JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 11 MAY 1978 [1]

Jozef Oslizlok
v Commission of the European Communities

"Retirement in the interests of the service"

Case 34/77

Officials — Retirement — Discretionary power of the administration — Extent — Decision not to assign the official to another post — Defence of the interests of the servant concerned

(Staff Regulations of Officials, Article 50)

In the case of retirement in the interests of the service, which is provided for in relation to officials in Grades A 1 and A 2, the appointing authority enjoys wide discretionary powers. Such powers assume a considerable freedom to take decisions, as regards both the objective requirements of the service and the assessment of the specific qualities of the officials concerned and at the same time a scrupulous examination of the relevant factors — which constitutes the guarantee that the said powers will be exercised in full knowledge of the facts.

A decision not to reassign the official concerned to another post does not follow automatically from the retirement decision itself but must be based on appropriate considerations. The exercise of discretionary power, however wide, requires that an official concerning whom such a decision is contemplated should first have an opportunity of effectively defending his interests.

In Case 34/77

JOZEF OSLIZLOK, a former official of the Commission of the European Communities, residing at 18 Landbouwlaan, Overijse (Belgium), represented and assisted by Marcel Grégoire and Edmond Lebrun, Advocates at the Cour d'Appel, Brussels, 68 Rue Camille Lemonnier, 1060 Brussels, with an address for service in Luxembourg at the chambers of Tony Biever, 83 Boulevard Grande-Duchesse Charlotte,

applicant,

1 — Language of the Case: French.

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giorgio Pincherle, acting as Agent, assisted by Denise Sorasio-Allo, a member of the Legal Department, with an address for service at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building,

defendant,

Application, first for the annulment of the decision of the Commission of 21 July 1976 adopted in pursuance of Article 50 of the Staff Regulations, retiring the applicant from his post as Director of Directorate A of Directorate General XVI, Regional Policy, and dismissing him, secondly, in so far as it may be necessary, for the annulment of the decision of the Commission of 21 July 1976 reorganizing Directorate General XVI and adopting a new detailed list of posts, as well as, thirdly, for the annulment of the implied decision rejecting his complaint lodged on 7 October 1976,

THE COURT (First Chamber)

composed of: G. Bosco, President, J. Mertens de Wilmars and A. O'Keeffe, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

The applicant, Jozef Oslizlok, an Irish national, held from 1 April 1973 the post of Director of Directorate A (Analysis, Documentation and Objectives) in Grade A 2 at Directorate General XVI (Regional Policy). That directorate general was then divided into *three directorates:*

A: Analysis, Documentation and Objectives, directed by the applicant;

B: Co-ordination and Programmes, directed by Mr de Castelbajac;

C: Development and Conversion Operations, directed by Mr Solima.

In 1975-1976 the Commission decided on the initiative of Mr G Thomson, the Member of the Commission responsible for regional policy, to carry out a reorganization of that directorate general, which led to the drawing up, on 21 July 1976, of a new detailed list of posts amalgamating Directorates A and B into one new directorate, with the result that there were thenceforward only two directorates, that is:

— Directorate A: Co-ordination, Programmes, Studies and Analyses, placed under the authority of a director, assisted by a chief adviser, both posts being in Grade A 2;

— Directorate B: Development and Conversion Operations, placed under the authority of a director.

The applicant was warned by a letter from President Ortoli dated 1 July 1976 that, as far as he was concerned, the proposed reorganization was likely to result in retirement within the meaning of Article 50 of the Staff Regulations and he was invited to submit his observations; he replied on 12 July 1976 that in the absence of more detailed information it was impossible for him "to submit any effective observations", whilst adding that he was "ready to consider the possibility of assignment to another post corresponding to his grade and qualifications".

The applicant's letter was communicated to the Commission at its meeting on 21 July 1976.

According to the minutes of that meeting the Commission was informed of the vacant posts in Grade A 2 and considered the possibilities of assigning Mr Oslizlok to another post in the same grade either within DG XVI (new post of chief adviser) or to other posts which were either vacant or likely to become so within a short period but finally decided to retire him in the interests of the service in pursuance of Article 50 of the Staff Regulations and to award him the allowance provided for in that article.

On 30 September 1976 the applicant lodged a complaint within the meaning of Article 90 (2) of the Staff Regulations against:

1. The decision of 21 July 1976 retiring him from his post and dismissing him in implementation of Article 50 of the Staff Regulations;
2. In so far as necessary, the decision of 21 July 1976 reorganizing Directorate General XVI (Regional Policy), and adopting a new detailed list of posts therefor.

The complaint was received on 7 October 1976.

