period. That description must be sufficiently precise to permit the appointing authority to adopt its decision and to state the reasons on which it is based.

3. It is for the competent administrative authority to use its power of assessment as regards the ability of the person concerned to perform the duties entrusted to him, subject to review by the Court of the manner in which that has been done in the event of manifest error.

4. The provisions of Article 24 of the Staff Regulations are concerned with the defence of officials against the acts of third parties and not against acts emanating from the institution itself, the review of which is governed by other provisions of the Staff Regulations.

K. J. MUNK, a former probationary official of the Commission of the European Communities of 9 Rue de Maelbeek, 1040 Brussels, assisted and represented by G. Vandersanden of the Brussels Bar, 38 Avenue de Blauwaerts, 1050 Brussels, with an address for service in Luxembourg at the Chambers of N. Eden, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by J. Pipkorn, a member of its Legal Department, acting as Agent, assisted by R. Andersen of the Brussels Bar, 214 Avenue Montjoie, 1180 Brussels, with an address for service in Luxembourg at the office of O. Montalto, a member of its Legal Department, Jean Monnet Building, Plateau du Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 1 July 1980 to terminate his engagement on the expiration of the probationary period with all the consequences of such an annulment, in particular as regards his reinstatement in his career,

THE COURT (Second Chamber),

composed of: O. Due, President of Chamber, A. Chloros and F. Grévisse, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts, the conclusions and the submissions and arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and written procedure

By decision of 18 March 1980 with effect from 1 October 1979, the applicant entered the service of the Commission in Grade A 7. He was assigned to Directorate General XIV/B/2 (Fisheries — Market and Structure — Structural Policy Division).

On 20 May 1980 he was informed by a memorandum from the head of the division to which he was assigned that he would not recommend his establishment at the end of the probationary period.

The applicant replied to that memorandum on 9 June 1980.

On 19 June 1980 the head of division put forward a report at the expiry of the probationary period in which he recommended that the applicant should not be retained in the Commission's service.

The report was communicated to the applicant on 22 June 1980. He returned it on 27 June with his observations.

By decision of the Commission of 1 July 1980, with effect from that day, the applicant was dismissed.

On 26 September 1980 the applicant, in pursuance of Article 90 (2) of the Staff Regulations of Officials, lodged a complaint against that decision.

The Commission did not adopt an express decision rejecting the applicant's complaint until 21 May 1981.

In the absence of a reply to his complaint within the prescribed period of four months, Mr Munk applied to the Court for annulment of the implied decision rejecting his complaint.

His application was lodged at the Court Registry on 24 April 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry. It did however ask the Commission to give information relating to the applicant's duties during his probationary period and for an appraisal of his work from the scientific point of view in terms of the requirements of the service as well as information on the duties at present carried out by the applicant in Directorate General VI of the Commission as a national technical specialist, together with an appraisal of the quality of his work. This information was furnished within the period prescribed.

II — Conclusions of the parties

1. The applicant claims that the Court should:

Declare the application admissible and well founded;

Consequently annul the Commission's decision of 1 June 1980 dismissing the applicant at the end of his probationary period;

Consequently grant the applicant the reinstatement in his career to which he is entitled;

Order the defendant to pay the costs.

2. The defendant contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. The applicant claims that the decision of 1 July 1980 to dismiss him was adopted in breach of Article 34 (2) of the Staff Regulations and that it is vitiated by an error in the statement of the grounds on which it is based and by misuse of powers.

As regards the first submission of infringement of Article 34 (2) of the Staff Regulations, the applicant puts forward the following arguments:

Under that provision a report is to be made on the ability of a probationary official "not less than one month before the expiry of the probationary period".

Whereas the probationary period expired on 30 June 1980, the probation report was drawn up only on 19 June and the applicant received it only on 22 June. He returned it to his directorate on Friday 27 June with his observations. According to the applicant, the appointing authority therefore had at its disposal only one day, Monday 30 June, to weigh up the applicant's arguments, which concluded with a request for reconsideration of his case.

