OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 8 APRIL 1976 [1]

Mr President,
Members of the Court,

The changes which took place in preparation for or further to the accession of the new Member States on 1 January 1973 were particularly numerous in the Directorate-General for Parliamentary Documentation and Information in the European Parliament. As part of these changes, this directorate was divided up into a Directorate-General for 'Information and Public Relations' and a directorate which took the name of 'Directorate-General for Research and Documentation'. As early as 1972, Mr Taylor, a British national, was appointed head of the latter directorate and, as from 1 March 1974, took more direct responsibility for the library, which comes under that directorate. During the course of the year 1973, the library was itself divided into two divisions: the 'Catalogue and Administration' division, run by Mrs Hebrant, *née* Macevicius, an official of Italian nationality, recruited by competition in 1967, classified in Grade A 4 since 1 January 1973, and the 'References and Official Documents' division, later renamed 'Library and Documentation'. It seems that the directorate of the latter division remained without a head for some time and that during the year 1973 it was in fact placed under Mr Reid, a British national, who officially was only recruited as a temporary servant, in Grade A 5, with effect from 25 February 1974. Mrs Hebrant would appear to be one of the few officials 'for management, creative thinking and study' who, in the midst of these vicissitudes, remained in place.

On a proposal from the new director, Mr Taylor, the Bureau of the European Parliament decided, on 23 September 1974, to undertake a sweeping reform of the library, to be carried out by Mr Taylor. So far as this case is concerned, the most important aspect of this consisted in introducing, alongside the alphabetical subject system which until then was the only one used for compiling the catalogue, a decimal classification for new acquisitions and for works of specific interest.

From the beginning Mrs Hebrant continuously made it clear that she was opposed to the introduction of this system because, quite apart from the bad opinion which she had of it, she took the view that as the person alone responsible until then for supervising the catalogue, based exclusively on the alphabetical subject system, she might find some of her duties taken away from her. This was because for the future there was to be a catalogue based on a dual system of classification, alphabetical subject and decimal, and because responsibility for supervision of the re-organization of the classification system was to be assumed by a new arrival.

Only seasoned librarians would be capable of passing a value-judgment on the course thus taken and I shall carefully avoid making such a judgment. I would only say that there is some irony in the fact that it was only when the British arrived that the idea arose of introducing the *decimal* classification in an institution of the old continent.

The Director-General assumed that Mrs Hebrant would hardly be interested in carrying out the re-organization of the library. Therefore, on 9 October 1974 he informed her of his decision to place this re-organization under the working party

1 — Translated from the French.

chaired by Mr Reid and composed, apart, from him, of four other servants who were also of a lower grade than that of Mrs Hebrant. Two of these were in the same section as Mr Reid, and one of these was, furthermore, a temporary servant just as he was. This working party was to meet regularly and all decisions taken by it were to be recorded and notified to all library staff.

Psychologically, this measure was not very well chosen. The Director-General was so well aware of what might be unpleasant for the applicant in the new situation that he suggested to her that she devote herself for some time to studies on the possibility of 'computerizing the library catalogue'. In that same letter of 9 October 1974, he also attempted to dissuade her from continuing to supervize the compiling of the alphabetical subject catalogue. Friction was foreseeable since she was to take instructions from Mr Reid who from then on, reporting to the Director-General was to be responsible for re-organizing the classification system and also responsible for general supervision of the compiling of the alphabetical subject catalogue, an area over which until that time Mrs Hebrant alone had authority, and therefore the Director-General was anxious to prevent such friction to the greatest extent possible.

On 21 November 1974, Mrs Hebrant protested vigorously against the appointment of the 're-organizer'. On 25 November 1974, the Director-General made it clear to her in his reply that the task of the working party was only to issue 'recommendations'. After a new note of 15 December 1974, in which she maintained her position, on 28 December 1974 Mrs Hebrant submitted a complaint to the President of the Parliament under Article 90 of the Staff Regulations requesting him to 'have annulled', that is to say, to revoke the dual appointment of Mr Reid to the functions of re-organizer and of chairman of the working party and to 'have these duties conferred on herself'. By a letter of 5 May 1975, the President of the European Parliament rejected this complaint. Mrs Hebrant's application was entered in the Court Registry on 31 July 1975. Her advocate claims that the Court should annul the appointment of Mr Reid to these two functions and hold that the Parliament 'is guilty of a wrongful omission in that it failed to give favourable consideration to his client's complaint'.

