On those grounds

THE COURT (First Chamber)

hereby:

1. **Dismissed the application;**

2. **Orders the Commission to bear its own costs and one half of the applicant's costs.**

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 21 May 1981.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 19 MARCH 1981 [1]

Mr President,
Members of the Court,

The case in which I am giving my opinion today is brought by Mr Jacobus Kindermann against the Commission. Mr Kindermann is a Principal Translator of Dutch mother-tongue and was employed from 1 February 1970 to 31 December 1979 by the Translation Section of the Administrative Commission on Social Security for Migrant Workers (hereinafter referred to as "the Administrative Commission"), an international body which is provided for by Articles 80 and

1 — Translated from the German.

81 of Regulation No 1408/71 of the Council of 14 June 1971, and whose secretariat is provided by the Commission.

In his action Mr Kindermann seeks the annulment of the decision taken on 4 October 1979 by Mr Tugendhat, who at the time was the member of the Commission responsible for questions relating to staff and administration. By virtue of that decision the applicant was assigned, with effect from 1 January 1980, no longer to Division IX-D-3, the Translation, General Matters Division, but to Division IX-D-8, the Dutch Translation Division of Directorate IX-D, the Translation, Documentation, Reproduction and Library Directorate. This action thus comes within the class of proceedings, at present very numerous, which in various connexions arise from the decisions on the change in the employment of officials of the Commission with or without a change in the place of residence. It has in particular a close connexion with the action brought by Mrs Elke van Schaik, a colleague of Mr Kindermann in the Translation Section of the Administrative Commission, which is at present pending before the Second Chamber (Case 168/80); a decision was also taken on 4 October 1979 by Mr Tugendhat in relation to Mrs Schaik assigning her to the German Language Division of Directorate IX-D.

I — 1. For a proper understanding of the case I think it is necessary first to outline, simultaneously with the applicant's career, the structural development of the Translation Department of the Commission.

After being engaged on 15 June 1959 as an auxiliary translator Mr Kindermann was appointed by decision dated 3 December 1962 with effect from 1 January 1962 as a permanent official in Grade L/A 6 with the newly established Translation, Reproduction and Distribution of Documents Division, which came within the Internal Affairs Directorate of the Directorate-General for General Administration. He was specifically assigned to the Dutch Translation Section of the Translation Division. It was however only very much later that that section became an independent administrative unit.

(a) By decision of 1 February 1970 the applicant was placed at the disposal of the Translation Section of the Administrative Commission.

Contrary to what may be supposed from the use of the concept "secondment" in various documents contained in the files of the Commission's Administration, that measure did not involve secondment but what was in fact his placement at the disposal of the above-mentioned section. As Mr Kindermann rightly observed in his complaint through official channels, although the concept "seconded translator and reviser" is generally used in some departments, it has however no connexion with the concept "secondment" as defined in the Staff Regulations. Article 37 of the Staff Regulations relates on the one hand to officials who have been directed in the interests of the service to serve temporarily in a post outside their institution or to assist temporarily a person holding an office provided for in the Treaties or with an elected President of one of the institutions or organs of the Communities or the elected Chairman of one of the political groups in the European Parliament and on the other hand to officials who have at their

own request been placed at the disposal of another of the institutions of the Communities. Placement at disposal therefore, which represents no legal status under the Staff Regulations, is, as the Commission has observed, a matter for the head of department. In the present case it may be assumed that the decision to place the applicant at the disposal of the Administrative Commission, which is contained neither in the pleadings nor in his personal file, was taken, perhaps orally, by the head of the division responsible for translations.

With his new duties the applicant continued to belong to the Translation, Reproduction and Distribution of Documents Division. The assessment of his work however was now the responsibility of the Secretary-General of the Administrative Commission, the Head of the Social Security for Migrant Workers Department and the Head of the Translation Section of the Administrative Commission.

(b) On 1 January 1973 the division responsible for translation was elevated to the rank of a directorate, namely Directorate D, the Translation, Documentation, Reproduction and Library Directorate of Directorate-General IX (Directorate-General for Personnel and Administration). As from 1 November of the same year the translation sections corresponding to the various languages were made into divisions (IX-D-4 to IX-D-9). The translation section to which the applicant originally belonged became the Dutch Translation Division IX-D-8.