According to the applicant it must therefore be recognized that the period prescribed and guaranteed by Article 34 (2) of the Staff Regulations, which is absolutely binding, has not been observed as regards the drawing up of the probation report and furthermore that the observations made by him, which can only have come to notice at a late stage, were not seriously considered by the defendant in such a way as to be able to come to a decision with full knowledge of the facts.

The result is that, even if the validity of the probation report cannot be called in question from the point of view of failure to observe the period prescribed for its drawing up, the subsequent decision to dismiss him is unlawful for failure to observe the period in question or to put the applicant in a suitable position to make his observations on the probation report.

As regards the submission that the decision to dismiss him is vitiated by errors in the statement of the reasons on which it was based, the applicant observes that the probation report on

which that decision is based reproduces only a part of the truth and in fact that part which might be regarded as unfavourable to the applicant.

In that report he is charged with the following shortcomings: lack of understanding of his duties; insufficient capacity to adapt himself to the nature of the work required; poor judgment; incapacity to organize work in terms of the needs of the service; an insufficient sense of responsibility and unsatisfactory performance of the duties assigned to him; the theoretical nature of his work, which took no account of reality; refusal to follow instructions given him through such channels and rigidity in his contacts with others.

The applicant states that these charges are unfounded as being contrary to the facts as regards both the quality and the quantity of the work which he performed during his probationary period and as regards his conduct in the service.

In general terms and to the extent to which these charges consist substantially in allegations that he failed to use official channels and was incapable of providing work in accordance with the guidelines worked out through official channels the applicant puts forward the following arguments:

Without showing any lack of respect for his immediate superior and with a full sense of the necessary discretion the applicant sought to obtain information from his colleagues as to the best way of executing the work assigned to him to make up for the lack of precise instructions from the head of his division whose economic and technical knowledge was not sufficient for him to be able to guide his work. Furthermore that state of affairs grew worse, according to the applicant, as a result of the fact that his head of division spoke neither Danish nor English, the applicant's working languages. The result was that not only did he have, as a probationary official, to face increased difficulties in carrying out his work but that also he wrongly gave his head of division the impression of a probationary official who lacked a spirit of cooperation and discipline.

In addition the applicant disputes the reservations stated in the probation report with regard to the quality and quantity of his work. He maintains that when his work was produced it was accepted without any criticism and that in certain cases it was very well received. The applicant refers to his papers on the over-capacity of the EEC fishing fleet, the development of the North Sea Centre, the economic effect of aids on the sardine and anchovy industries, which he produced together with others such as the one on the establishment of a Norway pout box or the one on Jutland.

He emphasizes that not only were these papers of a satisfactory standard but that he had to produce them whilst facing problems relating to the difficulties of communication with his head of division for linguistic reasons, the absence of instructions and even of technical facilities (absence of English language typists) and the absence in his division of persons with whom he could converse with regard to technical and economic data whilst working on some of his papers.

As regards the submission of misuse of powers, the applicant maintains that it is clear from the following considerations. The particularly severe nature of the probation report, which led directly to his dismissal, was due to the animosity of his head of division against him

which was the result of the absence of communication and collaboration between them because of linguistic difficulties and the lack of instructions given by his head of division as regards the preparation of the work which he performed during his probation.

To this must be added the fact that, as emerges from the probation report, the applicant's superiors had recommended him before Easter 1980 to find another assignment so as to pursue his probation in another directorate general in order possibly to obtain establishment.

The applicant states that in fact he undertook a series of steps with the Internal Resources Division in Directorate General XIV, which appeared prepared to take him, and that he also approached other directorates general. The applicant claims that any transfer within the directorate general, which would have meant that his head of division would have lost his post within the division, was for that reason obstructed. He states in this regard that, as appeared at the end of June, in a telephone conversation with his head of division, the latter accepted his transfer to Directorate General VI — with a subsequent modification of the probation report — on condition that he could obtain in exchange the assignment to his division of a qualified official, which could not be done.