As the Commission made no reply to that complaint within the period provided for in Article 90 of the Staff Regulations the applicant lodged on 18 March 1977 an application for the annulment of the implied decision rejecting his complaint which resulted from the failure of the Commission to reply. Subsequently he did receive a reply, the full text of which was transmitted to him on 3 May 1977, one month after his application was received at the Court Registry.

Upon hearing the report of the Judge-Rapporteur and views of the Advocate General the Court (First Chamber) decided to open the oral procedure without holding any preparatory inquiry.

II — Conclusions of the parties

The applicant claims that the Court should:

1. Annul the decision of the defendant of 21 July 1976 retiring him from his

post of director and dismissing him in implementation of Article 50 of the Staff Regulations;

2. In so far as necessary, annul the decision of the defendant of 21 July 1976 reorganizing Directorate General XVI and adopting a new detailed list of posts therefor;

3. Annul the implied decision rejecting his complaint which was registered on 7 October 1976 under No 4496;

4. Order the defendant to pay the costs.

The defendant contends that the Court should:

— Dismiss the present action as inadmissible in part and entirely unfounded;

— Order the applicant to pay the costs.

In his reply the applicant claims as an alternative to the conclusions set out in the application that the Court should:

Before giving judgment on the substance, authorize the applicant to prove by all legal means, including the hearing of witnesses, that he was kept in ignorance of the plan to reorganize Directorate General XVI as it was presented to the Commission on 26 July 1976 until after the adoption of the decision to retire and dismiss him.

III — Submissions and arguments of the parties

Application

The application is based on the following three submissions:

1. Infringement of Article 50 of the Staff Regulations of Officials, inasmuch as the decision to retire the applicant was adopted without his having been given the opportunity of submitting any effective observations (judgment of the Court of 30 June 1971, Case 19/70, *Almini* v *Commission*, [1971] 2 ECR at p. 631);

2. Infringement of Article 25 of the Staff Regulations of Officials, as there was no statement of the reasons on which the decision to retire him was based;

   In this respect the applicant requests the Court to give further consideration to its judgment in *Reinarz* v *Commission* (judgment of 6 May 1969, Case 17/68, [1969] ECR 61);

3. Infringement of Article 50 of the Staff Regulations of Officials and misuse of powers, inasmuch as the interests of the service did not require either the applicant's retirement or, *a fortiori*, his dismissal.

A — Infringement of Article 50 of the Staff Regulations and disregard of the rights of the defence

The applicant considers that the decision of 21 July 1976 infringed Article 50 of the Staff Regulations and disregarded the rights of the defence, inasmuch as the decision to retire and dismiss him was adopted without his first having been allowed an opportunity to submit any effective observations, even though such a decision may only be adopted after the official concerned has been given an opportunity to state his views, in full knowledge of the facts, on the factors regarded as decisive in the adoption of the decision.

Although, according to Article 50 of the Staff Regulations, "An official holding a post in Grades A 1 or A 2 may be retired in the interests of the service by decision of the appointing authority", the Court of Justice nevertheless stated in its judgment of 30 June 1971 (Case

19/70, *Almini*, [1971] 2 ECR at p. 630) that the exercise of discretionary powers which are so widely defined required that the official concerning whom such a measure is contemplated should first have an opportunity of effectively defending his interests.

In fact, the applicant observed in his letter of 12 July 1976 that after receiving the letter from the President of the Commission dated 1 July 1976 he had not been given any opportunity of replying in full knowledge of the facts or of submitting any effective observations on the expressed intention to retire him in the interests of the service and he asked to be enabled to submit appropriate observations.

In particular, the applicant was unaware of a fact which was only to be revealed by the decision of 21 July 1976 concerning the reorganization of Directorate General XVI and the adoption of a new detailed list of posts and which he found out after the adoption of the decision of the same date relating to his retirement and dismissal: that the alleged reorganization was directed towards the amalgamation of the former Directorates A and B into a new Directorate A into which a Grade A 2 post of "chief adviser" was introduced.

B — Infringement of the second paragraph of Article 25 of the Staff Regulations

Even though under the second paragraph of Article 25 any decision relating to a specific individual which is taken under the Staff Regulations is to be communicated at once in writing to the official concerned and any decision adversely affecting an official is to state the reasons on which it is based, the decision to retire the applicant contains no statement of reasons which is sufficient in law.

First, the decision does not indicate the objective requirements of the service which justify retirement and it is not clear why the alleged reorganization must imply retirement, particularly since the post from which the applicant was retired is in fact maintained in the new detailed list of posts under the title "chief adviser".

Secondly, the decision in dispute does not state the reasons why retirement from the post must imply dismissal, ruling out the possibility of the applicant's being assigned to another post in his category corresponding to his grade. A statement of reasons is even more necessary since the post of "chief adviser" assigned to the new Directorate A, which corresponds to the applicant's grade and is in a directorate which has, in particular, taken over the tasks of the former Directorate A of which the applicant was Director, has remained vacant and is at present occupied only under a temporary posting.

