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

accession of the new Member States to the Communities on 1 January 1973 he had risen to the rank of Economic Adviser to the Central Bank of Ireland.

On 1 April 1973 the Applicant became a member of the staff of the Commission, as Director of Directorate A in the Directorate General of Regional Policy. That post was of course one in Grade A 2 and the Applicant was appointed to it under Article 29 (2) of the Staff Regulations.

By decision of the Commission dated 21 July 1976 (Annex 1 to the Application) the Applicant was retired under Article 50 of the Staff Regulations, with effect from 15 October 1976. That decision was taken in connexion with a reorganization of the Directorate General of Regional Policy that the Commission had decided upon on the same day.

Article 50 provides, Your Lordships remember:

"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.

Such retirement shall not constitute a disciplinary measure.

An official thus retired who is not assigned to another post in his category or service corresponding to his grade shall receive an allowance calculated in accordance with Annex IV."

The Applicant was not assigned to another post, so he became entitled to the allowance there referred to.

On 7 October 1976 the Applicant lodged a complaint under Article 90 (2) of the Staff Regulations against the decision to retire him and also, if and so far as might be necessary, against the decision to reorganize the Directorate General of Regional Policy (Annex 5 to the Application). On 23 March 1977, having received no reply to his complaint within the statutory four-month period, he commenced the present action. (The Applicant did in fact receive a written reply to his complaint, but out of time. Indeed, owing to a mistake, he did not receive the full text of that reply until May 1977: see Annex I to the Defence. The reply contained a reasoned rejection of his complaint).

In this action the Applicant claims first and foremost a declaration that the decision to retire him was void. He does so on three grounds:

(1) That the decision was taken without his having been given a proper opportunity to exercise his right to be heard;

(2) That the decision was inadequately reasoned; and

(3) That the decision was not taken in the interests of the service but constituted a misuse of powers.

The Applicant also claims, if and in so far as may be necessary, a declaration that the decision of the Commission to reorganize the Directorate General of Regional Policy was void. It was however made clear on his behalf that that claim was added only in case it should be held that that decision and the decision to retire him could not be dissociated, so that the two decisions must stand or fall together.

It is a feature of the case that the circumstances leading up to the Commission's decisions of 21 July 1976 did not become entirely clear until the hearing, when we had the advantage of hearing the oral evidence of Mr Renato Ruggiero, who was the Director General of Regional Policy at the material time.

Before 21 July 1976 the Directorate General of Regional Policy was divided into three Directorates, namely:

— Directorate A, "Analysis, Documentation and Objectives", of which the Applicant was Director;

— Directorate B, "Coordination and Programmes", of which the Director

was Mr Phillipe de Castelbajac (who was also Deputy Director General); and

— Directorate C, "Development and Conversion Operations", of which the Director was Mr Rosario Solima.

(See Annex 2 bis to the Application).

Mr Ruggiero explained to us that that structure had been adopted at a time when there was no Regional Development Fund or Regional Policy Committee. In 1975 the situation changed for two reasons. The first was the establishment of the European Regional Development Fund and of the Regional Policy Committee by, respectively, Council Regulation (EEC) No 724/75 of 18 March 1975 and Council Decision No 75/185/EEC of the same date. The establishment of the Fund necessitated a strengthening of Directorate C, which was to be responsible for the management of the Fund. That strengthening was effected in May 1975 by means of a transfer of staff from Directorate A to Directorate C. The strength of Directorate B had to be maintained, because it was to be responsible for servicing the Committee, and in particular for tackling the problem of coordinating Community regional policy with national regional policies and for formulating regional development programmes. The second reason was that the Commissioner then responsible for regional policy, Mr Thomson (as he then was), wished to put into effect a new conception of regional policy under which it would be concerned not merely with the making of grants to the poorer regions but with the regional aspect of every branch of the Community's economic policy — agricultural policy, competition policy, etc. Mr Ruggiero conceived that, for those two reasons, it was desirable to reorganize the Directorate General into two Directorates, one responsible for coordination and planning and the other for the management of the available funds. There was an additional reason, of an administrative character, for such a reorganization, which was that, owing to a number of factors, including the transfer of staff that had taken place in May 1975, Directorate A was reduced to little more than a Division. (See Transcript pp. 3 to 5).

There are before the Court the minutes of three meetings of the Commission in 1975 which reflect to some extent the events of which we were told by Mr Ruggiero.