I – As regards the application for annulment, the defendant Parliament alleges that this is inadmissible because it is directed against a measure which did not adversely affect the applicant. The Director-General's letter of 9 October 1974 did not have any effects on the applicant's remuneration; it did not mean in any way downgrading her in relation to Mr Reid; and the task conferred on him did not in any way adversely affect the 'status' of the applicant.

Following a principle which is generally accepted in the civil service law of the Member States, you have held that measures concerned exclusively with matters internal to the service and the way in which the administration is carried out are not actionable measures (11 July 1968, *Labeyrie*, [1968] ECR 293). The administration 'may arrange its departments and move its staff as required for the performance of the tasks assigned to it' (5 May 1966, *Gutmann*, [1966] ECR 103). Similarly, you have held that the administration has a largely discretionary power in appointing officials to particular posts (13 May 1970, *Reinarz*, [1970] ECR 275), having regard to the specific needs of the service (*Kurrer*, 28 March 1968, [1968] ECR 127).

Certainly, an official not only may but must inform his immediate superior, if necessary, in writing, that he disagrees with a measure which he considers to be

contrary to the interests of the service, and he can obtain his superior's assent when having an instruction confirmed (Article 21 of the Staff Regulations). He must even persist in his refusal to carry out an order if the order which is given to him is contrary to the criminal law. However, he has a fundamental duty to be loyal to the administration and to cooperate with it (9 June 1964, *Capitaine,* [1964] ECR 239); 14 December 1966, *Alfieri,* [1966] ECR 437).

This principle that officials have no grounds for attacking measures organizing or re-organizing the service and which renders inadmissible applications brought against such decisions is tempered, in Community law governing its officials as in the national law governing the civil service, by the condition that such measures must not adversely affect their rights. This results from the guarantee which is given to them against any misuse of powers, which might be found for example in disciplinary sanctions dressed up as measures concerning the service. You have no hesitation in censuring such conduct on the part of the administration (Judgment of 5 May 1966, *Gutmann,* [1966] ECR 103). It is even the case, for example, that a transfer which is apparently in the interests of the service may amount to a misuse of powers 'if it appears, on the basis of objective, relevant and consistent facts, to have been taken for purposes other than those stated' (same judgment). In reality, such a case is a classical example of misuse of powers.

Moreover, unlike certain national laws, and in particular French law, which retains the distinction between grade and post, the said principle is tempered, in the Staff Regulations of Officials of the Communities, by another rule, namely the rule of correlation or 'equivalence' between grade and post within each category, which brings the Community civil service close to the 'job system' or system of posts (Judgment of 17 December 1964, *Boursin,* [1964] ECR 691; *Reinarz, loc. cit.).*

It follows, indeed, from provisions of Articles 5 and 7 of the Staff Regulations of Officials of the Communities that an official is entitled not only to remain in the same grade and to receive the corresponding remuneration, but also to be entrusted with duties and powers which are, as a whole, in accordance with the post corresponding to the grade which he occupies in the scale of posts (Judgment of 15 December 1965, *Klaer,* [1965) ECR 1045; Judgment of 16 June 1971, *Vistosi,* [1971] ECR 535).

Furthermore, even in the system governing the French civil service, an official may be heard on the merits if he contests a decision ordering him not to exercise his duties, or contests a measure 'adversely affecting the prerogatives of the technical body to which he belongs' with a view to securing respect for the value of this body.

This is why you have qualified the principle according to which 'the higher authority alone is responsible for the organization of the department, which it must be able to determine and modify according to the exigencies of the services' with the reservation that this is 'without prejudice to the rights which servants enjoy under their staff regulations and which they can ask the Court to enforce', and why you have held that 'withdrawing from an official one or more of the departments for which he was previously responsible may in certain circumstances amount to an infringement of this right' (Judgment of 11 July 1968, *Labeyrie,* [1968] ECR 293).