C — Misuse of powers and infringement of Article 50 of the Staff Regulations

The applicant maintains that the interests of the service did not imply either his retirement or, *a fortiori*, his dismissal and that the real aim of the reorganization was his dismissal. In fact, the applicant's post has not been abolished within the context of the reorganization and continues to exist under the "chief adviser", which, according to the table of descriptions of basic posts provided for in Article 5 of the Staff Regulations, corresponds to the basic post of director in Career Bracket A 2.

Furthermore, the tasks carried out by the former Directorate A continue to exist in the new Directorate A, with the result that there are no objective requirements justifying the retirement of the applicant.

As the letter of notification of 1 July 1976 in no way called in question the specific qualities of the applicant in relation to the objective requirements of the service the reference to those interests in order to support the contested decision is unfounded and therefore unlawful.

Those findings are sufficient to show the existence of a misuse of powers. However, such a misuse also emerges from the fact that:

(a) the applicant, the person most concerned, has not been enabled to express his point of view effectively as regards the reorganization and his retirement;

(b) the decisions at issue were adopted with uncommon suddenness, in all haste, on the eve of and even during the holidays and a few months before the expiry of the term of office of the Commission as then constituted.

The applicant states that it is in case the decision of 21 July 1976 to reorganize Directorate General XVI and adopt a new detailed list of posts should appear to be inseparable from that relating to his retirement and dismissal and should therefore be wholly or partly affected by unlawfull elements vitiating the latter — in particular that of misuse of powers — and/or in case the Court considers that the lawful nature of the decision retiring and dismissing the applicant is conditional upon the lawful nature of the decision to reorganize Directorate General XVI and adopt a new detailed list of posts that the application also seeks the annulment of the latter.

Defence

The Commission contests the admissibility of the application in so far as it seeks the annulment of the decision modifying the detailed list of posts for the Directorate General and in that regard refers to the judgment of 16 December 1964 (Joined Cases 109/63 and 13/64, *Muller*, [1964] ECR at p. 676), according to which a general measure for the organization of departments cannot have an adverse effect within the sense of Article 91 of the Staff Regulations.

The potential effect on the position of officials which a measure of that type may have and the fact that it always involves the adoption of certain number of decisions of an individual nature cannot alter the principle formulated above.

A — Misuse of powers

The Commission begins by considering the submission regarding the existence of a misuse of powers and observe that the objection of inadmissibility which it has put forward renders superfluous a defence of the substance of the decision to reorganize the Directorate General. Secondly, it observes that misuse of powers must be proved by objective, relevant and consistent factors showing that the administration used its powers for purposes other than those for which they were conferred upon it (judgment of the Court of Justice of 5 May 1966, Joined Cases 18 and 35/65, *Gutmann*, [1966] ECR at p. 117). The arguments put forward by the applicant do not in any way satisfy those conditions.

The improbability of the applicant's argument is also shown by the consideration that the Commission has a discretionary power as regards the application of Article 50 of the Staff Regulations, since it is hard to see why the Commission and its officers should have involved themselves for more than 18 months in a parody of reorganization, solely in order to cover up an individual decision which the Commission was empowered to adopt

at any time, independently of any operation of a more general scope.

The Commission emphasizes that Article 50 of the Staff Regulations is exceptional in nature. It maintains that it is, with other provisions (Article 29 (2), Article 34 (1), Article 43), clear evidence of the desire to allow the appointing authority a largely discretionary power as regards the posts in Grades A 1 and A 2 by subjecting the exercise of that power solely to a consideration of the interests of the service. Furthermore, it clearly appears as the corollary and, as it were, as the price of recruitment without competition (Article 29 (2)).

The Commission considers that the foregoing considerations allows two principles to be laid down:

— The reasons which may justify a retirement under Article 50 may lie in a consideration of the abilities, in the widest sense of the term, of the official concerned just as much as in a reorganization resulting in the abolition of a specific post (judgment of the Court of Justice of 30 June 1971, Case 19/70, *Almini*, [1971] ECR 623);

— As regards the implementation of such a measure, in the absence of special protection provided for by the Staff Regulations the officials concerned cannot be entitled to expect more from the Commission than observance of the guarantees which apply even in the absence of any specific provision.

B — Infringement of Article 50 and disregard of the rights of the defence

As Article 50 of the Staff Regulations contains no procedural provision intended to enable the official in question to submit observations before a decision to retire him is adopted, the applicant can only plead the alleged violation of the general principles of law acknowledged by the case-law of the Court and, in particular, by the *Almini* judgment referred to above, according to which the official concerning whom a retirement decision is contemplated must first have an opportunity of effectively defending his interests.

