JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 12 JULY 1979 [1]

Harald List
v Commission of the European Communities

Case 124/78

1. *Officials — Applications to the Court — Act adversely affecting an official — Concept — Internal administrative measures — Exclusion — Conditions — Absence of effects on applicant's rights under the Staff Regulations*
(Staff Regulations, Art. 91)

2. *Officials — Duty of the administration to provide assistance — Protection requested by an official against the alleged machinations of other officials — Unsuccessful attempts at reconciliation — Adoption of appropriate internal administrative measures — Observance of individual's rights under Staff Regulations — Legality*
(Staff Regulations, Art. 24)

1. An internal administrative measure does not constitute a measure which may be the subject of an application to the Court under Article 91 of the Staff Regulations in so far as it does not affect the rights under Articles 5 and 7 of the Staff Regulations of the person concerned.

2. The administrative authority is not in breach of its duty to provide assistance under the first paragraph of Article 24 of the Staff Regulations if, in answer to a request by an official for protection against the alleged machinations of certain of his colleagues, and finding that its efforts to bring about a reconciliation are of no avail, it takes all the appropriate steps to mitigate the deterioration of working relationships within the service without affecting the rights under the Staff Regulations of the person concerned.

In Case 124/78,

HARALD LIST, an official of the Commission of the European Communities, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B/IV Rue Philippe II,

applicant,

1 — Language of the Case: French.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, acting as Agent, assisted by Daniel Jacob, of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in particular for the annulment of the decision taken by Mr Pignot to relieve the applicant of his duties as co-ordinator of the German translation section of the Administrative Commission on Social Security for Migrant Workers,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, P. Pescatore and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts, the procedure and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

The applicant entered the service of the Communities on 1 January 1961, first with the Parliament, subsequently with the Council of Ministers and finally, as from 1965, with the Commission. He was appointed to Grade L/A 5 in 1967 and then to Grade L/A 4 as from 1 January 1973. As from 1 April 1974 the applicant was posted to the translation department of the Administrative Commission on Social Security for Migrant Workers (hereinafter referred to as "the Administrative Commission")

and from the second half of 1975 he carried out the duties of co-ordinator of the German translation section consisting of five officials in Grade L/A 5.

On 15 June 1977 the officials in the German translation section informed Mr Pignot, Head of the General Affairs Division that they would in future refuse to work with the applicant. Mr Pignot tried to organize a meeting of the various officials concerned but this could not take place as the applicant refused to take part declaring that he was not prepared to have a confrontation with the "conspirators". In a "note for the record" dated 20 June 1977 Mr Pignot wrote that the attempts at reconciliation initiated by him had failed and "in order to ensure the continuity of the work and in the interests of the service" he asked Miss Peppinck, Head of the translation department of the Administrative Commission herself to allocate the German translation work in her section". The note was countersigned by the various officials concerned including the applicant. At the applicant's request Mr Pignot confirmed in writing in a "note for Mr Harald List through the intermediary of Miss J. Peppinck" dated 20 June 1977 that he had given Miss Peppinck "instructions to allocate work amongst the members of the German section of the Administrative Commission herself".

On 21 June 1977 the applicant submitted a complaint to the Commission of the European Communities seeking primarily the withdrawal of the measures adopted by Mr Pignot.

On 1 July 1977 Mr Pignot spoke to Mr List but the content of the conversation is interpreted differently by the parties. According to the applicant Mr Pignot informed him that when Miss Peppinck was absent Mr List would not assume responsibility for her duties. According to the defendant Mr Pignot informed the applicant only that during the absence of Miss Peppinck, who was taking several weeks' leave, he himself would assume responsibility for her duties.

On 4 July 1977 the applicant lodged an additional document to his complaint through official channels. A second additional document was lodged on 25 July 1977.

On 28 June 1977 the Director, Mr Ciancio, suggested to the applicant that he be posted to the Task Force for Negotiations with Portugal.. The applicant declined that offer in a letter of 1 July 1977.

On 27 July 1977 Mr Baichère, the Director General, placed the applicant at the disposal of the Task Force for Negotiations with Portugal.

