3. It is proper to apply the second subparagraph of Article 69 (3) of the Rules of Procedure, pursuant to which the Court may order even a successful party to pay costs which the Court considers that party by its conduct to have caused the opposite party to incur, to an institution which has led an official to bring an application by itself bringing about an abnormal situation and arousing in the applicant expectations which are understandable but unjustified.

In Case 218/80

WALTRAUT KRUSE, an official of the Commission of the European Communities, residing in Brussels, represented by P.-P. Van Gehuchten of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Mr Loesch, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, J.-P. Delahousse, acting as Agent, assisted by D. Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of O. Montalto, a Member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the original statement of claim for an order that the Commission should guarantee the applicant's right to perform the duties of a translator, together with her assignment exclusively to work of that nature, pursuant to Article 24 of the Staff Regulations of Officials and, in a supplementary claim contained in her reply, an application for a declaration that the Commission has failed to fulfil its obligation to facilitate the further training and instruction of the applicant, and for the payment to her by the Commission by way of damages of one franc for the damage suffered by her under that head of claim,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and A. Chloros, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

The applicant, Miss Waltraut Kruse, has been an official of the European Communities since 1961. She is a secretary/shorthand-typist in Category C. In the first few years of her career she carried out secretarial duties as such, but it is clear from her periodic report for 1970 to 1971 that, during the period in question, she was already undertaking various translations and the drafting of texts in the usual working languages.

As from March 1973 she was exclusively assigned to the duties of drafting texts and translation into several languages, and it is clear from the periodic reports that she performed those duties to the complete satisfaction of her superiors. However, in June 1979, she was asked also to undertake secretarial duties and she then stated that she was unable, for health reasons, to undertake any type of work other than translation.

The applicant was absent from work owing to sickness from the beginning of June 1979 until the end of that year. On 3 December 1979, she had a discussion with her immediate superior who informed her that, when she resumed her duties in the following January, he intended to assign her to the library where she would be able to undertake urgent translation work, albeit only for one half of her time. It is clear from the documents in the case that the latter restriction led the applicant to make strong protests.

By a note of 7 January 1980 addressed to the Director-General, the applicant let

it be known that she was resuming her duties whilst "reserving all [her] rights and in particular all [her] acquired rights".

The Director-General acknowledged receipt of that note on 18 January 1980 observing however that the applicant had once again been absent since 8 January 1980 and pointing out, as regards the reference to acquired rights, that he had forwarded the note to the Director-General for Personnel and Administration as the official competent to deal with it.

There then followed an exchange of correspondence between the applicant's lawyer and the administration on 17 January, 17 March and 22 April 1980. On 18 April 1980, the applicant submitted a complaint through official channels which was rejected by the administration on 28 July. This action was brought on 28 October 1980.

On 22 April 1980, the appointing authority informed the applicant that a decision had been taken to refer her case to the Invalidity Committee.

II — Conclusions

In her application, the *applicant* claims that the Court should order the Commission to continue to guarantee her right to perform the duties of a translator, together with her assignment to such duties.

In her reply the applicant made a fresh claim requesting the Court to declare that the Commission had failed to fulfil its obligation under Article 24 of the Staff Regulations of Officials to facilitate the further training and instruction of the applicant, and to order the Commission to pay to her by way of damages one franc for damage suffered under that head.

The *Commission* claims that the Court should:

— Dismiss the application as inadmissible;

— Failing that, order the application to be stayed until the findings of the Invalidity Committee regarding the applicant are known;

— In any event, dismiss the application as unfounded.

III — Submissions and arguments of the parties

A — Admissibility

The *Commission* first points out that the applicant mentioned herself in her complaint that "as from June 1979 she was compelled more and more to forsake her work as a translator in order to attend to petty secretarial tasks". According to the Commission, the act adversely affecting the applicant dates therefore from the beginning of June and in December 1979 was merely confirmed. The Commission argues therefore that the complaint, when lodged, was already out of time. Furthermore, the rejection, whether express or implied, of the complaint was purely a confirmatory act and no application to the Court may be brought against it.

Alternatively, the Commission states in this connection that a decision must be taken on the basis of the conclusions of the Invalidity Committee whether the applicant is fit to perform her duties. In the Commission's view the applicant does not therefore have a sufficient interest to bring this action.

The *applicant* states that the application was brought within the period of three months from the date of the notification

of the decision rejecting her complaint and that the Commission waived the alleged inadmissibility of her complaint by replying to it. She maintains that the inability to perform her duties is due to the changes made in those duties and that she therefore has a sufficient interest to bring this action. It is rather the proceedings of the Invalidity Committee which should be suspended pending the judgment of the Court.

B — Substance

In her application, the *applicant* states that for the past seven years, although she is in Category C, she has been working as a translator to the satisfaction of her superiors and that she has acquired a right to continue doing that specialized work.