Thus the minutes of a meeting of the Commission held on 15 January 1975 (Annex III to the Defence) record the Commission's view that it was very important that the European Regional Development Fund should be properly established and administered during its first experimental period; and they record the readiness of the Commission to consider, at Mr Thomson's instance and when he should judge it necessary, the organization of DG XVI (i.e. the Directorate General of Regional Policy) and the provision of additional posts for it.

Similarly, the restricted minutes ("P.V. spécial") of a meeting of the Commission held on 12 February 1975 (Annex IV to the Defence), after recording a protest on the part of Mr Thomson about the fact that only four additional officials had been allotted to DG XVI instead of the 11 Category A officials for which he had asked, refer to instructions given by Mr Thomson to Mr Ruggiero to draw up a scheme for the reorganization of that Directorate General.

The Commission discussed regional policy again at its meeting on 29 May 1975 (Annex V to the Defence) and, in the restricted minutes of that meeting (Annex VI to the Defence), it is recorded, amongst other things, that Mr Thomson envisaged putting forward proposals for reorganizing the Direc-

torate General of Regional Policy towards the end of the year.

One can piece together what happened between mid-1975 and mid-1976 partly from the documentary evidence and partly from Mr Ruggiero's oral evidence (Transcript pp. 6 to 14).

Mr Ruggiero did formulate a scheme for the reorganization of the Directorate General, which he discussed with Mr Thomson, and which was then discussed with the then President of the Commission, Mr Ortoli.

The scheme, as it emerged from those discussions, was, so far as relevant for present purposes, this.

The Directorate General would be reorganized into two Directorates, namely:

— Directorate A, "Coordination, Programmes, Studies and Analyses", and

— Directorate B, "Development and Conversion Operations".

Mr de Castelbajac would be the Director of Directorate A (and remain Deputy Director General). There would be included in the establishment of Directorate A a second A 2 post, that of Chief Adviser, "especially responsible for the coordination of policies and financial mechanisms". No-one was at that stage proposed for that post.

The Director of Directorate B would be Mr Solima.

To the Applicant Article 50 would be applied.

At no time during the elaboration of the scheme was it discussed by Mr Ruggiero (or by anyone else) with any of the then Directors in the Directorate General, i.e. Mr de Castelbajac, the Applicant and Mr Solima (see Transcript p. 7) — though it seems to be common ground that they all knew that some sort of reorganization of the Directorate General was in the wind.

The reasons why Mr de Castelbajac was to be proposed for the post of Director of Directorate A are, I think, clear enough. He was after all the Deputy Director General: the new Directorate A was to result substantially from an amalgamation of the old, reduced, Directorate A with his own, more active, Directorate B; and he was, so Mr Ruggiero told us, particularly experienced in the field of coordinating national regional policies (Transcript p. 14).

The reasons why Mr Solima was to be proposed for the post of Director of Directorate B are equally clear. That Directorate was to be, as Mr Ruggiero pointed out to us (Transcript p. 14), nothing other than Mr Solima's old Directorate C with a new designation letter. Not even its description was to be changed. It remained "Development and Conversion Operations".

What is crucial here, however, is why the Applicant was not to be proposed for the third A 2 post in the reorganized Directorate General, i.e. the post of Chief Adviser in Directorate A. The reason was hinted at in the Commission's pleadings, where it was said that the duties of that post did not resemble those that the Applicant had gained experience in discharging as Director of the old Directorate A. In the Rejoinder (at p. 8) it was stated that the decision to retire the Applicant was taken in the light of his qualifications in relation to the exigencies of the service. It was added that that was perfectly normal and logically inevitable. At the hearing, in answer to a question of mine, Mr Ruggiero explained it more fully, in these terms:

"Cela est une évalution de caractère personnel. Moi, je crois que Monsieur Oslizlok, pour son curriculum vitae et pour l'expérience qu'il a acquise à la Commission, était un homme possédant plutôt des capacités d'analyses économiques que de coordination et d'action. Il n'avait pas une très grande expérience, par exemple — et cela était tout à fait

naturel, car il était rentré dans la Communauté seulement en 1973 — des différents fonds communautaires, des différentes règles communautaires. Et le travail de coordination exigeait justement une très grande capacité et une très grande connaissance dans le domaine, par exemple, du Fonds social, comment ce fonds fonctionne, pourquoi par exemple certaines régions ne reçoivent pas d'argent et d'autres en reçoivent plus. Il fallait donc toute une série de connaissances spécifiques que Monsieur Oslizlok n'avait pas et qu'il n'avait pu avoir durant sa période de fonctions à la direction générale des politiques régionales."