The applicant maintains that the director of the Task Force had no work for him. The defendant however states that the fact that there was no work for the applicant within that group was caused solely by his refusal to translate into a language other than German although he had a perfect command of French and had stated in the note of 1 July 1977, in which he rejected Mr Ciancio's offer, that he was interested in Portuguese.

On 24 October 1977 the applicant submitted a complaint to the Commission "against all the appointing authority's acts or omissions operating to my detriment in this case".

On 27 October 1977 Mr Baichère informed the applicant that he was

terminating the assignment of the applicant to the Task Force for Negotiations with Portugal and that, pending a fresh decision, in order to find a new posting for the applicant, he asked him to continue "to carry out the specific tasks which will be entrusted to you by Mr Ciancio and which already constitute a measure satisfying the substance of your demands".

By note of 8 February 1978 which was transmitted to the applicant on 1 March 1978 Christopher Tugendhat, a Member of the Commission, rejected the applicant's complaints.

By an application of 26 May 1978, received at the Court Registry on 29 June 1978, the applicant initiated these proceedings.

The written proceedings followed the normal course. On 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 holding a preparatory inquiry.

II — Conclusions of the parties

In the originating application the *applicant* claims that the Court should:

1. Declare the decision of Mr Pignot, referred to in the note of 20 June 1977, to discharge the applicant from his duties as co-ordinator of the German section of the Administrative Committee to be null and void;

2. Declare the decision of Mr Pignot that in case of absence of his superiors the applicant should not replace them or receive a temporary posting to be null and void;

3. Declare the decision of Mr Baichère, the Director General, of 27 July 1977 moving the applicant from his post as reviser/co-ordinator in the Administrative Commission to the Task Force for Negotiations with Portugal to be null and void;

4. So far as necessary declare the decision of Mr Baichère of 27 October 1977 putting the applicant at the disposal of Mr Ciancio, the Director, to be null and void;

5. Declare the opposite party's refusal of the applicant's request of 21 June 1977 for protection against the machinations of a number of his colleagues to be null and void;

6. Order the opposite party to pay the costs.

In his reply the *applicant* maintains the claims set out in the application and further claims that the Court should:

"In the alternative request the opposite party to produce:

1. The 'Guide pratique du traducteur' [Translator's Practical Guide];

2. The annual report for the 1976 financial year and if necessary for the 1977 financial year of the Directorate General for Personnel and Administration — Translation, Documentation, Reproduction and Library Directorate;

3. The applicant's periodic report for the period from 1 July 1975 to 30 June 1977;

4. The periodic reports of Mr Förster, the applicant's predecessor in the German section of the Administrative Commission (or at least the description of his duties).

In its defence the *defendant* contends that the application should be dismissed as inadmissible and in any event without foundation and that the applicant should be ordered to pay the costs. In its rejoinder the *defendant* maintains the

conclusions in its defence and, in the alternative, contends that it should be authorized to prove by the evidence of witnesses the following facts:

"1. In the course of a meeting between the applicant and Mr Ciancio on 28 June 1977 the former agreed to the measure placing him at the disposal of the Task Force for Negotiations with Portugal in order to carry out there work in accordance with his category and grade consisting of the translation of Portuguese and possibly Spanish texts into French.

Witness: Mr Ciancio, Director of Directorate IX/D.

2. In the course of a meeting held at the end of his leave, on 19 September 1977, the applicant informed Mr Duchateau, the official in charge of the Task Force for Negotiations with Portugal that he refused to carry out translations into French in spite of the fact that those translations were not intended for publication.

Witness: Mr Duchateau, Director in Directorate General I — External Relations."

III — Submissions and arguments of the parties

Admissibility

In its defence the *defendant* argues that the application is inadmissible in so far as the first four heads of claim therein are concerned.