The Commission notes that none of the factors whose presence in the aforementioned case led the Court of Justice to consider that the official concerned had been unable to submit his observations effectively is present in this instance. In the present case, therefore, it cannot be claimed that the time-limits fixed were too short, since the period of 15 days fixed as a guide in the letter of 1 July 1976 was reasonable in every respect.

Furthermore, when it is realized that the reorganization of Directorate General XVI had been agreed in principle since the beginning of 1975 and that active preparations had been going on for more than a year, it is impossible to believe that the applicant knew nothing of the operation contemplated, if only because his duties entitled him to study the minutes of the meetings of the Commission. As regards the details of the reorganization, which were drawn up under the authority of his immediate superior, it is unlikely that the applicant was not informed of them orally and unofficially.

The Commission notes, furthermore, that in his letter of 12 July 1976 the applicant considered all the consequences which might result for him from the possible application of Article 50. He cannot, therefore, claim to have been unaware of the implications of the measure contemplated.

The Commission observes that the applicant was, in any event, informed in the course of the proceedings before the Court of the real cause of the proposed measure, that is, the reorganization of Directorate General XVI, a direct consequence of which was the applicant's retirement.

C — Absence of any statement of reasons

As regards the inadequacy of the statement of reasons alleged by the applicant, it has been established since the judgment of the Court of 6 May 1969 (Case 17/68, *Reinarz*, [1969] ECR at p. 70) that reasons do not have to be given for decisions applying Article 50. In fact, the reasons which appear in the contested decision are more than sufficient and indeed refer, first, to the reorganization of Directorate General XVI and, secondly, to the absence of any assignment to another post in the same grade.

There can be no obligation to state the reasons on which such decisions are based "to the extent to which their substantive considerations are concerned, that is to say, the considerations over and above a mere statement of the legal principles applicable to the decisions and a recital of the procedure leading up to them" (Opinion of Mr Advocate General Roemer in Case 17/68, [1969] ECR at p. 81).

Even if the Court has not yet defined that principle, it is clear that the Commission is not required to state the reasons on which are based decisions leading in themselves to a reorganization of its departments including the decision which affected the applicant by the abolition of the post he occupied.

As regards the fact that the decision amounts to not assigning the applicant to one of the Grade A 2 posts appearing either in the new detailed list of posts for Directorate General XVI or to a post in the same grade vacant in another department the Court of Justice has in somewhat similar cases laid down the principle that the Commission cannot be expected to give particulars of its assessment of an official in comparison with others or, more generally, make known complex value-judgments relating to individual cases (judgment of the Court of Justice of 2 July 1969, Case 27/68, *Renckens*, [1969] ECR 255 at p. 264). Even if the Court of Justice should wish to reconsider well- established case-law, a procedural defect in the form of an insufficient statement of the reasons on which a decision is based cannot alone lead to the annulment of the contested decision if it appears that that decision can be confirmed in substance in the absence of a mistake of law or of fact (judgment of the Court of Justice of 29 September 1976, Case 9/76, *Morello*, [1976] ECR at p. 1422).

D — Absence of any interests of the service

The Commission returns to the third submission and contests various allegations made by the applicant:

— The statement that the applicant's post has not been abolished and continues to exist in the new detailed list of posts for Directorate General XVI is incorrect and irrelevant. In the application of Article 50 the appointing authority may merely retire an official in Grade A 1 or A 2 for reasons arising out of the assessment of his qualifications in relation to the requirements of the service and subsequently appoint another official to the same post, without the post's having been modified in any way in the meantime as regards the duties or tasks attaching to it;

— Moreover, a comparison of the old and new detailed lists of posts shows that although the total number of Grade A 2 posts is the same, the posts themselves, considered from the point of view of the duties attaching to them, are different.

Finally, as regards the Commission's consideration of the question whether the applicant could be appointed to one or other of the Grade A 2 posts vacant in its departments, in particular that of chief adviser created in Directorate General XVI, there is nothing in the application to prove that it was irregular. Neither the applicant's previous training and experience nor his career within the Commission — which was of short duration and limited to the occupation of a single post — appears *a priori* to qualify the applicant for one of those posts.

Reply

The applicant maintains that the application for the annulment of the reorganization decision is admissible or, at the least, that its admissibility is linked with the substance of the application, with the result that it cannot be held inadmissible in the absence of any consideration of the substance.

A — Infringement of Article 50 of the Staff Regulations and disregard of the rights of the defence

The applicant maintains that the requirement that in the case of the application of Article 50 of the Staff Regulations the official concerned must first have an opportunity of effectively defending his interests has not been fulfilled. The letter from the Commission of 1 July 1976 gave no precise information either as to the reasons for and details of the contemplated reorganization of Directorate General XVI or as to the interests of the service which required the applicant to be retired from his post and even dismissed in the context of that reorganization.

