On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Court of Auditors to pay the whole of the costs, including those of the applicant.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 21 June 1984.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 17 MAY 1984 [1]

Mr President,
Members of the Court,

1. Introduction

In this case, Mr Lux, an official in Grade A 5 at the Court of Auditors has brought an action complaining of his reassignment from the Legal Department to the Staff and Operational Expenditure Sector, which is an auditing sector. The applicant asks the Court to annul the decision of the Court of Auditors of 24

1 — Translated from the Dutch.

March 1983 transferring his budgetary post and the decision of the President of the Court of Auditors of 14 April 1983 assigning him to that post. The applicant relies in that regard on five submissions, which may be summarized as follows:

1. Lack of power on the part of the Court of Auditors to transfer the post held by the applicant, since such power is vested only in the President in his capacity as appointing authority;
2. The contested decisions adopted by the Court of Auditors and by the President do not contain an adequate statement of the reasons on which they are based;
3. Infringement of Articles 4, 7 and 29 of the Staff Regulations, inasmuch as in the present case there can be no question of there having been a reassignment of the applicant together with his post since there was a substantial change in the applicant's duties;
4. Infringement of Article 7 of the Staff Regulations, inasmuch as the transfer is contrary to the interests of the service since there is no work in the auditing sector for which the applicant, who is a lawyer, is suited;
5. Misuse of powers, inasmuch as the reassignment is a disguised disciplinary measure related to the fact that the applicant had brought another action before the Court on 13 October 1982 against the decision classifying him in Grade A 5, Step 3, claiming that he should be reclassified in Grade A 4 (Joined Cases 129 and 274/82).

2. Facts

After practising as an avocat and as a notary, Mr Lux was appointed as an official in the Commission's Legal Department on 25 June 1973, where he was concerned with *inter alia* transport, environmental and consumer law.

On 1 August 1978 he entered the service of the Court of Auditors. It is clear from the vacancy notice in question (No CC/A/3/1978) that the post was a Grade A 6 post and involved auditing duties. According to the documents before the Court, the activities of the Court of Auditors are of a dual nature, namely administrative or so-called "horizontal" tasks on the one hand and auditing or so-called "vertical" tasks on the other. Initially, every Member of the Court of Auditors was responsible for supervising both types of activity.

Since 15 January 1981, however, three Members have dealt with administrative or "horizontal" tasks and seven Members have dealt with auditing or "vertical" tasks, each task falling under a specific sector.

The applicant and the Court of Auditors have given differing accounts of the nature of the applicant's initial duties. However, it is clear from the documents before the Court that Mr Lux at the outset performed both "horizontal", in particular legal, tasks in addition to "vertical" tasks which involved carrying out audits on the expenditure of Community staff. Finally, at the end of 1978 the applicant was unequivocally assigned to a post involving the auditing of staff expenditure.

Moreover, he seems to have applied for a number of vacancies in Career Bracket A 5/A 4 which were not specifically legal in character but were concerned with the activities of the Court of Auditors in general, or with auditing in particular. The applicant seems to have been unsuccessful because he did not fulfil the requirement of six years' relevant experience.

On the other hand, his application for a vacant post of principal administrator (A 5/A 4) in the Legal Department was successful. He performed the duties attaching to that post from August 1980 until the adoption of the contested decision of 14 April 1983 reassiging him

to the Staff and Operational Expenditure Sector, which is an auditing sector. His duties in the Legal Department involved giving legal advice on a wide range of matters and dealing with actions brought before the Court of Justice against decisions of the Court of Auditors. The Legal Department forms part of the Secretariat of the Court of Auditors. Apart from the applicant, it also consisted of the Secretary of the Court of Auditors who, in addition to his other duties, acted as legal adviser and was therefore Mr Lux's superior. Since 15 January 1981 the Secretariat in its entirety has been within the sphere of responsibility of the President of the Court of Auditors.

Finally, I would mention that on 27 April 1983 Mr Lux submitted a complaint under Article 90 of the Staff Regulations against the decision of 14 April 1983 reassigning him; it would appear from the documents before the Court that his complaint remained unanswered. On 28 April 1983 the applicant, at the same time as he lodged the present application, applied to the Court for the adoption of an interim measure suspending the operation of the decision reassigning him; the latter application was dismissed by the Court by order of 20 May 1983.