The defendant argues, first, that the appeal against the decisions taken by Mr Pignot on 20 June and 1 July 1977 (first and second heads of claim in the application) was lodged out of time. Mr Pignot's decision of 20 June 1977 formed the subject of a complaint registered on 22 June 1977 to which the Commission did not reply within the period laid down by the Staff Regulations and the final date for lodging the application was therefore 22 January 1978 (Aritcle 90 (2) of the Staff Regulations). Similarly the appeal against Mr Pignot's decision of 1 July 1977 should have been lodged before 4 February 1978 as on 4 July 1977 a complaint was lodged against that decision to which no reply was given within the period laid down by the Staff Regulations. The fact that the documents sent to the Commission by the applicant on 22 June and 4 July 1977 were described by the latter as "requests" is not relevant as the nature of a document must be determined in the light of its content and not in the light of the author's description of it.

Secondly the defendant argues that the decisions of 20 June and 1 July 1977 (first and second heads of claim in the application) are not acts capable of adversely affecting the applicant. Those measures by no means affect the position under the Staff Regulations of the applicant, who has retained his grade and duties, but merely concern the internal relations of the service and the administrative organization of the work. The Commission refers to the judgments in Case 16/67 *(Labeyrie* v *Commission* [1968] ECR 293), Case 66/75 *(Macevicius* v *European Parliament* [1976] 1 ECR 593) and Case 129/75 *(Hirschberg (née Nemirowsky)* v *Commission* [1976] 2 ECR 1259) and concludes that the decisions of 20 June and 1 July 1977 are not in the nature of measures which may be annulled within the meaning of Article 91 of the Staff Regulations.

The defendant contends, thirdly, that the appeal against Mr Baichère's decision of 27 July 1977 to place the applicant at the disposal of the Task Force for

Negotiations with Portugal (third head of claim in the application) is inadmissible because it has lost its purpose as the measure was superseded even before the appeal was lodged.

Finally as regards the fourth head of claim the *defendant* observes that the appeal against the decision taken by Mr Baichère to put an end to the measure placing the applicant at the disposal of the Task Force for Negotiations with Portugal is inadmissible as the decision in question was not referred to in the complaint through official channels preceding the application.

In his reply the *applicant* challenges the defendant's description of the documents sent to the Commission on 21 June and 4 July 1977 as "complaints". It is extremely difficult, particularly for one who is not a lawyer, to draw a distinction between a request and a complaint as the two concepts are very generally confused. Furthermore it is difficult to conceive of a complaint which does not at the same time contain a request as complaints generally are not abstract in nature but seek to correct a situation or to obtain a benefit laid down by the Staff Regulations and so forth. *Bona fide* application of the provisions in accordance with the intention of the Community legislature, which was to avoid appeals to the Court not preceded by discussions with the administration, should exclude any kind of secondary dispute on the question whether the appeal through official channels is a complaint or a request coupled with a complaint or *vice versa*. Finally relying on the maxim *error communis facit ius* the applicant emphasizes, in the alternative, that in the letter to the applicant of 27 July 1977 Mr Baichère, Director General for Personnel and Administration, himself used the word "request" to describe the applicant's note to the Commission of 21 June 1977. In that note although the applicant certainly did not cite Article 24 of the Staff Regulations he referred to it as he asked the Commission for assistance. The note of 21 June 1977 is therefore indeed a "request".

Contrary to what the defendant states the decisions of 20 June and 1 July 1977 are measures which may adversely affect the applicant. Those measures had decisive effects on the applicant's duties. The position would be different as regards tasks or powers which were merely a secondary part of the duties of the official in question such as being a member of a committee or a selection board.

Although Mr Baichère's decision of 27 July 1977 was withdrawn it had produced both material and non-material effects and the applicant was therefore entitled to seek its annulment which for him would serve to remedy the situation.

In its rejoinder the *defendant* maintains the arguments set out in its defence concerning the inadmissibility of the application. It emphasizes in particular that in so far as it refers to Mr Pignot's decision the note dated 21 June 1977 from the applicant to the Commission does indeed constitute a "complaint" and not a "request" as it seeks the revocation of a decision adopted by the administration.