(Transcript pp. 10—11).

It is, I think, common ground that, on 29 June 1976, Mr Thomson sent for the Applicant and warned him that he would shortly be receiving a letter as to the reorganization of the Directorate General, which might involve the application to him of Article 50. It is alleged on behalf of the Applicant that, when he asked what that meant, Mr Thomson said that he did not know but that they would have occasion to talk about it again later. We have not heard the testimony of either party to that interview, so that we cannot be sure what really happened thereat. At all events it is, I think, also common ground that there was no further relevant interview between them.

On the following day, 30 June 1976, there was a meeting of the Commission, of which the relevant extract from the minutes (produced at the Court's request) reads as follows:

"*Confidentiel*

B. Réorganisation de la direction générale de la politique regionale — engagement de la procédure de l'article 50 du statut a l'égard d'un fonctionnaire

1. M. Thomson informe la Commission de ses intentions en ce qui concerne la réorganisation de la direction générale de la politique régionale. Il indique qu'il a longuement étudié ce problème avec M. le Président. Cette réorganisation vise à tirer les leçons de la période expérimentale d'un an qui s'est écoulée depuis la mise en place effective du Fonds européen de développement régional. Elle visera notamment à concentrer les activités de la direction générale sur deux directions au lieu de trois et à renforcer le secrétariat du Comité de la politique régionale.

La Commission sera très prochainement saisie d'une communication à ce sujet, établie en accord avec M. le Président, communication sur la base de laquelle elle aura à arrêter le nouvel organigramme de la direction générale de la politique régionale.

2. M. Thomson indique à la Commission qu'il a reçu M. Oslizlok, directeur de la direction A (analyses, documentation et objectifs) de la direction générale de la politique régionale, et l'a informé de l'intention de M. le président Ortoli et de lui-même de proposer à la Commission que celle-ci engage à l'égard de M. Oslizlok la procédure de l'article 50 du statut.

Sur propostion de M. le Président et de M. Thomson, après délibération, la Commission décide d'engager à l'égard de M. Oslizlok la procédure de l'article 50 du statut.

M. le Président adressera à M. Oslizlok la lettre suivante . . ."

There follows in the minutes the proposed text of a letter that was, in fact, sent the following day, 1 July 1976, by the President of the Commission to the Applicant (see Annex 3 to the Application). The letter was in these terms:

"Dear Mr Oslizlok,

The Commission's current examination of changes in the tasks allotted to certain of its services had led to reconsideration, in particular, of the

allocation of some senior posts. In particular the Commission is working out a reorganization of the services of the Directorate General for Regional Policy.

In this context, the Commission feels that it is necessary to envisage your retirement in the interests of the service, pursuant to Article 50 of the Staff Regulations.

I should be grateful if you would let me have your observations as soon as possible, preferably by the 15th of July, so that I can inform the Commission of them.

Yours sincerely,

(signed)

François-Xavier Ortoli"

To that the Applicant replied on 12 July 1976, as follows (see Annex 4 to the Application):

"Monsieur le Président,

J'accuse réception de votre lettre du 1er juillet 1976.

Vous me permettrez d'exprimer ma surprise la plus totale et ma profonde déception d'être ainsi, subitement, en ce moment, confronté à une telle situation.

Vous avez l'obligeance, dont je vous remercie, de me demander de vous communiquer mes observations sur les intentions de la Commission de me retirer mon emploi en raison d'une réorganisation des services, particulièrement de ceux de la direction générale de la politique régional (XVI).

Malheureusement votre lettre ne fournit aucune précision sur les motifs et le contenu d'une telle réorganisation, de sorte qu'à mon vif regret je ne suis pas en mesure de répondre à votre demande d'une manière adéquate et de présenter utilement des observations.

Je me permets donc de vous demander, avec une respectueuse insistance, de bien vouloir me mettre à même de faire valoir utilement des observations appropriées. En attendant, je suis contraint à me limiter à des considérations d'ordre général.

Je n'aperçois absolument pas les raisons qui feraient que, dans le cadre d'une réorganisation communautaire des services à la direction générale de la politique régionale, il y aurait lieu soit à suppression de la direction A (analyses, documentation et objectifs) que je dirige et qui me paraît indispensable pour la conduite d'une politique régionale, soit, cette direction maintenue, à ce que je n'en exerce plus la direction.