Apart from these truly linguistic divisions the new structure included the Translation, General Matters Division IX-D-3, whose Head was Mr Pignot, the previous head of the single translation division. Division IX-D-3 was entrusted with the responsibility for the administrative tasks connected with the work of the language divisions, and under it were placed the translators who had been placed at the disposal of the various directorates-general of the Commission and in particular those who worked for the Administrative Commission.

2. On 22 August 1979 Mr Ciancio, the Director of Directorate IX-D, called the translators working for the Administrative Commission together and informed them that those who had been working there for ten years or more would be "recalled" to the translation division corresponding to their language. He indicated that this principle would be applied first of all to four translators and revisers, among them Mrs van Schaik and Mr Kindermann. Both were on holiday at the time of the meeting.

In the course of the meeting the Director for Translations read out a circular which was to be sent to every translator as soon as he had been employed for ten years with the Administrative Commission informing him of the change in his employment. The circular addressed to the applicant was signed by Mr Ciancio the same day. In it the applicant was in particular requested to contact his Head of Division, Mr Pignot, and then to report on 2 January 1980 to Mr Dallinga, the Head of the Dutch Translation Division.

On 27 August the applicant returned from holiday and was informed by his colleagues of the decision affecting him. Subsequently, albeit indirectly, he received written confirmation of the decision when he received a copy of a communication dated 22 August 1979 from the Secretary-General of the Administrative Commission, Mr Schneider,

to Mr Ciancio, to which I shall return when I discuss the merits of the application. Ultimately, on 4 September 1979, the applicant received his Director's circular through official channels.

For his part, the applicant sent Mr Ciancio on 17 September a letter in which he voiced reservations in respect of the decision taken in regard to him. On 3 October, after waiting in vain for an answer, he lodged a complaint against the circular pursuant to Article 90 (2) of the Staff Regulations.

Some days later he received the formal decision taken by Mr Tugendhat on 4 October 1979 against which he lodged a fresh complaint on 12 October which essentially repeated the content of the first complaint, supplementing it however in regard to the legal nature of the decision.

These complaints were expressly rejected only on 22 April 1980, that is to say, more than two months after the expiry of the period at the end of which there is presumed to be an implied decision of rejection. In the meantime, on 21 February, Mr Kindermann's appeal was lodged with the Court.

II — The Commission has raised an objection of inadmissibility to the action brought by Mr Kindermann on the ground that the decision taken is a purely internal measure or organization which is not open to complaint and cannot therefore be contested pursuant to Article 91 of the Staff Regulations.

On closer consideration it seems to me that this contention is based on two arguments.

1. The Commission relies on the case-law of the Court of Justice to the effect that only such acts or omissions as are apt to affect the legal position of officials as governed by the Staff Regulations may be the subject of complaint. Since the applicant has neither proved nor even alleged that the level of the duties entrusted to him since 1 January 1980 does not correspond to his grade and post as guaranteed by Articles 5 and 7 of the Staff Regualtions, his action is inadmissible.

(a) The Commission relies on four judgments. I should like to observe from the outset that, of these earlier decisions, namely the judgment in Case 66/75 *Hebrant (née Macevicius)* v *Parliament* [1976] ECR 593; Case 129/75 *Hirschberg (née Nemirovsky)* v *Commission* [1976] ECR 1259 and Case 124/78 *List* v *Commission* [1979] ECR 2499, three concern facts which are different from those of the present case and that in the fourth and, moreover, oldest of those decisions, a view was taken which in the meantime the Court has abandoned.

In this fourth case, Case 64/69 *Reinarz* v *Commission* [1970] ECR 275, the applicant sought the annulment of a decision by which he was assigned to the post of Principal Adviser in Grade A 2 although he would have preferred to be appointed Director. The Court held that that decision did not adversely affect the applicant since the posts of Director and Principal Adviser fall within the same grade. The difference between their respective powers and duties, whilst it

might justify a personal preference for one or the other post, yet did not infringe the rule of equivalence between grade and post on which officials are entitled to rely (paragraphs 9 and 10 of the Grounds of Judgment).

(b) The Court however obviously abandoned that view in Case 35/72 *Kley* v *Commission* [1973] ECR 679. In his application Mr Kley sought the annulment of the implied decision rejecting the complaint he had made against a decision of the Director-General of the Joint Research Centre relieving him of his duties as Head of the Physics Division at the Ispra Research Centre and appointing him Adviser to the Scientific Directorate of the Centre. The Commission argued, *inter alia* on the basis of the *Reinarz* judgment, that the action was inadmissible since it was directed against a measure which did not adversely affect the applicant. It contended that the transfer decision did not involve for him any modification of his material interests or any reduction in his rank in the hierarchy, and consequently did not adversely affect his legal position (paragraphs 2 and 3 of the Grounds of Judgment).