Substance

In support of his application the *applicant* relies, as regards the first head of claim in the application (Mr Pignot's decision

of 20 June 1977) on the following five grounds:

1. No reasons are stated for Mr Pignot's decision, in infringement of the second paragraph of Article 25 of the Staff Regulations;

2. The scope and effect of the decision are to diminish substantially the responsibilities of the applicant and thus to reduce his career prospects;

3. The decision constitutes a change of assignment within the meaning of Article 7 of the Staff Regulations which should have been effected by the appointing authority, in this instance a Member of the Commission;

4. Moreover the decision is a disguised disciplinary measure which could only be taken in accordance with the rules laid down in Articles 86 and 89 of the Staff Regulations;

5. The decision was not adopted in the interests of the service but only under pressure from the applicant's colleagues who had conspired against him.

As regards the second head of claim in the application (Mr Pignot's decision of 1 July 1977) the applicant relies on the same grounds as those set out above subject to the following:

1. As regards the absence of reasons it should be added that as the decision was notified orally it was not communicated to the applicant in writing without delay;

2. The applicant adds an additional argument relating to this head of claim: the decision in no way to appoint the applicant as replacement although he was the senior official in the team constitutes an infringement of Article 26 of the Commission's Internal Rules of Procedure.

Regarding the third head of claim in the application (Mr Baichère's decision to place the applicant at the disposal of the Task Force for Negotiations with Portugal) the applicant relies on the same arguments as those raised in respect of the first head of claim but gives the following further details:

1. The contested decision constitutes the sequel to Mr Pignot's decision of 20 June 1977 and bears the same defects; the reasoning is merely stereotyped and does not correspond to the facts of the case;

2. The measure was not adopted in the interests of the service as it was evident that there was no work for the applicant in the Task Force for Negotiations with Portugal.

Finally regarding the fifth head of claim in the application (request for assistance from the Commission) the applicant states that his request of 21 June 1977 sought in particular to obtain from the Commission protection against the conspiracy of which he was a victim and that the Commission had not acted on that request.

In its defence the *defendant* makes the following observations concerning the five arguments which are common to the first three heads of claim in the application made by the applicant:

1. Mr Pignot was entitled not to state the reasons on which his decisions of 20 June and 1 July 1977 were based as the second paragraph of Article 25 of the Staff Regulations concerns only measures which adversely affect an official. The decision of 20 June 1977 on the other hand did state the reasons on which it was based and, furthermore, was supplemented by a "note for the record" bearing the same date and countersigned by the

applicant. As the decision of 1 July 1977 was taken a few days after the first of the contested measures the applicant could not be unaware that the reason underlying the decision was the need to avoid too frequent contacts between the applicant and his five colleagues in the interests of the Service. Finally the applicant provides no evidence to support his argument that the statement of reasons on which Mr Baichère's decision of 27 July 1977 was based has the same defects as that of Mr Pignot of 20 June 1977. In fact examination of Mr Baichère's note shows that the decision was taken both on account of the needs of the Task Force for Negotiations with Portugal and of the applicant's qualifications and his interest in Portuguese.

2. The applicant has not established in what way the contested decisions substantially reduced his responsibilities. The applicant retained his Grade L/A 4 and his duties as reviser. The sole effect of Mr Pignot's decision of 20 June 1977 was to entrust Miss Peppinck, the Head of the translation department and thus the applicant's superior, with responsibility for distributing work between the officials in the German section. The internal measure which for a time had given him responsibility for distributing work was cancelled by another internal measure. Similarly regarding the decision of 1 July 1977 it should be observed that the applicant has no better right than the other revisers to replace the head of the translation department when she was absent; taking the situation in the service into account there was the danger that if the applicant had been appointed to replace Miss Peppinck during her holiday he would have been exposed to fresh incidents which would certainly not have stood him in good stead for possible promotion. Finally regarding Mr Baichère's note of 27 July 1977 it was there emphasized that the decision taken was based in particular on the acknowledged high qualifications of the applicant.

3. Mr Pignot's decision of 20 June 1977 by no means altered the post of the applicant, who retained his duties as reviser; such a measure therefore did not constitute a change of assignment within the meaning of Article 7 of the Staff Regulations and was therefore one which his superior officers were entitled to take. As regards the decisions referred to in the second and third heads of claim in the application the applicant merely makes a reference, without establishing its factual basis, to the argument regarding the alleged change of assignment which had been effected.