3. Appraisal of the applicant's submissions

3.1. First submission

The applicant contends that the Court of Auditors lacked the power to adopt the decision of 24 March 1983 transferring his post from the President's Sector to the Staff and Operational Expenditure Sector. In his view, such a decision may be adopted only by the appointing authority, in this case the President of the Court of Auditors, in accordance with *inter alia* Articles 2 and 7 of the Staff Regulations.

In a general sense, the applicant contends that the Court of Auditors, irrespective of its internal division of powers, may adopt decisions regarding the allocation of posts as between sectors only in so far as such posts are vacant, whilst in other circumstances it is for the President to exercise that power in his capacity as appointing authority.

The Court of Auditors refers in the first place to the internal division of powers under its Rules of Procedure. It is clear from Article 7 (e) of the Rules that the President is to act as the appointing authority in accordance with Article 2 of the Staff Regulations and from the second sentence of Article 13 (1) of the Rules that the Court of Auditors itself is to be responsible for the allocation of posts as between the different sectors.

The above-mentioned provisions read as follows: [1]

"Article 7: Functions of the President

The President shall

...

(e) exercise, in respect of the officials and other servants of the Court, the powers vested in the appointing authority by the Staff Regulations of Officials of the Communities and by the Conditions of Employment of Other Servants of the European Communities;

...

Article 13: Organization of departments

The Court shall determine the structure of its departments. It shall allocate the posts among the sectors." [2]

1 — Taken from the English version of the Rules of Procedure of the Court of Auditors of the European Communities, as drawn up at the meeting of the Court of Auditors on 21 May 1981.

2 — *Translator's note:* This footnote in the original text of the Opinion is concerned solely with a mistranslation in the Dutch version of the article which does not occur in the English version.

According to the documents before the Court, the power of the Court of Auditors to allocate the posts provided for in the budget as between sectors was most recently confirmed on 21 January 1982. In that connection it was pointed out at the time *inter alia* that the posts were to be allocated on a proposal from the President who could be assisted for this purpose by an *ad hoc* group of colleagues.

Next, the defendant contends that the decision of the Court of Auditors of 24 March 1983 must be regarded as a general decision transferring a post provided for in the budget. The decision-making process must be seen as involving first of all the adoption of a general decision transferring a post provided for in the budget and, secondly, the assignment of the applicant to the reallocated post pursuant to the individual decision of the President of 14 April 1983.

That procedure, according to the defendant, is entirely consistent with its Rules of Procedure and with the Staff Regulations.

In the defendant's view, the applicant is confused by the fact that in other institutions the same authority is responsible both for the organization of departments and for the adoption in connection therewith of individual decisions concerning the officials themselves.

With regard to this submission, I should state in the first place that the applicant and the defendant agree that, in reality, the operation amounts to the reassignment of the applicant together with his post from the President's Sector to the Staff and Operational Expenditure Sector.

According to the established case-law of the Court, reassignment is permissible provided that the official is reassigned to an equivalent post and the reassignment is in the interests of the service, in conformity with Article 7 of the Staff Regulations (see *inter alia:* Joined Cases 33 and 75/79, *Kühner* v *Commission,* [1980] ECR 1677; Joined Cases 161 and 162/80, *Carbognani* v *Commission,* [1981] ECR 543; Case 260/80, *Kindermann* v *Commission,* [1981] ECR 1329; and Case 125/80, *Arning* v *Commission,* [1981] ECR 2539). Those cases seem to be concerned with the transfer of an official together with his post. The formalities laid down for transfers by Articles 4 and 29 of the Staff Regulations need not be complied with since no vacancy has arisen.

In considering the first submission, it is important in my view to refer to the full text of the two decisions in question. Moreover, the applicant did not have an opportunity to inspect the first decision of the Court of Auditors of 24 March 1983 until after a copy thereof was submitted by the defendant to the Court at the latter's request. The applicant was notified of the decision orally on 24 March 1983 by the Secretary of the Court of Auditors.