According to the applicant the contents of the probation report were to a large extent due to the fact that his head of division wished to keep at all costs the post which he occupied even if that were to lead to his dismissal at the end of his probation.

The applicant remarks that in these circumstances it may well be thought that if it had been possible for him to be transferred to another post in Directorate General VI or if some *quid pro quo* could have been provided, in exchange, for Directorate General XIV he would not have been dismissed.

The applicant states that in addition to the considerations set out above his superiors refused to give him the assistance due under Article 24 of the Staff Regulations of Officials and took the decision to dismiss him without awaiting the outcome of the requests which he was in the process of making to obtain a transfer, in spite of the fact they knew about these steps. Finally his superiors' determination to obtain his dismissal and the misuse of powers alleged may be shown according to the applicant by the contradictory attitude of the Commission.

He observes in this respect that either he had not the necessary qualifications to be established at the end of his probation in the division to which he was assigned, in which case it would be difficult to consider his assignment to another department, or else he did in fact possess the qualifications required for establishment, in which case they should be taken into consideration to permit of a favourable probation report and his subsequent establishment.

According to the applicant the same contradiction is to be found between the verdict on his probationary period which led to his dismissal and his appointment as from 1 December 1980 as a national technical specialist by Directorate General VI, a post calling for qualifications and skills similar to those required of the Commission officials, together with a sense of the importance of the use of official channels which the Commission accused him of lacking as a probationary official.

2. The Commission puts forward the following arguments:

As regards the first submission relating to an infringement of Article 34 (2) of the Staff Regulations, it points out that it is common ground that the probation report was not drawn up within the period prescribed by that provision.

However, it refers to the case-law of the Court according to which, although delay in drawing up the report constitutes an irregularity, it is not of such a nature as to call in question the validity of the report (judgment of 12 July 1973, Joined Cases 10 and 14/72 *Di Pillo* v *Commission* [1973] ECR at p. 770). It maintains that the decision to dismiss an employee does not necessarily have to be adopted on a date coinciding with that of the expiration of the probation but must simply be taken within a reasonable period which starts to run from the time at which the report on the expiry of the probationary period has been drawn up and communicated to the person concerned. It stresses that the contents of the report could not have come as a surprise to the applicant, who had been warned during his probation, in particular by a memorandum from his head of division of 20 May 1980, of the problems created by his conduct, and who had been advised to find if possible another assignment so as to continue his probation.

The Commission states moreover that it was because his superiors expected that such a change of assignment would take place that the probation report was drawn up late, as well as owing to the fact that Mr Munk had been late in producing a paper which he had been asked to write on 20 May 1980.

Moreover the Commission maintains that the probation report and the documents appended to it were sufficiently detailed to allow the appointing authority to adopt its decision at the end of the period of probation with full knowledge of the facts after the applicant had been enabled to present his own observations, which he in fact did on 27 June 1980.

As regards the submission that there was an error in the statement of grounds on which the decision was based, the Commission remarks that the probation report contains the essential findings made by Mr Munk's superiors as regards his conduct in the service and that this thus constitutes a decisive factor concerning the appointing authority's decision. It maintains that an appraisal of the candidate's ability is a matter for the exercise of its discretion subject to a review by the Court of the ways and means which may have led to that appraisal, as is clear from the judgments of 19 July 1955 (Case 1/55 *Kergall* v *Commission of the European Coal and Steel Community*, [1954 to 1956] ECR 151) and of 12 December 1956 (Case 10/56 *Mirossevich* v *High Authority of the European Coal and Steel Community*, [1954 to 1956] ECR 333).