Therefore it seems to me that the applicant is right in replying that on this point the admissibility of her application is closely connected to the substance of the case (cf. Judgment in *Klaer,* p. 1054) and that it is only after an examination of the substance of the case that it will be

possible to state whether the contested matters do or do not constitute an act adversely affecting the applicant.

However I think that at least at this stage you will not have to enter into such an examination, because it seems to me that there is no relevance in the applicant's conclusions seeking annulment because the decisions which she says should be annulled in her complaint had to her knowledge ceased to apply at the moment when she introduced her contentious application. Therefore the applicant has no interest in asking for the annulment of a decision which, as the file confirms, has in fact been abrogated. In effect on 24 April 1975 and in the presence of Mrs Hebrant, Mr Reid was officially thanked for the way in which he had discharged his task; the 'working party' which he had chaired was dissolved on the following 29 April, and Mr Reid was appointed a probationer official during that same month.

II — In order to do full justice to the applicant and putting the most favourable interpretation on the conclusions in her application, one could suppose that she is making a secondary claim for compensation for the non-material damage which she has allegedly suffered because of the irregular actions taken concerning her. The alleged irregularity is supposed to consist in the fact that an improper appointment was not abrogated and that she was not given the same appointment. However the alleged damage is not even quantified at one Luxembourg franc.

As regards this matter, it would be necessary to proceed with the examination which I have mentioned above, and to find out whether the 'recommendations' made by the working party chaired by Mr Reid were followed by decisions adopted by Mr Taylor involving subordinating the applicant to Mr Reid or taking some of her duties away from her. Such subordination could, according to your case-law, constitute a 'substantial diminution of [his] earlier status' (Judgment of 15 December 1965, *Klaer,* [1965] ECR 1055).

For, speaking generally, the table of definitions adopted by the institutions shows that the institutions started with the concept that a holder of a post is answerable to an official in a career bracket higher than his own. It is indeed the case that you have held (Judgment of 10 July 1975, *Scuppa,* [1975] ECR 919) that no provision in the Staff Regulations prevents an official who is carrying out administrative duties from being, in the interests of the service and for the purpose of coordinating certain activities, made answerable, under the authority of his immediate superior, to another official of the *same* rank, but so far as I know you have never held than an official can be made answerable to a temporary servant in a *lower* grade.

The applicant's situation in relation to Mr Reid can only be elucidated from the description of their respective duties. To get at the real truth and to see whether the measures to which the applicant takes objection only constituted a mere internal re-organization of the service, or, on the contrary, whether they adversely affected her right that the duties given to her be as a whole in accordance with the post corresponding with the grade which she held in the hierarchy, it would be necessary to see the table of definitions of duties and powers attaching to each basic post (within the meaning of the second paragraph of Article 5 (4) and the detailed list of posts relating to the library departments at the time when she first 'crossed swords' with Mr Taylor, that is to say in 1973-1974, and at the time which immediately preceded or followed the application. For this 'job description' is a fundamental element of the system of posts which is what the Community civil service in certain respects ultimately amounts to.

You have asked the Secretary-General of the European Parliament to produce

these documents, but he has only produced a fragment of the detailed list of posts covering the situation in December 1975. He says that no description of the various posts exists for the preceding period. This is somewhat surprising. Perhaps it is one of the reasons why a re-organization was decided upon. It is at least to be hoped that the re-organizers took into consideration the structure of the service and the allocation of duties within the service before they set to work.

Another way of finding out how the duties corresponding to the post held by the person interested developed would be to consult the periodical reports (Article 43 of the Staff Regulations) concerning her because they include a special heading concerning the description of the duties corresponding with the post occupied by the official reported upon. Although the report on the applicant's probationary period, made in 1967 carries the entry: 'all activities relating to the management of the library at the level of a principal administrator', though the report for the years 1967/1968 states: 'management of the library and *re-organization* of the catalogue' and though the same report for the years 1969/1970 says: 'management of the library and more particularly *revision* of the catalogue', the report for the years 1971/1972 does not carry any entry and the applicant has requested — in vain — that this gap be filled in by the person compiling the report. Unless I am mistaken, there is no staff report on the applicant's file for the years 1972 to 1975.