4. The applicant submits no evidence to support his contention that the contested decisions were "disguised disciplinary measures". There is nothing to support the argument that those measures were based on a reason other than that referred to in the measures in question.

5. The contested decisions were adopted in the interests of the service. Having

tried to reconcile the parties without success in view of the absence of the applicant, Mr Pignot had to resolve to remove the contacts which gave rise to incidents between the applicant and his five colleagues which were detrimental to the smooth running of the service. The reason for Mr Baichère's decision of 27 July 1977 was that the Task Force for Negotiations with Portugal needed qualified revisers, that the applicant was sufficiently qualified to work there and that he was interested in Portuguese and Spanish.

Regarding the additional argument relating to the alleged infringement of Article 26 of the Commission's Internal Rules of Procedure which the applicant raises with regard to Mr Pignot's decision of 1 July 1977 the defendant refers to the opinion of Mr Advocate General Gand in Case 26/67 *(Danvin* v *Commission* [1968] ECR 315 at p. 323 *et seq.* in particular p. 325) and observes that Article 26 refers to cases where an official replaces a superior who is *absent or prevented from attending to his duties.* The contested decision was adopted when the head of the translation department left on holiday; such a case therefore does not constitute a fortuitous happening or an unforeseen event and does not fall within the scope of Article 26. Even if Article 26 were applicable it would not necessarily follow that the contested decision infringes that provision. In fact that article provides for a system of automatic replacement, exceptions to which may be made by decision of the Commission. In Case 16/67 *(Labeyrie* v *Commission* [1968] ECR 293) the Court decided that in a case where an official's superior had deprived him of responsibility for a portion of the department previously subject to his authority although, in principle, only the Commission had the power to take such a step, the fact that the superior did not in principle have such powers did not prevent him from taking "without delay provisional measures" in order to avoid a situation which was "detrimental to the efficient functioning of the service". The same is true in the present case.

Concerning the fourth head of claim in the application (Mr Baichère's decision of 27 October 1977 placing the applicant at the disposal of Mr Ciancio) the defendant observes that the applicant makes no specific complaint against the decision in question.

Finally regarding the request for assistance from the Commission the defendant states that in this instance the administration, represented here by the Head of Division, Mr Pignot, had taken steps to protect the applicant's rights long before he had requested the assistance of the Commission. Faced with a situation which is common to many working groups the Commission spared no effort to settle the dispute but the applicant did not co-operate in those efforts. Even if it were possible to rely on the obligation to provide assistance set out in Article 24 of the Staff Regulations in view of the trivial nature of the events in question that obligation was in any event satisfied in this case.

In his reply the *applicant* develops the arguments set out in the application and gives further details concerning the tasks carried out by him within the Administrative Commission's translation team. Whilst recognizing that the post of co-ordinator as such is not provided for in Annex I to the Staff Regulations the

applicant emphasizes that the post not only exists in fact but has a place in the hierarchy of duties as is apparent from a number of documents which the applicant requests the defendant to produce: the "Guide pratique du traducteur"; the annual report for the 1976 financial year and possibly for the 1977 financial year of the Directorate General for Personnel and Administration — Translation, Documentation, Reproduction and Library Directorate; the applicant's periodic report for the period from 1 July 1975 to 30 June 1977; and the periodic reports (or at least the description of duties) of Mr Förster, the applicant's predecessor in the German section of the Administrative Commission. Regarding his refusal to translate into a language other than German after he had been placed at the disposal of the Task Force for Negotiations with Portugal the applicant states that it is contrary to all the applicable rules for a translator to have to translate into a language other than his principal language. There is no shortage of French language translators capable of translating from Portuguese to French. The posting of the applicant to the Task Force for Negotiations with Portugal was therefore not carried out on the grounds of the interests of the service.