The Commission moreover criticizes the applicant's arguments to the effect that his head of division showed animosity towards him, since he fails to recognize that the probation report, which is the basis for the decision to dismiss him and which was drawn up by the head of division, also bore the signatures of the Director of Directorate B, Market and Structure, who drew up the report in consultation with the head of the division and that of the Director General of Directorate General XIV, who thus approved its content.

The Commission does not dispute the applicant's intellectual qualities but maintains that the report on the expiry of the applicant's probation does indeed reflect the applicant's actual conduct during his probationary period and that whilst his probation was not entirely negative, it was so on balance.

The applicant thus neglected the proper official channels by "short-circuiting" his

head of division, criticizing his instructions and even attempting to discredit him with his superiors.

Furthermore, according to the Commission, the applicant by his tendency to follow his own ideas in the pursuit of the subjects assigned to him, by his obstinacy in not being willing to follow the instructions which his superiors in fact gave him, including his director, whose language was English, and by his tendency to approach subjects in a theoretical frame of mind, involving himself in long trains of thought without any direct link with the factual data, acted in such a way that his work suffered and had to be re-done several times.

Furthermore the Commission claims that the applicant was guilty of indiscretion by cultivating contacts outside his directorate general on the subject of the papers which he had been asked to produce such as the one on the Norway pout box, a subject which had serious political implications.

Finally the Commission claims that the applicant purposely exaggerated the linguistic and technical difficulties, which were the same as those encountered by any probationary official, by refusing in addition to follow instructions even when they might have been useful to him in the performance of his work.

As regards the submission of misuse of powers, the Commission maintains that the applicant does not adduce even a scintilla of evidence in support of that submission. The probation report gives an objective picture of the facts of the probation, even emphasizing the applicant's theoretical knowledge and mentioning, quite properly, his principal activities.

As regards the applicant's transfer, the Commission remarks that his superior officers had no authority in this respect and therefore could not take any precise steps or assume the responsibility for the failure of the moves made in this direction.

It observes that he was advised to make such a transfer before the end of his probation in view of the unfavourable prospects which were becoming apparent as regards his establishment in the directorate in which he was serving his probation.

The applicant's superiors gave no undertaking and made no promise in this respect. The failure of this attempt to obtain a transfer was due to his decision not to follow official administrative channels and to the fact that those in charge of the directorates with which he had been in touch knew the manner in which the applicant had served his probation until then in the division to which he was assigned.

The Commission continues by saying that although the applicant's superiors were not unaware that he was making genuine efforts to obtain a transfer, they could not wait indefinitely for them to come to fruition.

The preparation of the probation report and the adoption of the consequent decision were thus effected, not only without infringing the rule relating to the assistance to be given to officials, as the applicant claims, but also in conformity with the rules governing its content and the time at which it should be undertaken.

Finally, the Commission stresses that neither the recommendation made to the applicant to find another assignment nor the fact that he was engaged as a national technical specialist by another directorate general is in conflict with the content of the probation report or the decision to dismiss him.

The recommendation with regard to the applicant's transfer was made so as to permit him to prove his qualities if possible in another department in carrying out tasks of a different content in view of the inconclusive results to which his probation had led within the division to which he was assigned.

As regards his actual position as a national specialist, the Commission remarks that the qualifications and abilities required for that post are different from those required for officials.

Whereas national specialists, the Commission continues, are expected to perform only precise and specific tasks, officials are expected to adapt themselves to many varied duties for the attainment of objectives whose realization in fact presupposes the suppression of personal views and subordination to the requirements of the public service in which some officers are set in authority over others.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. It did however ask the Commission to supply information regarding the duties performed and the work carried out by the applicant during his probation and an appraisal of the manner in which his present duties as a national specialist are carried out.

That information, which was supplied within the period prescribed, is as follows:

I — *Description of Mr Munk's duties in Directorate General XIV*

(i) Analysis of structural problems in the fisheries sector (Norwegian pout, balance between fishing capacities and fishing resources);

(ii) Examination of projects and investment programmes in the fisheries sector (in particular construction of ships, and industrial installations);

(iii) Following up of certain studies preponderantly of an economic nature prepared outside the institution.