According to the minutes of the meeting of the Court of Auditors on 24 March 1983, a copy of which has been submitted to the Court, the decision reads as follows:

"10. 3. Proposal to amend the allocation of posts as between the sectors

[The President]

In accordance with the decisions of the Court concerning the allocation of posts as between the sectors, the President submits two proposals changing the allocation of posts as between the President's Sector and the Staff and Operational Expenditure Sector.

The first change consists of transferring a post of principal administrator/lawyer from the President's Sector to the Staff and Operational Expenditure Sector.

The second change consists in transferring a post of administrator from the Staff and

Operational Expenditure Sector to the President's Sector.

The Court hereby *adopts* both proposals." [1]

The decision of 14 April 1984, [2] adopted by the President acting as appointing authority, is as follows:

"The President of the Court of Auditors,

Having regard to the Staff Regulations of Officials of the European Communities and in particular Article 7 (1) thereof,

Having regard to the Rules of Procedure of the Court of Auditors and in particular Article 7 relating to the exercise of the powers vested in the appointing authority by the Staff Regulations of Officials,

Having regard to the minutes of the meeting held by the Court of Auditors on Thursday, 24 March 1983 (Doc. DEC 37/83 Rev. 1), adopted at the meeting on 14 April 1983, and more precisely paragraph 10 (3) of those minutes, whereby the Court changed the allocation of posts provided for in the budget as between the President's Sector and the Staff and Operational Expenditure Sector,

Whereas pursuant to that decision of the Court of Auditors, there is a post of principal administrator/lawyer in the Staff and Operational Expenditure Sector,

Whereas that is the only post in the detailed list of posts of the Court of Auditors ('allocation of posts provided for in the budget among the sectors') which corresponds to the specialism and to the qualifications of Mr Lux,

Has adopted this decision:

1. In the interests of the service, the posting of Mr Charles Lux (Personnel No 90137) shall be changed as follows:

   Former posting: President's Sector

   New posting: Staff and Operational Expenditure Sector.

2. This decision shall enter into force on 15 April 1983.

Done at Luxembourg, 14 April 1983

Pierre Lelong."

1 — Unofficial translation of the original French text, which reads as follows:

"10.3. Proposition de modification de la répartition des emplois entre les secteurs

[M. le Président]

Conformément à la décision de la Cour concernant la répartition des emplois entre les secteurs, le PRÉSIDENT soumet deux propositions de modification de la répartition des emplois entre les secteurs 'Présidence' et 'Personnel et Fonctionnement'.

La première modification consiste à transférer un poste d'administrateur principal-juriste du secteur 'Présidence' vers le secteur 'Personnel et Fonctionnement'.

La deuxième modification consiste à transférer un poste d'administrateur du secteur 'Personnel et Fonctionnement' au secteur 'Présidence'.

La Cour *adopte* ces deux modifications."

2 — Unofficial translation of the original French text, which reads as follows:

"Le président de la Cour des comptes,

vu le statut des fonctionnaires des Communautés européennes et notamment son article 7, § 1;

vu le règlement intérieur de la Cour des comptes et notamment son article 7 relatif à l'exercice des pouvoirs dévolus par le statut des fonctionnaires à l'Autorité investie du pouvoir de nomination;

vu le procès-verbal de la réunion tenue par la Cour des comptes le jeudi 24 mars 1983 (doc. DEC 37/83 Rév. 1) adopté à la réunion du 14 avril 1983, et plus précisément le point 10.3 par lequel la Cour a modifié la répartition des emplois budgétaires entre le secteur 'Présidence' et le secteur 'Personnel et Fonctionnement';

considérant qu'en application de cette décision de la Cour, un emploi d'administrateur principal juriste existe au secteur Personnel et Fonctionnement';

considérant que cet emploi est le seul, dans l'organigramme de la Cour (Répartition des postes budgétaires entre les secteurs'), qui corresponde à la spécialité et au niveau de qualification de M. Lux;

décide:

1. Dans l'intérêt du service, l'affectation de M. Charles Lux (no personnel 90137) est modifiée comme suit:
   Affectation ancienne: Secteur Présidence
   Affectation nouvelle: Secteur Personnel et Fonctionnement.
2. La présente décision prend effet le 15 avril 1983.