The fact that the defendant's arguments on that point are based on hypotheses ("it is impossible ...", "it is unlikely ...") shows it to be aware that on the basis of the letter of 1 July 1976 the applicant was not in a position to submit any effective observations. It is true that the applicant was aware that there was to be a reorganization of Directorate General XVI and of other directorates general as well, but he was kept in complete ignorance of the details of the reorganization as proposed to the defendant and accepted by it until after the contested decisions had been adopted.

The fact that in his letter of 12 July 1976 the applicant was able to contemplate the consequences of a possible application of Article 50 does not imply that he was in a position to submit appropriate observations on the actual details of the reorganization.

Finally, the applicant questions the justification for the defendant's statement that by their nature "the reasons based on the interests of the service which were to result in reorganization" cannot be assessed by the applicant. For what reason should the director of one of the directorates concerned not be entitled to give his opinion on the principle and nature of a reorganization of the directorate general?

What, in the defendant's view, is the meaning of the duty to allow an official to submit his observations on a contemplated decision to retire him in the interests of the service if he is not entitled to give his opinion on what the interests of the service require or imply and if it is not even necessary that he be informed of the nature of those interests?

B — Absence of any statement of reasons

According to the applicant there is still some uncertainty over the question whether a decision applying Article 50 of the Staff Regulations must contain a statement of the reasons on which it is based.

In contrast to the *Reinarz* judgment (judgment of the Court of Justice of 6 May 1969, Case 17/68, [1969] ECR 61) referred to by the Commission, the applicant refers to the judgment of 2 July 1969 *(Renckens,* Case 27/68, [1969] ECR 255 at p. 264) in which in relation to a measure of termination of service the Court states once again the principle laid down by reference to Article 25 of the Staff Regulations that any decision adversely affecting an official shall state the reasons on which it is based. Article 25 states that obligation in very general terms, with the result that it was not necessary to state it again subsequently in Article 50 in the case of particularly adverse decisions. The decision retiring the applicant contains no statement of reasons which is sufficient in law, since it refers neither to the factors which were taken into consideration in adopting the decision to retire him nor to those preventing his assignment to another post in the same grade which was available or about to become so. Such a statement of reasons does not in any way mean, as the Commission wrongly suggests, that particulars need be given of its assessment of the applicant in comparison with other officials of equal rank.

The production by the defendant of the minutes of the meeting of 21 July 1976, even supposing, *quod non*, that it can make good the inadequate statement of reasons on which the decision was based, would merely show that the various possibilities of assigning the applicant to another post were examined but would not explain what made the defendant decide not to assign him to another post. Finally, the applicant replies to the defendant's argument based on the judgment of the Court of 29 September 1976 *(Morello,* Case 9/76, [1976] ECR 1415 *et seq.),* according to which a procedural irregularity consisting in an inadequate statement of reasons cannot alone bring about the annulment of the contested decision if it appears that that decision could be confirmed in substance in the absence of a mistake of law or of fact, and observes that having regard precisely to the wide discretionary power of the administering authority in the matter, it cannot be regarded as certain that the same decision to retire him from his post would be adopted after a judgment annulling the earlier one had been given.

C — Misuse of powers and infringement of Article 50 of the Staff Regulations

The applicant refers to the aforementioned judgment in the *Almini* case and notes that, since in this case there is no reference in the Commission's letter of 1 July 1976 to the specific qualities of the applicant, the objective requirements of the service can alone justify his retirement and dismissal.

The applicant contests the existence of such requirements and observes that the publication, after the events in dispute took place, of Vacancy Notice No COM/382/77 relating to the post of Director of the new Directorate A — Co-ordination, Programmes, Studies and Analyses — shows that the qualifications required for that post are identical to those required for the post formerly held by the applicant. He concludes from that that the reorganization was only carried out in order to bring about his removal, so as to enable a third party to receive the promotion

which it was impossible to provide by any other means since Directorate General XVI had been refused an additional post in Grade A 2. The applicant stresses the haste with which the measures he criticizes were adopted, which he considers to be evidence of the existence of misuse of powers.

Rejoinder

The objection of inadmissibility

The Commission maintains that the decision to carry out a general reorganization and the individual decision adversely affecting the applicant are clearly distinguishable in the context of the proceedings before the Court. There is nothing to prevent the decision applying Article 50 of the Staff Regulations to the applicant from being annulled without there being any consideration of the substance of the decision to reorganize Directorate General XVI. Respect for that clearly established distinction does not adversely affect the legal protection available to the official concerned since he is in a position to request the Court to review the decision adversely affecting him or, in other words, the specific consequences concerning him of measures of a general nature.