Departing from its previous case-law the Court held as follows: "Even though a transfer decision may not affect the material interests or the rank of an official it may, having regard to the nature of the duty in question, and to the circumstances, adversely affect the morale and the future prospects of the employee concerned. In these circumstances, it cannot be considered *a priori* that such a decision is not capable of adversely affecting the person concerned" (paragraphs 4 and 5 of the Grounds of Judgment).

In case it should be objected that that decision of the Court, which related to a transfer, cannot be transposed to the present case which at most concerns an alteration in the employment of an official without involving any change in his post, let me observe that the concept "transfer" was used in that case by the Court, and moreover also by the Commission, in a broad sense and not in the precise sense as used in the Staff Regulations (cf. my opinion of 12 February 1981 in Joined Cases 161 and 162/80 *Carbognani and Coda Zabetta*, p. 15 of the hectographed text, and paragraphs 19 and 20 of the decision of the Court (Second Chamber) of 24 February 1981). It is apparent from the documents in the *Kley* case that Mr Kley's employment was altered without any change in his post. In those circumstances I consider that precedent to be sufficient authority for rejecting the contention of the Commission.

(c) Moreover, in so far as what is expressly at issue is an alteration in employment without change of post, a concept which the Commission has only recently used before the Court, I may be permitted to refer to the judgment of 28 May 1980 in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1694, in which the *Kley* judgment was confirmed, if only in a restricted form. After the Court had voiced its doubts "whether the decision assigning the applicant to a new post should be

regarded as a transfer within the meaning of the Staff Regulations rather than as an internal measure relating to the reorganization of the department" it held that in that case the effects of the measure were the same as those of a transfer (paragraph 12 of the decision). Although the applicant may have retained the same basic post of a Principal Administrator and the same grade, the modification in his duties, reflected in a change in the heading to which they corresponded pursuant to the definition of duties for every basic post provided for in the second subparagraph of Article 5 (4) of the Staff Regulations, was likely to have an influence on his prospects and affect him adversely. Even if the modification of his duties may not have affected Mr Kindermann, who has remained a Principal Translator, in exactly the same way, it cannot *a priori* be excluded that they were *likely* to have an effect on his future prospects. In any event that is one of the arguments put forward by him to show that the contested decision was not in the interests of the department.

(d) Certainly if that view is accepted the door is wide open to the admissibility of the action. An official need only allege that a decision to alter his employment taken with regard to him is likely to affect his future prospects for an action brought by him against the decision to be admissible.

I do not however consider that result in any way aberrant. Like Mr Advocate General Trabucchi in his opinion in the *Kley* case ([1973] ECR 692) I think that on the question of the *admissibility* of the action a broader view should be taken than on the decision on the *merits*. As Mr Advocate General Trabucchi observed, admissibility presupposes the existence of an act having adverse effect whereas if the applicant is to win on the merits he must show that the measure which he seeks to have annulled infringes his personal rights. Mr Advocate General Trabucchi further observed that "Article 91 of the Staff Regulations ... sets up a procedure which serves not only to protect the official's subjective rights, as is the case in an action where the Court has unlimited jurisdiction (the Court's 'unlimited jurisdiction', designed to protect officials' subjective rights, is provided only for disputes of a financial character), but is intended rather to allow objective examination of the legality of the conduct of the Community administrative authority." I therefore agree with him that it is justifiable "to accept a concept of 'act adversely affecting' clearly distinguished from, and in every case wider than, that of 'act infringing the official's subjective right' ", and that "the fact that an official prefers one post rather than another would not, of course, be sufficient to render illegal a decision by the administration transferring him against his will, but it is sufficient to establish the admissibility of an application under Article 91."

(e) Since however according to the Commission's own admission transfer decisions differ from decisions concerning the alteration of employment without any change in the post only

formally and not in substance, it would be illogical to accept the former as admissible whilst denying the admissibility of the latter.

In my view therefore an alteration in employment without any change in a post, just like an actual transfer, must be regarded as a measure capable of adversely affecting a person and accordingly an action against it is admissible.

2. It only remains therefore to consider whether the decision on the alteration in the employment of the applicant was in fact of such a nature or whether its significance was confined to informing him that he was no longer at the disposal of the Administrative Commission.