Fait à Luxembourg, le 14 avril 1983

Pierre Lelong"

Both of those decisions confirm the Court of Auditors' description of the procedure which was followed. First, a decision transferring the post in question was adopted by the Court of Auditors itself. Subsequently, the President adopted an individual decision assigning the applicant to the post in the new sector. In that connection, I would refer in particular to the fourth paragraph of the preamble to the second decision.

However, I am not swayed by the defendant's arguments in that regard. The decision transferring the post, which was already occupied, must in this case be regarded as an individual decision. The Court of Auditors was aware that the post involved was the only post of principal administrator in the Legal Department — which moreover, apart from the applicant, consisted only of the Secretary himself — and that it was held by the applicant. This was confirmed by the Court of Auditors during the oral procedure. A measure depriving an official of his post must be of individual concern to him. Such a measure is of the same importance as the assignment of an official to a post. It is of the utmost importance that an official should be able to proceed on the assumption that a measure depriving him of his post may be taken only in accordance with the rules of the Staff Regulations. In that connection I would refer to Article 41 of the Staff Regulations concerning non-active status. Under the system established by the Staff Regulations, an individual decision of that kind may be adopted only by the appointing authority.

The preamble to the decision of the President of 14 April 1983, in particular the fourth paragraph thereof, seems to indicate the existence of a vacancy ("... there is a post ... in the ... Sector ...") which was subsequently filled by the assignment of the applicant thereto. In those circumstances, the formalities prescribed by Articles 4 and 29 of the Staff Regulations must be complied with. However, since both of the parties are agreed that a reassignment is involved, and there appears not to have been a vacancy, I will not consider this aspect of the case any further.

Has the Court of Auditors exceeded its powers and, consequently, is the decision of 24 March 1983 reallocating the post provided for in the budget void? The answer to that question must in my view depend on whether the guarantees given to officials by the Staff Regulations were infringed by the procedure which was followed. The division of powers within the Court of Auditors may not of course detract from the obligations laid down by the Staff Regulations. In that connection, I am mindful in particular of the requirements of Article 25 of the Staff Regulations to the effect that every individual decision must at once be communicated in writing to the official concerned and must state the reasons on which it is based.

In assessing the validity of the decisions in question, it is necessary, in my view, to consider the first and second submissions together.

3.2. Second submission concerning an insufficient statement of reasons

In the first place, it is quite clear from the second decision that the reasons stated therein relate only to the reassignment of the applicant and that the reallocation of the post which preceded that reassignment is merely stated as a fact, unaccompanied by any reasons. The question at issue is whether this fully satisfies the requirements laid down by the Court relating to the reasons to be stated in the event of reassignment.

The duty to state the reasons on which a decision to reassign an official is based

must, according to the established case-law of the Court, be viewed in the light of the relationship between the broad margin of discretion enjoyed by the institutions with regard to the organization of their departments and the incidental nature of the disadvantages which the new posting may entail for the official concerned (see *inter alia* Joined Cases 33 and 75/79, *Kühner* v *Commission,* [1980] ECR 1677, and Case 125/80, *Arning* v *Commission,* [1981] ECR 2539). A reference to the interests of the service alone is no longer considered sufficient by the Court, as I infer from *inter alia* paragraph 12 of the decision in the *Arning* case. According to the established case-law of the Court, it is necessary to take into consideration not only the document giving notice of the decision but also the context, that is to say the circumstances in which the decision was adopted and brought to the knowledge of the official concerned.

As I stated earlier, the decision of 14 April 1983 states only the reasons for the change in the applicant's posting but contains no reference whatsoever to the transfer of his post, which is the only reason given for the reassignment. The interests of the service are not referred to in the statement of reasons but only in the text of the decision itself and are not further clarified in any way.

The question arises whether that defect can be remedied by reference to the circumstances in which the decision was adopted.

The first decision of 24 March 1983 clearly played a decisive rôle in that respect. The text of that decision was, however, never communicated as such to the applicant but, as I stated earlier, was produced by the defendant only in reply to a question put to it by the Court.

Furthermore, it is clear that even in that decision the defendant did not state the reasons for the transfer of the post. On the other hand it is common ground that, at the President's request, the Secretary of the Court of Auditors informed the applicant orally of the decision in question on 24 March 1983.