Si, contrairement à ce qui est ma conviction, il était dûment établi que la réorganisation de la DG XVI implique nécessairement la suppression de la direction 'analyses, documentation et objectifs' ou que je n'en exerce plus les fonctions de directeur, je serais prêt à examiner la possibilité d'occuper un autre emploi correspondant à mon grade et à mes qualifications.

Je ne puis croire, en effet, que des raisons objectives de service puissent aller jusqu'à impliquer mon licenciement. Au demeurant votre lettre ne dit pas que ma compétence ou mon zèle au service de la Commission serait en cause.

Vous m'autoriserez, pour en terminer, d'attirer votre bienveillante attention sur le préjudice considérable que m'occasionnerait mon licenciement malgré les dispositions prévues par l'article 50 du statut, et cela, notamment, en raison de mon âge (56 ans) et de la brièveté de ma carrière à la Commission (3 ans).

J'ajoute, à ce propos, que j'ai quatre enfants, âgés respectivement de 14, 17, 21 et 23 ans et que comptant tout naturellement sur une carrière complète à la Commission et sur les revenus qui sont les miens actuellement, j'ai fait construire en Belgique (à Overijse), à l'aide d'un emprunt dont je dois rembourser les mensualités. Par ailleurs, je dois vous signaler qu'un de mes enfants a été obligé, faute d'une section de langue

anglaise à l'école européenne lors de notre arrivée à Bruxelles, de poursuivre ses études dans la section de langue française. Cela lui a fait perdre un an; il est exclus qu'elle ne termine pas, dans ces conditions, ses études secondaires à l'école européenne.

Veuillez agréer, Monsieur le Président, l'assurance de mes sentiments de haute considération.

(signed)
J. S Oslizlok"

There was no reaction by the Commission to that letter.

It is evident from it that the Applicant had discerned that the reorganization of the Directorate General might involve either the abolition of his Directorate or his own removal as its Director. We were told by Mr Ruggiero that, after the Applicant's interview with Mr Thomson, the Applicant had spoken to him (Mr Ruggiero) and that he had enlightened the Applicant as to the essentials of the proposed reorganization (Transcript p. 7). My impression was, however, that, in this part of his evidence, Mr Ruggiero was uncertain about dates. Unless one is to attribute to the Applicant exceptional deviousness, the inference from his letter to the President of the Commission is that he had no real knowledge about what was proposed — even though, from some of the expressions he used, e.g. "de présenter utilement des observations", it may be deduced that he had received legal advice. At all events there is no suggestion that the Applicant was told at any stage that the reason why he was not to be offered any A 2 post in the reorganized Directorate General was that he was not considered to have the appropriate qualifications.

The proposals for the reorganization of the Directorate General of Regional Policy were communicated to the Members of the Commission in a document dated 16 July 1976 headed "Réorganisation de la direction générale de la politique régionale (Communication de M. le Président et de M. Thomson)" (Annex VII to the Defence). This document commented *inter alia:*

"La nouvelle structure se caractérise donc par l'existence de deux directions au lieu des trois existantes:

— l'une chargée essentiellement des tâches confiées aux actuelles directions A et B. Par ce regroupement, sous une même autorité, il s'agit de mieux intégrer les fonctions d'études, d'analyses des évolutions régionales, de programmation et de coordination. C'est, en effet, de la parfaite interdépendance de ces différentes fonctions que dépend notamment l'élaboration progressive d'une stratégie régionale d'ensemble au plan de la Communauté. Un tel regroupement permettra en particulier d'assurer avec toute l'efficacité nécessaire tant la coordination des travaux au sein de la Direction générale que la coordination de la politique régionale avec les autres politiques de la Communauté.

— l'autre, plus directement chargée de la gestion des instruments financiers de la Communauté (FEDER, article 56 CECA et BEI) dont l'actuelle direction C a la responsabilité exclusive ou partagée. En réalité, les modifications proposées pour cette direction dont les tâches sont de nature assez homogène puisqu'il s'agit de traiter des opérations de développement et de reconversion, résultent uniquement de la création du FEDER et de l'instauration du Comité du Fonds."

There was annexed to the document a table showing the proposed new organization of the Directorate General with the names of the officials proposed for each post down to Heads of Divisions, but leaving blank the names of the two

Directors and of the Chief Adviser. The document concluded by proposing (so far as here material) that the Commission should approve the new organization as set out in the annex; proceed to a comparative study of the individual situations and qualifications of the Grade A 2 officials who had previously held posts as Directors in the Directorate General in the light of the qualities required of those holding posts as Directors in the new structure; take, following that comparative study, the appropriate individual decisions; and, finally, fix 1 August 1976 as the date of entry into force of the new organization.