A — Infringement of Article 50 and disregard of the rights of the defence

As regards the submission to the effect that the applicant has not been able to defend his interests effectively, the Commission objects that there is confusion between its decision of a general nature and that of an individual nature addressed to the applicant.

The requirement laid down in the *Almini* judgment is justified by the fact that a decision to retire an official has particularly serious consequences as regards his position but that requirement cannot be extended to measures of a general nature, incapable of adversely affecting an employee, such as the general reorganization of the department to which he belongs.

Even if the applicant shows that he was unaware of even the possibility of a reorganization it would be of no effect, since the Commission was under no obligation to inform him of the details of the scheme which it was about to examine. The duty to give the persons concerned the opportunity of defending their interests effectively, which has been defined by the Court, concerns only their dismissal under Article 50 of the Staff Regulations and is thus limited to the sole consequences of the decision which is of individual concern to them.

In assessing whether the defendant has been enabled to defend his interests effectively the decisive factor is whether the reasons put forward when he was informed of the possibility that a decision concerning him might be taken correspond to those which subsequently formed the basis of such decision. That condition is satisfied in this instance: the letter of 1 July 1976 stated that the application of Article 50 was contemplated as a result of the reorganization of the departments of Directorate General XVI and the decision of 21 July 1976 was based on the same reason.

The Commission also notes that the new Directorate A results from the amalgamation of the two Directorates (A and B) which existed previously and that, in the main and having regard to the aims of the reorganization, the duties attaching to the new post of director combined those attaching to two earlier posts. The reality of the abolition of the applicant's post and, therefore, of the reasons on which the contested decision is based is therefore established. The fact that that decision was adopted after consideration of the merits of the official concerned in

relation to the requirements of the service is not disputed and is perfectly normal and logically inevitable. The abolition of one of the posts of director implies that the Commission examines the comparative merits of the officials in that grade previously assigned to Directorate General XVI in order to determine those who will remain in that department.

The minutes of the meeting of the Commission show that it had the possibility of assigning the applicant to another department. It was entirely up to the applicant in his reply of 12 July 1976 to give full particulars of any abilities in that respect.

B — Absence of any statement of reasons

The statement of the reasons on which the contested decision was based is sufficient, even assuming that the Court intends to subject the decisions adopted in applying Article 50 to comparable or identical requirements to those laid down for decisions terminating service, the legal bases for which are different. The Court of Justice does not expect the Commission to give particulars of its assessment of an official in comparison with others and to make known complex value-judgments relating to individual cases. Furthermore, the duty to state reasons must be appraised by reference to other decisions which may have affected the party concerned and to all the circumstances surrounding the adoption of the decision at issue (judgment of the Court of Justice of 9 July 1969, Case 1/69, *Government of the Italian Republic* v *Commission of the European Communities*, [1969] ECR 277). Both the decision reorganizing and adopting a new detailed list of posts for Directorate General XVI and the minutes of the meetings of the Commission which have been produced are also factors to be taken into consideration.

The reasons on which the decision was based are, therefore, fully known and enable the Court to carry out a full review of their regularity, which is, moreover, only challenged by the applicant on the ground of misuse of powers.

C — Absence of any interests of the service and misuse of powers

A decision which is based solely on an assessment of the specific qualities of the offical in relation to the objective requirements of the service cannot constitute a misuse of powers. If the interests of the service had required the applicant to be retired, then even though the post continued to exist without any change of function in the detailed list of posts of the Commission the corresponding decision would not be vitiated by misuse of powers.

The applicant, represented by E. Lebrun of the Brussels Bar, and the Commission of the European Communities, represented by its Agent, G. Pincherle, presented oral argument at the hearing on 27 October 1977.

The Advocate General delivered his opinion at the hearing on 13 April 1978.

Decision

1 The application seeks the annulment of the decision of the Commission of 21 July 1976 retiring the applicant, an official in Grade A 2, from his post as Director of Directorate A (Analysis, Documentation and Objectives) of Directorate General XVI (Regional Policy) of the Commission and, on the ground that he was not assigned to another post in his category corresponding to his grade, awarding him the allowance provided for in the third paragraph of Article 50 of the Staff Regulations.

2 It also seeks the annulment, in so far as may be necessary, of the Commission's decision, also dated 21 July 1976, reorganizing the Directorate General (XVI) for Regional Policy.

3 As regards the retirement and decision not to re-assign him to another post in his grade, the applicant complains first of an infringement of Article 50 of the Staff Regulations and disregard of the general principle of respect for the rights of the defence, inasmuch as he was not given any opportunity beforehand to submit his observations on the intention expressed by the appointing authority to retire him in the interests of the service.