There is no indication in the documents before the Court that before the first decision was adopted the reallocation of posts was ever discussed with the applicant or that the parties subsequently had a genuine discussion on the subject.

It is true that the applicant maintains that prior to the adoption of the decision in question he was informed by the Secretary that the President, as a result of another action which the applicant had brought before the Court of Justice and of certain unwelcome advice which he had given the President, had considered removing him from the President's Sector and transferring him to another sector.

During the oral procedure, the Secretary denied that the President had threatened to transfer the applicant for those reasons. It is clear from the Secretary's testimony, however, that the President had informed the Secretary of his concern that the only member of the Legal Department, apart from the Secretary himself, had brought an action before the Court of Justice. On that occasion, according to the Secretary, the President also referred to the practice allegedly applied in the other Community institutions of transferring an official in circumstances of that kind. The Secretary states that he informed the applicant, at the President's request, of the latter's concern in regard to this matter.

Against that background to the decision, the reasons for its adoption must in my view be stated in full and must not leave the official in any doubt as to the true reasons which led the administration to adopt its decision.

The purpose of the duty to state the reasons on which a decision is based is both to permit the person concerned to determine whether the decision is defective, making it possible for its legality to be challenged and to enable it to be reviewed by the Court (see *inter alia* the judgment of the Court of 14 July 1983 in Case 176/82, *Nebe* v *Commission,* [1983] ECR 2475).

In my view, the reasons on which the decision was based were given by the Court of Auditors only in the course of proceedings before the Court, having regard to the fact that the applicant's complaint under Article 90 of the Staff Regulations remained unanswered. According to the reasons subsequently provided, the Staff and Operational Expenditure Sector, which is responsible for auditing staff expenditure and must consequently carry out its audits on the basis of the Staff Regulations and of the relevant case-law of the Court, needed an official with a legal background for those reasons. The Court of Auditors also stated, though only during the oral procedure, that the Member who was responsible for that sector at the time submitted a request for a lawyer to the President for the reasons stated. There is no further reference to that request in the documents before the Court.

In my view, however, a statement of reasons which is inadequate at the time of the adoption of the decision cannot be remedied subsequently during the proceedings before the Court, as was indeed held by the Court in Case 195/80 (*Michel* v *Parliament,* [1981] ECR 2861).

In view of the uncertain circumstances in which the decision was adopted, I consider the statement of reasons to be inadequate. This must be viewed in conjunction with the application of an incorrect decision-making procedure by the Court of Auditors involving the adoption by two separate authorities of two separate decisions; the first decision does not state the reasons on which it was based and yet the second is expressly based on the first and does not state the reasons for the transfer of the post which was decided upon in the first decision and which is an essential element of the reassignment. That fundamental defect cannot in my view be remedied by reference to the circumstances in which the decision was adopted. In this instance the opposite may even be the case.

3.3. Conclusions regarding the first and second submissions

In the light of the foregoing considerations, I have come to the following conclusions as regards the first two submissions:

(a) The decision reallocating the post in question is an individual decision in this case since the duties attaching to that post were performed by the applicant. Consequently, in the light of the system established by the Staff Regulations, the decision should have been adopted by the appointing authority. Moreover, the requirement of Article 25 to the effect that the decision must at once be communicated in writing to the official concerned and the obligation to state the reasons on which the decision was based should have been fulfilled.

(b) The individual decision of 14 April 1983 reassigning the applicant also omits to state any of the reasons for the transfer of the post and gives that transfer as the sole reason for its adoption, when, far from being a valid reason, it constitutes merely another facet of the same inadequately reasoned decision reassigning the applicant together with his post. That defect cannot in my view be made good by a reference to the specific circumstances in which

the decision was adopted. Nor can it be remedied by the statement made in the decision itself, but not explained in detail, to the effect that the change in the applicant's posting was in the interests of the service.

On the basis of the foregoing considerations I therefore propose that the Court should annul both of the decisions in question.

For the sake of completeness, however, I shall also consider the applicant's remaining submissions.

3.4. In its *third submission* the applicant contends that the defendant has infringed Articles 4, 7 and 29 of the Staff Regulations, inasmuch as there can be no question of reassignment where it entails a substantial change in the duties of an official, as is the case in these proceedings.