The Commission does admit that the decision of 4 October 1979, from a formal point of view, involves, as is apparent from its wording, an alteration in employment. It maintains, however, that neither in practice nor from the point of view of organization is this the case. It is not so from the point of view of practical reality since the applicant was not seconded from the Translation Department of the Commission to the Administrative Commission, but simply placed at the disposal of the latter. Thus the decision recalling him to the Translation Department could only have been one terminating his placement at the disposal of the Administrative Commission. Similarly, from the point of view of organization, the contested decision did not alter the applicant's employment, since he continued to be assigned to the Dutch Translation Section, which, after he was placed at the disposal of the Administrative Commission, was elevated to the rank of a division.

According to the Commission, the fact that the contested decision was taken by the member of the Commission responsible for staff matters and not, as would normally have been the case in respect of a termination of a placement at disposal, by the applicant's superior, the Head of Division IX-D-3, the Translation, General Matters, Division, was due to the new organization of the Translation Department after the applicant had been placed at the disposal of the Administrative Commission. The procedure, which would otherwise be unusual in this connexion, is based on Article 3 of the Commission Decision of 5 October 1977 on the exercise of the powers which the Staff Regulations give to the appointing authority.

That argument does not convince me. Although, as I said in my opinion in the *List* case (at p. 2516), according to the consistent case-law of the Court of Justice "in determining the nature of a legal instrument, reference should be made not to the formal criterion of the external appearance or the description of the measure by the author or a third party but solely to the objective content and the true significance of the instrument", nevertheless in the present case I am convinced that the external nature of the measure in question corresponds to its true nature.

In my view the Commission's argument could only succeed if the applicant had been without interruption a member of the Dutch Translation Division. But that is not the case. Although when the applicant was placed at the disposal of the Administrative Commission in 1970 he came from the Dutch Section of the Translation Division, (which at the time was the only one there was) and was recalled in 1980 to the Dutch Translation Division, that does not take account of the new organization of the

Translation Department carried out in 1973. It is clear that from the time when the Dutch Translation Section was converted into a division until 1 January 1980 the translators placed at the disposal of the Administrative Commission were responsible to the Head of Division IX-D-3, the Translation, General Matters, Division, as their superior but that their work continued to be assessed by the Secretary General and by the Head of the Translation Section of that Commission. In those circumstance I wonder what conceivable role language division — like the Dutch Translation Division IX-D-8 in the case of the applicant — could have played as far as those translators were concerned.

It follows from the foregoing that the contested decision is a genuine decision on the alteraton of employment, for which reason it was taken, by way of a quite normal application of Article 3 of the above-mentioned decision of 5 October 1977, by the member of the Commission responsible for staff matters, and not as a consequence of a new organization of the departments, a possibility which is not provided for in Article 3.

The action brought against the decision must therefore be considered as admissible.

III — The applicant has put forward various arguments on the substance of the case, but has maintained them only to a very partial extent up to the conclusion of the presentation of his case.

First, in his reply he abandoned the submission, which had been the principal one contained in his application, to the effect that there was an infringement of the Commission decision of 24 November 1976 on mobility procedure.

The abandonment of that first submission was in a certain sense compensated for by the fact that, again in the reply, the following three submissions were put forward: breach of the principle of non-discrimination; breach of the duty to have regard to the applicant's welfare and disregard of the rights of the defence. Since these are fresh issues which according to our rules of procedure may not, in principle, be raised during the course of the proceedings, I should have considered them only very perfunctorily, but since the applicant's counsel did not mention them any more in his final speech, I have no hesitation in leaving them completely out of account.

There remain two related submissions: infringement of Article 7 (1) of the Staff Regulations, in so far as that provides that transfers may be made solely in the interests of the service, and misuse of powers. The submission of misuse of powers is of only subsidiary importance in comparison to the submission of disregard of the interests of the service. Only if it is shown that the contested decision was not taken in the interests of the service will it be necessary to seek the true reasons for it elsewhere. If on the other hand it is shown that the decision was justified in the interests of the service it is superfluous to consider whether there is a misuse of powers.

1. In the applicant's view Article 7 (1) of the Staff Regulations was infringed in two respects by the decision to alter his employment. First, the Commission did not observe the procedure provided for in the case of transfer. Secondly, the contested decision was not taken solely in the interests of the service.

As regards the first point of view I need only repeat that the contested decision was not a transfer within the meaning of the Staff Regulations so that there was no reason to observe the formalities provided for such a case.