Even so, certain signs point to the view that the applicant's complaint that she was subordinated to Mr Reid and indeed that she was deprived of her duties is not without some apparent substance. The document produced by the European Parliament shows that it was still the case in December 1975 that 'management of administrative questions' concerning the 'Catalogue Division' was in the hands of Mrs Hebrant, whereas the same management was in Mr Reid's hands for the 'References, Information and Documentation Division'. According to the same document it was understood that Mrs Hebrant only perused and made notes on French and Italian *works* although in fact she was also responsible for doing the same in respect of French and Italian *periodicals,* according to a call to order issued by Mr Taylor on 20 March 1975, whereas it was understood that Mr Reid was responsible for the *organization* of official documents and *periodicals.*

Until 27 November 1974, Mr Taylor gave instructions only to Mrs Hebrant for the acquisition of books. As from 18 December 1974 he gave instructions jointly to her and to Mr Reid asking them both to do what was necessary, although, theoretically, according to the detailed list of posts for 1975, the applicant alone had responsibility for this.

On 1 April 1975, Mr Taylor sent a note to the applicant concerning permissions to take leave which she had granted to persons belonging to Mr Reid's section. On the third of that same month the director sent a *joint* note to Mrs Hebrant and to Mr Reid concerning the permissions to take leave and the library rules.

On 9 April, the director sent a new note to the applicant, who had meanwhile carried out his instructions concerning the library rules, but this time simply with a copy to Mr Reid. On 11 April 1975, Mr Taylor sent a *joint* note to Mrs Hebrant and to Mr Reid concerning information for members of the Parliament. Thus the director was giving instructions simultaneously to the applicant and to Mr Reid concerning matters which theoretically only concerned one of them: the applicant was being made responsible for what was happening in Mr Reid's division, while the latter had his say in what was happening in Mrs Hebrant's division.

Yet above all, at the same time as he was put on the same footing as Mrs Hebrant from the point of view of receiving instructions, Mr Reid took part in and drew up the minutes of the meetings of the working party. Thus, on 15 November 1974, the working party had a discussion with an official of the Translation Service about the classification of books acquired by this service and used by it and as a result of this discussion the working party proposed that these works should not be indexed, although Mrs Hebrant alone had the responsibility for the central 'cataloguing'. In these same minutes we learn that Mr Reid undertook to draft a note describing how the cataloguing was done with a view to rendering it easier to prepare 'recommendations' to be made on this subject. Therefore it does indeed seem that for a certain period of time there was some overlapping between the duties of Mrs Hebrant and those of Mr Reid, and hence the friction which I have already described.

Finally, the applicant sees evidence of a misuse of powers in the fact that on 3 April 1975 Mr Taylor suggested to her that she take charge of an outpost of the library at Brussels, the creation of which had become necessary because of the frequent meetings of committees in that city. She replied to this suggestion on 24 April 1975 saying that she was not interested because she regarded it as a means of 'shunting her on to a siding'.

If this situation had persisted and if Mr Reid had continued to perform the duties of 're-organizer' at the moment when the application was lodged, one could not exclude the possibility that the applicant might have suffered damage, at least of a non-material character, for which she might have been able to claim compensation. But the applicant is not saying this. The defendant Parliament gives it to be understood that the contrary was the case and, since the lodging of the application, certain signs show that certain of the applicant's former responsibilities have been restored to her.

I acknowledge the statement of the Secretary-General of the European Parliament in which he says that he does not deny the accuracy of the 'job description' made out by the applicant on 23 March 1975, and that her responsibilities, particularly budgetary ones, were enlarged and increased in importance in the summer of 1975.

Taking into account the facts that the activities of which the applicant complains were temporary ones, that any non-material damage has been made good by the cessation of the measures complained of, and that what one might call her 'prerogatives' have been substantially restored to her, I also suggest that you reject her secondary conclusions.

In these circumstances I am of the opinion that the application should be dismissed and that the parties should bear their own costs.