Annexed to its rejoinder the *defendant* submits copies of the various documents which the applicant asked it to produce. According to the defendant those documents confirm the argument that the duties of a co-ordinator which were orally entrusted to the applicant did not give him any authority over his colleagues in the German translation team. The contested decisions did not therefore have the effect of substantially reducing the applicant's responsibilities. The defendant maintains that the applicant agreed to the measure placing him at the disposal of the Task Force for Negotiations with Portugal in order to carry out work translating texts in Portuguese and possibly Spanish into French, but that after he had been assigned to the Task Force for Negotiations with Portugal, he refused to carry out that work in spite of the fact that the translations were not intended for publication. The defendant offers to prove the facts in question by calling witnesses.

IV — Oral procedure

The applicant, represented by M. Slusny, of the Brussels Bar, and the Commission of the European Communities, represented by D. Jacob, of the Brussels Bar, presented oral argument at the hearing on 31 May 1979.

The Advocate General delivered his opinion at the hearing on 28 June 1979.

Decision

1 This application, lodged on 29 May 1978, seeks the annulment of four sucessive measures taken in respect of the applicant, an official of the Commission in Grade L/A 4, and the annulment of the Commission's refusal

of the applicant's request of 21 June 1977 "for protection against the machinations of a number of his colleagues". The measures whose annulment he seeks, as described in the orginating application, are as follows:

— The note of Mr Pignot, Head of the Translation (General Matters) Division, of 20 June 1977 discharging the applicant from his duties as co-ordinator of the German section of the Administrative Commission on Social Security for Migrant Workers;

— The note of Mr Pignot of 1 July 1977 to the effect that in case of absence of his superiors the applicant should not replace them or receive a temporary posting;

— The note of Mr Baichère, Director General of Personnel and Administration, of 27 July 1977 moving the applicant from his post as reviser/co-ordinator in the Administrative Commission to the Task Force for Negotiations with Portugal;

— The note of Mr Baichère of 27 October 1977 putting the applicant at the disposal of Mr Ciancio, Director of the Translation, Documentation, Reproduction and Library Directorate.

Admissibility

2 The Commission contends that in so far as the application relates to the four above-mentioned measures it is inadmissible.

3 The Commission argues on the one hand that the application is out of time and on the other that the contested measures fall within the internal organizational powers of the administration and are not therefore measures which may be annulled within the meaning of Article 91 of the Staff Regulations. It is appropriate to examine the last argument first.

4 It appears from the file that in the course of 1975 the applicant was orally given responsibility for co-ordinating the work of the German translation

section of the Administrative Commission. It should be noted that the task of co-ordinator is not provided for in Annex I to the Staff Regulations. According to the Guide Pratique du Traducteur [Translator's practical guide] (p.22), published in October 1975 by the Directorate General for Personnel and Administration, "the work of co-ordinators is of a purely technical nature. The supervisory authority remains wholly in the hands of the head of the division who, by that token, is alone responsible for the distribution of work and, where appropriate, the transfer of texts from one group to another . . .". The note of 20 June 1977 by virtue of which the responsibilities of co-ordinator which had been carried out by the applicant were transferred to the head of department, Miss Peppinck, thus in no way affected the applicant's position under the Staff Regulations. That instruction constitutes merely an internal administrative measure which, in so far as it did not affect the applicant's rights under Articles 5 and 7 of the Staff Regulations, cannot form the subject of an application to the Court.

5 The same conclusion must be drawn regarding the decision taken by Mr Pignot on 1 July 1977 himself to replace the head of department, Miss Peppinck, during her absence. That step relating to the organization of the service, which was even more limited in nature than the previous one, does not constitute "an act adversely affecting" the applicant within the meaning of Article 91 of the Staff Regulations as it in no way affects the applicant's position under those regulations.

6 As the two said measures do not constitute measures capable of forming the subject of an application to the Court it is not necessary to consider whether the application directed against those two measures was introduced within the period laid down by the Staff Regulations.

7 The Commission has also challenged the admissibility of the claim directed against the instruction of 27 July 1977 by virtue of which the applicant was placed at the disposal of the Task Force for Negotiations with Portugal from 1 September 1977. As the Commission points out, that measure was superseded before the application was lodged. In the terms of the statement of the reasons on which it is based the contested measure was adopted solely by reason of "the needs of the Task Force" and the applicant's "recognized qualifications as reviser" and it can not therefore be regarded as a "disguised disciplinary measure" which, even after its withdrawal, might have detrimental effects on the applicant. To the extent to which it is directed against that measure the application is therefore inadmissible as it has lost its purpose.