II — *Work*

1. Analysis of structural problems

(a) Work on the Norway pout box:

The object of the work was to facilitate the search for a solution, from the structural point of view, to the problems raised by the conservation measures known as "the Norway pout box". This should have led, after noting the Danish losses consequent upon the British measure prohibiting fishing for pout, to indications of the best way of helping fishermen and industrialists to divert their activities at least partially into other channels.

From the beginning the head of the division tried to restrict the study to its proper subject within the scope of the division, but without success.

In spite of the foregoing the paper was limited to showing that the British measure was damaging Danish fisheries; from this point of view and although based on certain hypotheses which were open to criticism, the paper may be considered as valid on a strictly theoretical basis but it was perfectly useless, not to say dangerous, as regards the policy of conservation of fishery resources conducted by the Commission. In fact it tended to

show how little impact the British measure had in terms of fish catches for human consumption. The director considered the paper as inappropriate and inconclusive. When the matter was brought to the notice of the director general he asked for the work to be broken off but Mr Munk persisted in his own time and ended his memorandum (64 pages).

(b) Balance between fishery capacities and fishing resources:

A memorandum was drawn up on this subject by Mr Munk relating to a description of the different methods of resolving the problem of excess fishing-fleet capacities. Instead of conveying these various methods in ordinary language and drawing practical conclusions for the further work of the division, Mr Munk restricted himself to summarizing the methods by using abstract mathematical formulae and without drawing any operational conclusions. The paper may meet scientific requirements but does not answer the requirements of the service.

2. Considerations of projects and investment programmes

Mr Munk was recruited principally in order to consider and give an opinion on projects and investment programmes submitted for appraisal to Directorate General XIV (especially in Danish). This work was satisfactorily done but after the beginning of his probationary period Mr Munk informed his superiors that he did not wish to perform this type of work as he considered it "of minor importance".

3. Following up certain papers produced outside the institution

In view of his training Mr Munk had been asked *inter alios* to follow up certain studies which the Structural Policy Division was conducting with the help of outside experts. This task was facilitated by the fact that the general plan of such studies had already been drawn up before Mr Munk's arrival; he was intended to follow up, in particular for the Danish and German regions, the proper development of these studies and to give his opinion on the results.

Instead of smoothing out the difficulties with the experts Mr Munk created fresh ones and the head of division was therefore required to intervene to rectify certain situations.

4. Economic effects of aids on the sardine and anchovy industries

Whereas he had been requested to proceed to a first evaluation of the order of magnitude of these economic aids Mr Munk produced a totally disproportionate work comprising no less than four memoranda and a working paper of some 40 pages plus 100 pages of appendices.

Finally, as regards an appraisal of the duties at present carried out by the applicant as a national specialist the Commission supplies a copy of a document containing the views of the

head of the division to which the applicant is assigned. According to the head of the division, whose views are confirmed by his director:

"Mr Munk, a Danish national specialist, has been given the task, on the basis of instructions of an A 5 official, of working out a model bringing up to date the data of the Network for the Collection of Accountancy Data on the Incomes and Business Operation of Agricultural Holdings in the Community.

Mr Munk's knowledge of econometrics and modelization have enabled him to produce an operational model which has already been used for the preparation of the Commission's memorandum on the Mandate of 30 May 1980 and on the preparation of proposals for common agricultural prices. At the present time Mr Munk is making technical improvements to the model in question to make it still more effective and to improve its scope.

Mr Munk's contribution to the development of the information facilities of Directorate General VI has been particularly effective."

IV — Oral procedure

At the sitting on 17 December 1981 the applicant, represented by G. Vandersanden of the Brussels Bar, and the Commission of the European Communities, represented by J. Pipkorn, a member of its Legal Department, acting as Agent, assisted by R. Andersen of the Brussels Bar, presented oral argument.