The minutes of the meeting of the Commission held on 21 July 1976 (Annex VIII to the Defence) record that the Commission approved the new organization of the Directorate General of Regional Policy as proposed, and decided, also as proposed, that that new organization should take effect on 1 August 1976. In the restricted minutes of that meeting (Annex IX to the Defence) it was further recorded that the Commission, having at its disposal the personal files of the three Directors under the old structure, then proceeded to the comparative study that had been proposed. In the result it was decided to appoint Mr de Castelbajac Director of the new Directorate A and Mr Solima Director of the new Directorate B. Then, under a separate heading entitled "Application of Article 50 of the Staff Regulations", the specific case of the Applicant was considered. The two new posts of Director in the Directorate General of Regional Policy having been filled, the Commission considered the possibility of appointing the Applicant to the new post of Chief Adviser in Directorate A, and also the possibilities of appointing him to four other A 2 posts in other Directorates General that were either vacant or about to become vacant. In the end, however, the Commission took the decision to apply Article 50 to the Applicant. The reasons are not recorded in the Commission's minutes. We know, however, that the Commission had before it copies of the President's letter of 1 July 1976 to the Applicant and of the latter's reply of 12 July 1976 and also a draft of the decision that was eventually notified to the Applicant (Annex 1 to the Application).

No appointment was made at the meeting to the post of Chief Adviser in Directorate A. In fact that post was not filled until October 1976, and then only on a temporary basis, when Mr Jaeger, the Head of the Division in Directorate A responsible for coordination and for the secretariat of the Regional Policy Committee, became acting Chief Adviser.

Those are, it appears to me, the material facts.

In my opinion, on those facts, the Applicant is entitled to succeed on the first ground on which he bases his claim.

This Court has held that Article 50 of the Staff Regulations confers a wide discretion on an appointing authority, the reasons for the exercise of which may lie either in the objective requirements of the service or in an assessment of the specific qualities of the official concerned in relation to such requirements. The very width of that discretion necessitates, however, that it should be exercised only after a scrupulous examination of the facts of the case, and in particular only after the official concerned has been heard in defence of his interests, which means that he must be given an opportunity of effectively defending those interests: see Case 17/68 *Reinarz* v *Commission* [1969] /ECR 61 (paragraphs 14 to 16 of the Judgment) and Case 19/70 *Almini* v *Commission* [1971] 2 ECR 623 (paragraphs 9 to 11 of the Judgment). That is really no more than a particular application of the general rule about the

right to be heard that the Court has upheld in such cases as Case 17/74 *Transocean Marine Paint Association* v *Commission* [1974] 2 ECR 1063, Case 121/76 *Moli* v *Commission* [1977] ECR 1971 and Case 75/77 *Mollet* v *Commission* (in which Your Lordships have just delivered judgment).

I do not think that the Applicant in the present case was given such an opportunity, because he was never told the real reason why it was proposed that he should be retired. In the oft-quoted words of Lord Morris of Borth-y-Gest (Current Legal Problems, 1973, p. 11), "If someone has a right to be heard, he must be entitled to know what he needs to be heard about". Indeed this case seems to me to bear a striking resemblance to the *Almini* case, where the Court found that the letter warning the official concerned suggested objective service reasons for the decision to retire him, whereas the minutes of the Commission's meeting at which the decision was taken indicated that it was taken "by reason of an assessment of the applicant's personal ability in relation to the requirements of certain possible postings". The Court concluded from this that the Commission had not given him an opportunity of commenting on the factors which in the final analysis seemed decisive, and that the decision to retire him must therefore be annulled. It may be observed that there too the official concerned had said "that he found it difficult to deal effectively with the matter in the absence of more precise information as to the 'reasons of public interest' upon which the action envisaged in respect of him was based". (See paragraphs 14 to 18 of the Judgment). It was suggested on behalf of the Commission that the *Almini* case might be distinguished because there the official concerned had been given only four days to produce his observations whereas here the Applicant had been given a reasonable time. The precipitate nature of the Commission's action was not however the only ground, or even the main ground, on which the Court decided the *Almini* case as it did.