8 Finally it must also be held that the application is inadmissible in so far as it is directed against Mr Baichère's note of 27 October 1977 placing the applicant at the disposal of Mr Ciancio as the applicant has failed to establish that he has an interest in the annulment of that note against which, furthermore, he did not lodge a complaint through official channels.

9 In view of the foregoing it is necessary to examine the substance only of the applicant's claim relating to the refusal to provide the assistance requested by him.

Substance

10 The applicant alleges that the Commission failed in its duty to assist him laid down by the first paragraph of Article 24 of the Staff Regulations by not acceding to his request for protection "against the machinations of a number of his colleagues" which he made on 21 June 1977. That request followed the submission on 15 June 1977 of a "Note for the attention of Mr Pignot" signed by the five officials in the translation group co-ordinated by the applicant. In that note the applicant's five colleagues stated that they would thereafter refuse to co-operate with the applicant.

11 The first paragraph of Article 24 of the Staff Regulations provides that: "The Communities shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances . . . to which he . . . is subjected by reason of his position or duties".

12 It is evident from the file that in the days following the submission of the said note of 15 June 1977 an attempt was made by the Head of the Division to organize a meeting between the officials concerned but the meeting could not be held as the applicant refused to have a confrontation with the "conspirators". Finding that its attemps at effecting a reconciliation were of no avail the administrative authority adopted the various measures described above.

13 Contrary to what the applicant alleges these measures cannot be regarded as constituting a breach of the obligation to provide assistance set out in the

first paragraph of Article 24 of the Staff Regulations. Quite apart from the question of who bears responsibility for the incident on 15 June 1977, which it is not necessary for the Court to decide in these proceedings, it should be observed that it was for the applicant, who had been given the task of co-ordination, to ensure that relations compatible with the proper running of the service were maintained within his working group. Once it became clearly impossible to smooth out the differences which had arisen between the applicant and his five colleagues the defendant institution was entitled to take any appropriate steps in order to restore a peaceable atmosphere in the department in question. The steps taken by the administration namely, first, in giving responsibility for co-ordination which had been carried out by the applicant to his superior and secondly in placing the applicant at the disposal of a department where a reviser with the applicant's qualifications was required, constitute a reasonable reaction to the situation resulting from the deterioration of working relationships in the translation group in question. The measures were thus adopted in the interest of the service and there is nothing to show that the way in which they were adopted detrimentally affected the applicant's interests as an official. In those circumstances the claim for a declaration that the institution failed to fulfil its obligation under the first paragraph of Article 24 of the Staff Regulations must be dismissed.

Costs

14 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

15 However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

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

Mackenzie Stuart Pescatore Touffait

Delivered in open court in Luxembourg on 12 July 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 28 JUNE 1979 [1]

Mr President,
Members of the Court,

The applicant in the proceedings in which I am delivering my opinion today has been in the service of the European Communities since 1961. After working for the Parliament and the Council of Ministers, in 1965 he moved to the Language Department of the Commission. In 1967 he was placed in Grade L/A 5 and in 1973 he was promoted to Grade L/A 4. Since 1974 he has belonged to the translation department of the Administrative Commission on Social Security for Migrant Workers, (hereinafter referred to as the "Administrative Commission"). The translators in question work in various languages and for administrative purposes form part of Directorate General IX but are in fact placed at the disposal of Directorate General V. They belong to Division IX/D/3 (Translation: General Matters), which itself comes under Directorate IX/D (Translation, Documentation, Reproduction and Library). In a group under a head of department the applicant worked as a translator and reviser for texts to be translated into German. From 1975 he was responsible in addition for co-ordinating the work of the five German translators in Grade L/A 5 belonging to the group and he also replaced the head of department when she was absent.

Tension and problems arose on a number of occasions between the applicant and the other translators and as a result the five German members informed the Head of Division, Mr Pignot, in writing that they rejected the applicant in all respects as a colleague

1 — Translated from the German.