It is obvious however that it is the disregard of the interests of the service which is the most significant in the eyes of the applicant.

(a) Before I examine the applicant's arguments I think it necessary to clarify the nature of the review which the Court may exercise over decisions on transfers or on alteration of employment.

On the one hand it is clear from the well-established case-law of the Court (judgment of 11 July 1968 in Case 16/67 *Labeyrie* v *Commission* [1968] ECR 293; judgment of 16 June 1971 in Case 61/70 *Vistosi* v *Commission* [1971] ECR 535; judgment of 14 July 1977 in Case 61/76 *Geist* v *Commission* [1977] ECR 1419, judgment of 24 February 1981 in Joined Cases 161 and 162/80 *Carbognani and Coda Zabetta* v *Commission)* that "the Community institutions are at liberty to organize their offices to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks". For that reason, as I stated in my opinion in the *Geist* case "the appointing authority has wide discretion in respect of the issue of measures of that nature which are closely connected with the exercise of the power of the administration. Accordingly, the Court of Justice cannot in such a case enter into all questions of detail, particularly those which involve considerations of expediency" ([1977] ECR at p. 1442).

On the other hand it is not sufficient for the administration to invoke in the abstract the interests of the service for an alteration in the employment of its officials to be *ipso facto* lawful. The concept of the interests of the service is an imprecise and vague one. Its mere mention, which can take on the character of a commonplace and correspond to nothing precise, is not sufficient for even a limited judicial review to be possible. I consider it necessary for the administration to be in a position to state the specific nature of such interest, which should be significantly less important than the adversely affected interests of the officials concerned.

I shall now, in the light of those principles, consider the applicant's arguments which are intended to show that the decision taken in regard to him seem contrary to the well-understood interests of the service and that, contrary to the contentions of the Commission, it in no way corresponded to his own interest.

(b) I shall begin with the general distinction drawn by the applicant according to whether or not there is an alteration in employment following a reorganization of posts such as that which took place within the Translation Department in 1973.

The applicant concedes that the transfer of a post together with its holder may be justified as being in the interests of the service in the context of a reorganization. Since however the decision affecting him was taken without any connexion, even partial, with a reorgan-

ization, it cannot be justified by showing that on the basis of the work which had led to the reorganization his employment was more useful in his new division than in his original division.

Those considerations, in my view, are based on a false premise. The distinction drawn by the applicant seems to me to conflict both with the very general wording of the judgments which admit the Community institutions' right to determine and alter their posts and to employ the staff at their disposal accordingly and with the facts underlying at least some of those judgments (in particular the judgments in *Labeyrie* and *Vistosi).*

(c) The other arguments put forward are of lesser importance. Thus Mr Kindermann mentions the adverse effects of his transfer on the work of the Translation Section of the Administrative Commission which he considers confirmed by the letter from Mr Schneider to Mr Ciancio dated 29 August 1979.

In that letter the Secretary-General of the Administrative Commission pointed out to the Director for Translations his misgivings regarding the effects on the work of the Administrative Commission and the ancillary bodies working in connexion with it which would be caused by the transfer of four revisers and translators who had for a long time been at its disposal. He closed with the request that Mr Ciancio should cancel his decision or postpone implementation of the decisions taken until the necessary replacement staff could be found and settled in to its new tasks.

It is true that at the end of August 1979 Mr Schneider showed some concern but his observations cannot be given the significance which the applicant attributes to them. First it is self-evident that every change in the composition of an administrative department may cause transitional difficulties in the progress of its work.

Secondly a comparison of the documents in the *van Schaik* case with those in the present case affords grounds for thinking that the greatest difficulties within the Translation Section of the Administrative Commission arose not in the Dutch but in the German section. Of four Dutch translators there was a change of employment only in respect of Mr Kindermann and he could have been replaced in a satisfactory manner. It is therefore probable, as the Commission's representative explained at the hearing, that Mr Schneider's letter basically related to the German part of the Translation Section of the Administrative Commission, which, as I have understood, was to lose two experienced members out of four, although it was already overloaded with work, a fact which had led to considerable arrears in the translations required of it.

(d) The applicant adds that to his knowledge the Dutch Translation Division did not need to be strengthened when he was assigned to it. He had therefore been taken from a post where he was needed to be placed in a post in which there was scarcely any work for him. He finds evidence of this in the fact

that at first he was made directly responsible to the Head of the Dutch Division who gave him translation work from various fields.

