissible but all the claims formulated by the applicant must be rejected as unfounded. In the light of the outcome of this case the costs fall to be dealt with on the basis of Article 70 of the Rules of Procedure: the parties must bear their own costs.