The applicant refers in that connection to the description of duties set out in the vacancy notice relating to the post which he held in the Legal Department. In his view, an official may not be transferred from a legal post to an auditing sector since that would entail a substantial change in the official's duties.

No support whatsoever is to be found for this submission in the case-law of the Court. The Court has held that an official may be reassigned together with his post, provided that it is in the interests of the service and the official is assigned to an equivalent post. The latter condition is connected with the requirement contained in Article 7 to the effect that the post to which an official is assigned must correspond to his grade, and it is not connected with the duties pertaining to the post as such.

It is not disputed that the applicant's new post corresponds to his grade (A 5/A 4). This submission cannot therefore be accepted.

3.5. The *fourth submission,* in which he contends that in view of his legal background he is more suited to working in the Legal Department than in an auditing sector, is also of no avail to the applicant.

According to the established case-law of the Court, the Community institutions are at liberty to organize their departments to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks (see *inter alia* Joined Cases 161 and 162/80, *Carbognani* v *Commission,* [1981] ECR 543, paragraph 28 of the decision).

It is also apparent from the documents before the Court that, from the end of October 1978 until his appointment to a post in the Legal Department, the applicant worked in the same auditing sector as that to which he has now been reassigned. The experience which he acquired in that capacity is expressly referred to in his periodic report for the period from 1 January 1980 to 31 December 1981. The applicant cannot therefore maintain that he is unsuited to working in an auditing sector.

3.6. In his *fifth submission* the applicant contends that the defendant is guilty of a misuse of powers inasmuch as the reassignment constitutes a disguised disciplinary measure adopted on account of the fact that the applicant had brought an action before the Court of Justice for a declaration that he should be reclassified in a higher grade. The defendant denies the applicant's assertion and observes once again that the decision in question was adopted because a lawyer was needed in the auditing sector concerned. During the oral procedure the present head of the applicant's sector clarified that observation by pointing out that his sector had at its disposal an accounting expert (expert-comptable) but not a lawyer.

According to the case-law of the Court, a decision may amount to a misuse of powers "if it appears, on the basis of objective, relevant and consistent facts, to have been taken for purposes other than those stated" (Joined Cases 18 and 35/65, *Gutmann,* [1966] ECR 103).

Article 7 of the Staff Regulations provides, so far as is relevant for the purposes of this submission, that reassignment is permitted in the interests of the service, as I have already stated. In the proceedings before the Court, the Court of Auditors has explained in the terms set out above the manner in which that requirement was met in relation to the reassignment of the applicant.

In my view, however, there are a number of facts and circumstances which give rise to doubts as to whether the applicant was reassigned exclusively in the interests of the sector concerned or whether the decision in question was also influenced by the fact that the applicant had instituted proceedings before the Court.

With regard to that uncertainty, I would make the following remarks. First of all, however, it must be stated that consideration of this submission is of course seriously complicated by the fact that the decision in question does not contain an adequate statement of the reasons on which it was based, as I mentioned earlier.

None of the documents submitted indicate that there is any objective need to enlarge the sector concerned by adding a qualified lawyer to it. As I said earlier, it was not until the stage of the oral procedure that it was disclosed that the Member who was responsible for the sector in question at the material time had submitted a request for a lawyer to the President. However, no further details were given and the Court has not been provided with a copy of that request.

The head of the applicant's sector stated in reply to a question put to him by counsel for the applicant that he was not aware that any such request had been made to the President since he had been working in that sector only since January 1983 and the decision to reassign the applicant was taken shortly afterwards. On reflection, however, a request of that kind would seem in his view to make sense.

In that connection I would again refer to the fact that the Secretary confirmed during the oral procedure that he had informed the applicant of the President's concern regarding the fact that the applicant had brought an action before the Court. Moreover, the Court of Auditors stated in its "supplementary reply" that the applicant was no longer able to perform certain tasks in the Legal Department as a result of the fact that he had instituted proceedings before the Court.

On the other hand, I am not convinced that the arguments put forward by the applicant support his contention that there has been a misuse of powers.