The Advocate General delivered his opinion at the sitting on 11 February 1982.

Decision

1 By application lodged at the Court Registry on 24 April 1981, K. Munk, a former probationary official of the Commission of the European Communities, brought an action for the annulment of the Commission's decision of 1 July 1980 terminating his appointment at the expiration of the probationary period, with all the consequences following upon such annulment, in particular as regards reinstatement in his career.

2 The applicant entered the Commission's service on 1 October 1979 as a probationary official with the Structural Policy Division of Directorate General XIV (Fisheries), and was placed in Grade A 7. On the expiration of the probationary period he was dismissed by decision of the appointing authority of 1 July 1980 on the basis of an unfavourable probation report.

3 The appointing authority gave as its reasons for the dismissal the applicant's failure to adapt himself to the requirements of the service from the point of view both of his ability to carry out his duties and of his efficiency and conduct, basing its decision on the principal considerations contained in the report at the conclusion of the probationary period.

4 In support of his application the applicant puts forward three submissions relating to alleged irregularities in the contested decision and consisting in failure to draw up the probation report within the prescribed period, in errors in the statement of the grounds on which the decision was based owing to inaccurate and over-rigid assessments in the report and in a misuse of powers by reason of the fact that the report was drawn up with the sole purpose of obtaining his dismissal and of preventing him from finding a post in another branch of the Commission. In this connection he alleges that the Commission further failed to comply with its duty to assist its officials and to observe the principle of good administration.

Failure to meet the time-limit imposed by Article 34 of the Staff Regulations

5 In the words of Article 34 (2) of the Staff Regulations of Officials: "Not less than one month before the expiry of the probationary period, a report shall be made on the ability of the probationer to perform the duties pertaining to his post and also on his efficiency and conduct in the service. This report shall be communicated to the person concerned, who shall have the right to submit his comments in writing."

6 The applicant claims in this respect that the time-limit of one month fixed by the above provision was not met in view of the fact that the report on his probationary period was drawn up on 19 June 1980, that he received it on 22 June and returned it with his observations on 27 June and that the decision to dismiss him was adopted on 1 July with effect as from that date. In view of the shortness of the time available the applicant did not have sufficient time to present his observations and the appointing authority did not have the necessary time to appraise the assessments contained in the report or the remarks accompanying it in order that its decision on the termination of the probationary period might be adopted with full knowledge of the facts. The decision to dismiss him, arrived at in these circumstances, must, according to the applicant, be regarded as unlawful.

7 The Commission justifies the fact that the time-limits were not met by its desire to have consideration for the applicant's interests. In fact his superiors wished to allow him the opportunity to conclude a paper and to seek a different post with the Commission before the end of his probationary period, as he had been advised to do.

8 As the Court has recognized, a delay in the drawing up of the probation report constitutes an irregularity in view of the express requirements of the Staff Regulations which, regrettable as it may be, is still not of such a nature as to call in question the validity of the report. The objective of Article 34 of the Staff Regulations is to guarantee to the person concerned the right to submit any observations to the appointing authority and also to ensure that such observations shall be taken into consideration by the appointing authority.

9 It appears from the file that the time which elapsed between the drawing up of the report and the decision to dismiss the applicant was in this case sufficient for the applicant to be able to make his observations after the report was communicated to him and also for the appointing authority to be enabled to assess the position, as it was bound to do. It should also be noted that the opinion of the applicant's superior, which gave an assessment which was substantially identical to that expressed in the probation report, had been communicated to him by a memorandum of 20 May and that the applicant had replied by letter of 9 June 1980.

10 It appears from the foregoing that the applicant's submission relating to the infringement of Article 34 of the Staff Regulations cannot be accepted and that consequently it must be dismissed.