4 He complains, secondly, of an infringement of the second paragraph of Article 25 of the Staff Regulations, inasmuch as the statement of the reasons on which the decisions in question were based was not sufficient to comply with the law, of an infringement of Article 50 of the Staff Regulations and misuse of powers, inasmuch as the latter provision was applied to him without its being justified by any consideration based on the interests of the service.

5 Although the applicant does not make any submission *expressis verbis* against the decision relating to the reorganization of the Directorate General for Regional Policy, it appears from the arguments put forward in support of the third submission that it is also directed against that decision, which, he alleges, was adopted only in order to permit his exclusion.

6 Thus formulated that submission is admissible also as regards the decision to reorganize Directorate General XVI, since it seeks to show that under the appearance of a measure of reorganization of the office that decision was in fact aimed at removing him from his post.

7 It is first necessary to consider the application in so far as it is directed against the decision to reorganize Directorate General XVI.

(a) The reorganization of the Directorate General for Regional Policy

8 Until the contested decisions were adopted, Directorate General XVI comprised three Directorates, that is: A (Analysis, Documentation and Objectives), B (Co-ordination and Programmes) and C (Development and Conversion Operations), the first of which was directed by the applicant.

9 It appears both from the file — and in particular from the minutes of the meeting of the Commission of 15 January 1975 — and from the explanations given during the oral procedure, in particular by the witness R. Ruggiero, formerly Director General of Directorate General XVI, that the Commission decided as early as the beginning of 1975 that the advisability of the reorganization of that Directorate General was to be considered.

10 Furthermore, it may be seen from the minutes of the meeting of the Commission of 30 June 1976 that the Member of Commission responsible for Regional Policy informed it of his intentions as regards the reorganization of the Directorate General for Regional Policy and that he indicated that "this reorganization represents an attempt to profit from the experience of the experimental period of one year which has passed since the effective establishment of the European Regional Development Fund. It will seek in particular to concentrate the activities of the Directorate General into two Directorates instead of three and to strengthen the secretariat of the Regional Policy Committee".

11 In addition, an internal memorandum of 16 July 1976 from the President of the Commission and the Member responsible indicates that the aim of combining Directorates A and B "the better to integrate the tasks of carrying out studies, analyses of regional development, planning and co-operation", since "the . . . elaboration of an all-embracing regional strategy" depends on the complete interdependence of those various functions.

12 Finally, according to the evidence of the witness R. Ruggiero, from the time the European Regional Development Fund was set up in March 1975 (Regulation No 724/75 of the Council of 18 March 1975, Official Journal No L

73 of 21 March 1975, p. 1), it became necessary to assign to it a number of officials from Directorate A, which helped to justify the amalgamation of Directorates A and B, both of which were responsible for planning and co-ordination, whilst Directorate C was essentially to assume responsibility for the management of the Fund.

13 It follows from those factors that the reorganization of Directorate General XVI was inspired by considerations based on the interests of the service, with the result that in so far as the application refers to that decision it must be dismissed.

(b) The decision to retire the applicant

14 In the normal course of events the reduction in the number of Directors of Directorate General XVI from three to two would necessarily result in the retirement of one of them.

15 Under the terms of Article 50 of the Staff Regulations retirement in the interests of the service is provided for only in relation to officials in Grades A 1 and A 2, it does not constitute a disciplinary measure and — if the official concerned is not assigned to another post — it is accompanied by the grant of allowances designed to protect the financial position of the officials concerned.

16 The power conferred by Article 50 must be considered in the light of the fact under the terms of Article 29 (2) of the Staff Regulations such officials may be recruited by a procedure other than the competition procedure and that under Article 34 they are not required to serve a probationary period.

17 It follows that the Commission enjoys wide discretionary powers as regards both the recruitment and retirement of such officials.

18 Such powers assume a considerable freedom to take decisions, as regards both the objective requirements of the service and the assessment of the specific qualities of the officials concerned and at the same time a scrupulous examination of the relevant factors — which constitutes the guarantee that the said powers will be exercised in full knowledge of the facts.

19 The defendant observes that the minutes of the meeting of 21 July 1976 show that after deciding on the reorganization of Directorate General XVI the Commission proceeded to carry out "a comparative examination of those officials in Grade A 2 and the official in Grade A 1 on a personal basis who had previously been assigned to the posts of director at the Directorate General for Regional Policy in relation to the requirements for performance of the duties involved in the direction of the new organization" and that "after examining the qualifications of those officials" it decided, on the proposal of the President of the Commission and of the Commissioner responsible for Directorate General XVI and "having regard to the duties to be performed by the two directorates resulting from the reorganization of Directorate General XVI", to exclude the applicant and to make the other two directors responsible for the new Directorates A and B.

20 It emerges clearly from the said minutes that the qualifications of the officials concerned, whose personal files were, moreover, at the disposal of the Members of the Commission, were examined and that the decision which resulted in the exclusion of the applicant was adopted following that comparative consideration.