In considering that submission regard must be had, in my view, to the wide discretion of the Commission in organizing its departments. Since the administration has the right to change the employment of its translators and can justify such changes as being in the interests of the service, it is natural for it to return those translators who were previously at the disposal of other administrative units to the Translation Division corresponding to their language which represents the natural area of their employment. In the same way it is obvious that the person in charge of the division will obtain an impression of the special capacities of each translator by entrusting him with various kinds of translations before assigning him to a specialist group in his division.

The applicant has moreover never alleged that he was given no work.

(e) I think I have thus shown that the contested decision was not against the interests of the service.

There is also no obviously wrongful exercise of discretion. The grounds given by the Commission for the applicant's transfer are indeed plausible: what is concerned is the intention to establish a certain mobility in all departments including the Translation Department. The defendant is of the view that for a translator to spend a very long period in the same administrative unit leads to a certain rigidity with the consequences that his performance, both quantitative and qualitative, declines.

The applicant's reply to this is in my view not sufficient to show that that argument is mistaken. Mr Kindermann does not basically contest the expediency of a policy of staff mobility. He thinks however that it is ill-suited to the specific position of translators in general and in particular of those who at the cost of a long and difficult apprenticeship had specialized in a technical area such as that of social security for migrant workers, which requires its own vocabulary. Relying in particular on certain extracts from the Practical Guide for Translators, he thus maintains that specialization is particularly necessary for translators, that it is carried out to a large extent in the Commission's departments and that the quality of the work has improved because it has made possible closer relations between the translators and the departments using their services. The Administrative Commission itself is a significant example of the success of that policy of *rapprochement.*

The Commission has countered this with other quotations from the Practical Guide for Translators which stress the need for mobility and flexibility between the various translation sections.

This issue between experts can hardly be resolved by the Court. Having regard to the Court's limited power of review in this matter I can only say that I find nothing absurd in the contention that even a conscientious official who has been translating the same kind of text for

almost ten years the whole day long runs the risk of suffering a certain ossification which the administration may rightly attempt to prevent or remedy by employing that official in a different way.

(f) Finally the applicant considers that the decision taken in regard to him is, contrary to what the administration maintains, in no way in his interest but is detrimental to it. It diminishes his prospects of promotion particularly because in his new employment his work is systematically checked although in the Administrative Commission he had acquired a certain skill permitting him from time to time to check the work of his colleagues.

It seems to me that no account can be taken of that argument in the present case. A change in employment without a geographical change or change in the definition of the basic post of the official in question does not in my view involve any "essential personal interests" which require to be taken into account "in examining the question whether this decision is appropriate", to use the phraseology of my opinion in the *Geist* case (at p. 1442).

Further it is not certain that that contention is fully in accordance with the facts. In the assessment of the applicant for 1975/77 it was essentially his age, seniority and education which militated in favour of his promotion. The first two factors are even more favourable to him today. As far as his legal education is concerned, the applicant had the opportunity after leaving the Administrative Commission of making specially valuable use of it, for, as we heard at the hearing, he recently took the place of a lawyer-linguist on a temporary basis. Finally his new employment enables him to broaden his horizons since, within the Dutch Translation Division, he now belongs to the special section dealing with social matters, administration and information, whose activities are wider than those of the Administrative Commission.

2. Since the applicant could not show that the decision taken in regard to him was not exclusively in the interests of the service, there is no need to consider whether the defendant abused its discretion in taking the contested decision.

IV — It only remains for me to make my proposals.

I should however first like to mention one matter of concern as Mr Advocate General Capotorti also did recently in his opinion of 29 January 1981 in Case 148/79 *(Korter* v *Council* at p. 12 of the hectographed copy). I have the impression that this case could have been avoided. As his advocate mentioned at the hearing, the applicant certainly did not bring the present action because he wished at all costs to continue to work for the Administrative Commission until his retirement, but because he was astonished at the circumstances in which the decision on the change in his employment was taken and the fact that the administration sought to make itself

the sole judge of what was in the interests of his career. In that respect I can only agree that it was at least indelicate and detrimental to the confidential relations which should exist between an authority and its officials for a decision on the alteration of the applicant's employment to have been made public in his absence without his being previously informed thereof or being given an opportunity of expressing his opinion thereon and without stating with all due clarity the legal basis for that decision.

Nevertheless I can only propose that the Court should dismiss the application and order the parties to bear their own costs pursuant to Articles 69 (2) and 70 of the Rules of Procedure.