It is possible that, if, in this case, the Applicant had been heard on the question of his qualifications and experience, the result would still have been the same. But of that we cannot be sure. It was stated on his behalf that, if the matter had been put to him, he would have been able, among other things, to draw the Commission's attention to certain relevant writings of his, including a monograph that he had just completed on the monetary mechanisms of Community regional policy.

Taking, thus, the view that the Applicant is entitled to succeed on that ground, I can deal relatively shortly with the other grounds on which he founds this action.

In the *Reinarz* case (already cited) the Court held that it was clear from Article 50 that reasons did not have to be given for decisions made thereunder. We were urged on behalf of the Applicant to reconsider that decision. In my opinion Your Lordships should adhere to it, for three reasons:

(1) As Mr Advocate General Roemer pointed out in the *Reinarz* case (at p. 81), Article 50, which says nothing about reasons, is to be found between two Articles (Articles 49 and 51) both of which also deal with circumstances in which officials may be compelled to leave the service and both of which expressly require reasons to be given. The inference is irresistible that no statement of reasons is called for in a decision made under Article 50.

(2) In a case where the rule has been observed that an official in respect of whom action under Article 50 is

envisaged must be afforded an effective opportunity of being heard before any decision is taken, he will already know the reasons for that action. A statement of them in the actual decision cannot therefore serve any useful purpose (consider Case 41/76 *Geist* v *Commission* [1977] ECR 1419, where it was held — in paragraph 26 of the Judgment — that the absence from a decision of a statement of the reasons for it was immaterial where those reasons had been given in an earlier document).

(3) Article 25 of the Staff Regulations, which the Applicant invokes, not only requires a decision to which it applies and which adversely affects an official to "state the grounds on which it is based", but also requires such a decision to "be posted in the premises of the institution to which the official belongs and ... published in the Monthly Staff Bulletin of the Communities". It could seldom be for the benefit of an A 1 or A 2 official retired under Article 50 to have the reasons for his retirement thus publicized. I should perhaps add that Case 27/68 *Renckens* v *Commission* [1969] ECR 255, which was cited on behalf of the Applicant, is distinguishable. It was concerned with the application of Article 25 in relation to the termination of an A 3 official's service under Article 4 of Regulation No 259/68.

I do not therefore think that the second ground on which the Applicant bases his claim could be held valid.

The same applies to the third. For that ground to be held valid it would be necessary for it to have been shown that the Commission's purpose in what it did was other than to promote the interests of the service. I see nothing in the facts to substantiate such an allegation.

I was at one time disturbed by the circumstance that the Commission had, at its meeting on 30 June 1976, decided to "initiate the Article 50 procedure" as regards the Applicant, and as regards him alone, before even it had considered the detailed proposals for the reorganization of the Directorate General or the comparative merits of its three then Directors. It transpired however that the reason why the Commission had done that was that it wished to have the Applicant's observations before it came to consider all the details of the proposals. Since it knew that the President and Mr Thomson would be proposing that the Applicant should be retired that seems to me not unreasonable. Indeed I think that, if any criticism can be levelled at the timing of the invitation to the Applicant to submit his observations, it is that that invitation ought perhaps to have been made sooner, before the President's and Mr Thomson's proposals became crystallized. At all events there was no reason why similar invitations should have been sent to Mr de Castelbajac or to Mr Solima, since no-one had ever suggested that either of them should be retired.

Lastly, it will come as no surprise if I say that, in my opinion, the Applicant's ancillary claim must fail, that is his claim that the Commission's decision to reorganize the Directorate General of Regional Policy was itself void. That must follow, *a fortiori*, if it is held that the third ground on which he bases his main claim cannot be sustained. As Counsel for the Commission submitted most persuasively at the hearing, it would verge on the ridiculous to hold that the Commission had gone to all the trouble of reorganizing the Directorate General of Regional Policy (and of discussing that reorganization at a number of meetings spread over a period of about a year and a half) simply for the purpose of getting rid of an A 2 official whom it had, if it

thought him unfit, the amplest power to retire under Article 50.

I should, I think, for the sake of completeness also refer to the fact that the Commission contended that that ancillary claim was inadmissible. That contention was, in my opinion, misconceived for the same reasons as the similar contention of the Commission in Case 25/77 the *De Roubaix* case, in which I delivered my Opinion to Your Lordships a moment ago.

In the result I am of the opinion that the Applicant is entitled to a declaration that the Commission's decision of 21 July 1976 applying Article 50 of the Staff Regulations to him was void and, consequently, to an order that the Commission should pay the costs of this action.