21 Thus the condition attaching to a correct exercise of the wide discretionary power reserved to the Commission in the matter has been satisfied. Having regard to the nature of the power conferred in that matter by Article 50 the statement that the comparative qualifications of the various officials concerned have actually been examined satisfies the requirements contained in Article 190 of the Treaty and the second paragraph of Article 25 of the Staff Regulations to the effect that decisions shall state the reasons on which they are based.

22 In fact, in the cases covered by Article 50 of the Staff Regulations, such reasons are sufficient evidence that the Commission took the interests of the service into account and it cannot be expected to go further and give particulars of its assessment of the applicant in comparison with each of the other officials of equal rank.

23 The submission with regard to the inadequacy of the statement of reasons must therefore be dismissed.

24 Furthermore, the fact that on 1 July 1976 the President of the Commission informed only the applicant and not the other two directors, that the

Commission was considering applying Article 50 to him within the context of the reorganization of the directorate general, cannot in the circumstances of the case constitute sufficient evidence of misuse of powers, since the Commission adopted its final decision only after examining the comparative merits of the officials concerned.

25 The submission as to disregard of the rights of the defence must also be dismissed, since the applicant had been warned by a letter from the President of the Commission that the latter contemplated applying Article 50 of the Staff Regulations to him and had had an opportunity to submit his observations.

26 An examination of his reply of 12 July 1976 shows that he was sufficiently informed of the nature and consequences of the measure contemplated to put forward effectively such arguments as might prevent its adoption and it is established that the Members of the Commission were aware of his observations before they adopted the contested decision.

(c) The Commission's decision not to assign the applicant to another post

27 According to the third paragraph of Article 50 of the Staff Regulations, an official who is retired in the interests of the service is to receive an allowance if he is not assigned to another post in his category and grade.

28 Just as in the case of a decision to retire an official the Commission enjoys wide discretionary powers in the case of a decision to reassign an official to another post in the same grade.

29 However, by reason of the consequences of such a decision for the official concerned a decision not to reassign him to another post cannot follow automatically from the retirement decision itself but must be based on appropriate considerations.

30 The exercise of discretionary power, however wide, nevertheless requires that an official concerning whom a decision not to reassign him to another post in his grade is contemplated should first have an opportunity of effectively defending his interests.

31 Although the letter of 1 July 1976 was such as to enable the applicant to express his point of view effectively as regards the decision to retire him, it made no mention of the possibilities of any reassignment.

32 In his reply of 12 July 1976 the applicant indicated that he was ready "to consider the possibility of assignment to another post" corresponding to his grade and qualifications and that he was not aware of the existence of any objective reasons which might justify his dismissal.

33 It appears from the minutes of the meeting of the Commission on 21 July 1976 under the heading "C. Application of Article 50 of the Staff Regulations" that in addition to the new post of chief adviser provided for in the new Directorate A, at least three other posts in Grade A 2 were either vacant or about to become so in other directorates general.

34 The Commission decided that it was not appropriate to assign Mr Oslizlok to another post in any of its departments without his having been given an opportunity of effectively defending his interests in that respect.

35 By neglecting to give the official concerned the opportunity of making his views known on that subject the Commission failed to respect the guarantees which must be offered to officials in the case of the final abolition of a post after retirement under Article 50 of the Staff Regulations and it must therefore reconsider his case.

36 The contested decision must therefore be annulled in so far as it decided that it was not appropriate to reassign the applicant to another post in his category corresponding to his grade.

37 It will be for the Commission to adopt the measures necessary for the enforcement of this judgment, in particular by allowing the applicant the opportunity of effectively defending his interests in that respect before deciding whether or not it is appropriate to reassign him to another post.

Costs

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

39 As the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Annuls the Commission's decision of 21 July 1976 relating to the application of Article 50 of the Staff Regulations in so far as it determined that the applicant should not be assigned to another post in his category corresponding to his grade;**

2. **Orders the Commission to pay the costs.**

Bosco Mertens de Wilmars O'Keeffe

Delivered in open court in Luxembourg on 11 May 1978.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 13 APRIL 1978

My Lords,

The Applicant in this case is Mr J. S. Oslizlok. He was born in Poland in 1920. Between 1940 and 1945 he served with the Polish Forces in France and in Great Britain. After the war he went to University College, Cork, where he graduated as a Bachelor of Commerce. Between 1949 and 1951 he held junior academic appointments at University College, Cork, and at the University of Bristol. In 1951 he received at University College, Cork, the degree of Master of Economic Science. In 1952 he joined the staff of the Central Bank of Ireland as an Economic Assistant. In 1953 he became, by naturalization, an Irish citizen. By the time of the