I cannot share his view that he now lacks any prospect of advancement. The applicant had applied in the past for a number of auditing posts which were vacant and had referred in his applications to the relevant experience which he had acquired in his first post at the Court of Auditors. A remark to that effect was, according to the statement made by the Secretary during the oral procedure, also included in his periodic report at his express request. Moreover, I also consider that the Court of Auditors has argued convincingly that the applicant has better opportunities for advancement in one of the seven auditing sectors than in the far more restrictive administrative and legal sectors, in view of the experience which he had previously gained in the field of auditing and in his present post. The argument that there is not sufficient

work for the applicant in his new post is more difficult to appraise. That argument was discussed at length by both parties and their views coincide as regards the tasks entrusted to the applicant. Since May 1983 he has worked in particular on four studies concerning "child allowances, *ad personam* grades, Ispra staff not covered by the Staff Regulations and a compendium of Community staff categories". The parties however disagree entirely as regards the importance attaching to those tasks. The applicant's detailed description of the amount of time spent by him on those studies is impressive. However, I do not believe that the Court can express a view in that regard since it does not appear that the applicant was without work. Moreover, it seems to me that the applicant is more concerned with the nature of his duties. He considers that he should perform not auditing tasks but legal tasks of the same kind as those which he carried out in the legal Department. Clearly, it was in that light that he assessed his tasks.

That view is incorrect and must be seen in conjunction with the applicant's third submission. The applicant must realize that he is expected to perform legal duties within the Staff and Operational Expenditure Sector, which is an auditing sector. Moreover, the argument that another official was appointed to the Legal Department does not point *per se* to the conclusion arrived at by the applicant, but could, no doubt, also demonstrate a desire to ensure continuity in the service.

Having regard to all the circumstances, I consider that there are certain doubts as to the true reason for the reassignment of the applicant. In saying that, I do not deny that there was a need for a qualified lawyer in the Staff and Operational Expenditure Sector. However, even if the institution of proceedings before the Court was partly or even primarily the reason for the reassignment of the applicant, that still does not amount in my view to a misuse of powers in the sense that the Court of Auditors pursued a purpose unconnected with "the interest of the service" within the meaning of Article 7 of the Staff Regulations.

It may be that, if that was the case, there were objective reasons based on the interests of the service which led to the applicant's reassignment, since the applicant was dealing with complaints lodged under Article 90 of the Staff Regulations and with actions brought before the Court of Justice by his colleages. Where, however, a decision to reassign an official is adopted on grounds such as those, great care must be taken and a decision to that effect should be adopted only on the basis of an objective investigation. A member of the Legal Department must also be in a position to avail himself of his rights. In that connection, I would refer to the defendant's remark during the oral procedure to the effect that certain legal tasks are also performed by other lawyers attached to the Secretariat rather than the Legal Department. Consequently, pending a decision by the Court on the action brought by the applicant, other complaints based on the Staff Regulations could be dealt with by other lawyers.

In the light of those considerations, I consider that, in spite of the doubts which have arisen in this connection, the applicant has not proved to the standard required by law that the appointing authority pursued any purpose other than that which was lawful (Case 23/76, *Pellegrini* v *Commission*, [1976] ECR 1807).

I conclude my examination of the applicant's fifth submission with the question whether this action, like so

many others concerning reassignment, might not have been prevented had the applicant been more fully informed by the administration beforehand.

In its judgment in Case 125/80, *Arning*, the Court held that there was no duty to do so, but that such action on the part of the administration was in keeping with the good faith and mutual confidence which should exist in the relationship between officials and the administration. The Court added that such a practice is also likely to prevent legal disputes. That line of action was not followed in this case, which is all the more regrettable as the reassignment of only a single official was involved.

4. Conclusion

In conclusion, I propose that the Court should annul the decision of the Court of Auditors dated 24 March 1983 transferring the post held by the applicant from the President's Sector to the Staff and Operational Expenditure Sector on the ground that the Court of Auditors lacked the power to adopt that decision and failed to take account of the provisions of Article 25 of the Staff Regulations, and that it annul the decision of the President of the Court of Auditors dated 14 April 1983 assigning the applicant to the reallocated post on the ground that the statement of the reasons on which that decision was based was inadequate. The Court of Auditors should accordingly be ordered to pay the costs.