Errors in the statement of the grounds on which the decision to dismiss the applicant was based

11 The applicant maintains that the probation report which constitutes the essential basis for the contested decision contains inaccurate and over-rigid assessments and that it is not objective inasmuch as it is based on disputed aspects of his work and does not mention any positive facets of the progress of his probationary period. He also claims that he worked during his probationary period without precise directions from his superiors and that the probation report does not mention all his activities during the period in question.

12 The defendant rejects that line of argument explaining that the intellectual qualities and the scientific qualifications of the applicant are not disputed. However, the applicant does not have the qualities required for the career of an official in an international administration facing specific probiems. The defendant claims that the applicant treated the subjects entrusted to him in too theoretical a manner which was not in conformity with the requirements of the daily functioning of the service and outside the framework in which he was expected to carry out his work.

13 In addition the applicant is charged with not having utilized the appropriate official channels for communication by making contact with other branches of the Commission without the permission of his superior and without passing communications through him.

14 It must be stated that the applicant adduces no evidence in support of his allegations that he was obliged to work without directions and that the report is inaccurate because it does not mention all his activities during the period in question. It should be noted moreover that the probation report itself must describe only the main activities of the person concerned during the probationary period. That description must be sufficiently precise to permit the appointing authority to adopt its decision and to state the reasons on which it is based.

15 Nor is it possible to confirm that the report shows a lack of objectivity as it is clear from a perusal of the report that the applicant's ability was judged to be good and even very good in certain respects.

16 With regard to the applicant's allegations as to the substance of the assessments made of him in the report, it should be recalled that it is for the competent administrative authority to use its power of assessment as regards the ability of the person concerned to perform the duties entrusted to him, subject to the review by the Court of the manner in which that has been done in the event of manifest error. In this case it does not appear from the file that the appointing authority has committed a manifest error in its assessment of Mr Munk's merits.

17 The second submission put forward by the applicant must therefore also be dismissed.

The submission of misuse of powers

18 The applicant claims in this respect that his dismissal was brought about so as to prevent the successful conclusion of his efforts to obtain a transfer.

19 This line of argument is based on a double misunderstanding and cannot be accepted. First it must be stated that it was the applicant's superiors themselves who at the proper time had advised him to consider the possibility of finding in other branches of the Commission another post which would correspond more exactly to his qualifications. Secondly it is not for the Court to assess the need for or expediency of a re-arrangement of posts within an institution, as the applicant's claim implies.

20 The applicant also claims that the Commission failed in its duty to assist its officials, as required by Article 24 of the Staff Regulations inasmuch as it did not support him in his efforts to obtain another assignment within the institution.

21 This submission cannot be accepted. As the Court recently stated in the judgment of 17 December 1981 *(Bellardi-Ricci,* Case 178/80, [1981] ECR 3187), the provisions of Article 24 of the Staff Regulations are concerned with the defence of officials against the acts of third parties and not against acts emanating from the institution itself, the review of which is governed by other provisions of the Staff Regulations.

22 It follows from the foregoing considerations that the application must be dismissed as being unfounded.

Costs

23 Pursuant to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

24 However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

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

Due Chloros Grévisse

Delivered in open court in Luxembourg on 25 March 1982.

The Registrar
by order

V. Joris
Legal Secretary

O. Due
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 11 FEBRUARY 1982 [1]

Mr President,
Members of the Court,

The applicant in these proceedings entered the service of the Commission on 1 October 1979 as a probationary official classified in Grade A 7. He was employed in Directorate General XIV (Fisheries), Directorate B (Market and Structure), Division II (Structural Policy).

Some considerable time before the expiry of his probationary period, which in accordance with Article 34 of the Staff Regulations terminated on 30 June 1980, he had already been reproached orally by his superiors concerning his conduct and his work. The head of the division in which he was employed also expressed criticism of him in writing, in a note dated 20 May 1980. In that note it was

1 — Translated from the German