In her reply, the applicant states that by assigning her to secretarial tasks the Commission has failed to fulfil its obligation under Article 24 of the Staff Regulations to facilitate her training and instruction. She bases her allegation on the fact that the Commission was aware of her exceptional qualifications in the field of translation and also knew that she had great difficulty in adapting herself to secretarial duties. Moreover, the periodic reports clearly indicate that it is in fact thanks to her further training that she was able to produce work of a very high standard. The administration's power to transfer officials is restricted, on the one hand, by the interests of the service and its efficient working, and on the other hand, by the duty of protection and assistance in the development of an official's career. The Commission has, on an objective view, not given any serious reasons why the applicant should not be allowed to continue to perform the duties which she has been performing for seven years.

As to the submissions contained in the application, the *Commission* states that the applicant belongs to Category C and she has not acquired, through her work, a right to the post of translator or the right solely to undertake translations.

The fresh claim set out in the applicant's reply, even if admissible, is unfounded, since it is clear from the documents in the case that, by permitting her, over the years, to follow language courses and by allowing her to undertake translations, the Commission did facilitate the applicant's supplementary personal training. However, the fact remains that she may only receive promotion within her own category, after being successful in a competition, and the Commission alone is responsible for organizing its departments and must be allowed to make any changes in them which may become necessary.

IV — Oral procedure

At the hearing on 4 June 1981, P.-P. Van Gehuchten, representing Miss W. Kruse and D. Jacob, representing the Commission, presented oral argument.

The Advocate General delivered her opinion on 17 September 1981.

Decision

1 By application lodged at the Court Registry on 28 October 1980, Miss Waltraut Kruse, a secretary/shorthand-typist at the Commission of the European Communities in Grade C 2, requested the Court to order the Commission to guarantee her right to perform the duties of a translator, together with her assignment exclusively to work of that nature in accordance with Article 24 of the Staff Regulations of Officials. In her reply, the applicant requested the Court to declare that by assigning her to secretarial duties, the Commission had failed to fulfill its obligation under the said article to facilitate her further training and instruction and, in the result, to pay to her by way of damages one franc for the damage suffered under that head.

2 It is clear from the documents in the case that the applicant was able throughout her career as secretary/shorthand-typist to follow a number of language courses and that as from March 1973 she was mainly, if not exclusively, assigned to duties of translating and drafting documents in various languages. However, in June 1979 she was asked also to undertake secretarial duties and she then stated that, for health reasons, she was unable to undertake any other type of work than translation. Since that date she has been absent from work owing to sickness and her case has now been referred to the Invalidity Committee.

3 On 3 December 1979 the applicant had a discussion with her immediate superior who informed her that when she resumed her duties, he intended to assign her to the library of the Directorate-General where she would be able to undertake urgent translation duties, albeit for only one half of her time. The applicant protested at this restriction and, following an exchange of correspondence, she lodged on 18 April 1980 a complaint through official channels which was rejected on 28 July 1980.

4 The Commission challenges the admissibility of the application by stating, on the one hand, that the complaint was out of time and, on the other hand, that the applicant does not have a sufficient interest in the proceedings now that her case has been referred to the Invalidity Committee.

5 In the event, it is not necessary to adjudicate upon those preliminary objections since, even upon a cursory examination of the applicant's arguments, it may be adjudged that the application is in all respects manifestly unfounded.

6 In that connection it should be remembered, in the first place, that under Article 7 of the Staff Regulations of Officials, the appointing authority, acting solely in the interest of the service, has to assign each official to a post in his category or service which corresponds to his grade and secondly that it follows from Article 36 of those regulations that an official in active employment is obliged to perform the duties pertaining to the post to which he has been appointed.

7 Whilst it cannot be denied that the administration has every interest in assigning its officials to posts which accord with their particular aptitudes and their personal preferences, an official cannot for all that be recognized as having a right to perform or to retain specific duties, or to refuse any other duties pertaining to his basic post. The only right guaranteed to officials by the Staff Regulations is to have duties assigned to them which correspond to their grade and basic post.

8 Such considerations apply *a fortiori* where the duties which the official claims she should be allowed to retain fall, at least partly, within another category than her own, as is the case here.

9 Neither may the applicant rely, in order to retain her previous duties, upon Article 24 of the Staff Regulations which imposes an obligation upon the institutions to facilitate the further training and instruction of the official to a degree which is compatible with the requirements of the efficient functioning of the departments. That provision does not concern the assignment of officials. Moreover, in the present case the Commission fully satisfied its obligations towards the applicant laid down in Article 24 by giving her the

opportunity to attend language courses and making it possible for her, even in the future, to devote a part of her time to certain translation work.

10 It follows from the foregoing that, by asking the applicant also to undertake secretarial duties pertaining in all respects to her basic post, the Commission has in no way failed to comply with the Staff Regulations nor has it committed any act of such a nature as to render itself liable to the applicant. Therefore, the applicant's claims must be dismissed in their entirety including the claim for damages.

Costs

11 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under the terms of Article 70 of those rules, in proceedings brought by officials of the Communities, the institutions are to bear their own costs.

12 Although the applicant in fact has failed in her submissions, in settling the question of costs, the history of the dispute must be borne in mind. By assigning the applicant over a very long period, exclusively or mainly, to drafting and translating duties which at least partly fall within a category other than her own, the administration has itself brought about an abnormal situation and has aroused in the applicant expectations which are understandable but unjustified. Thus, the attitude of mind which led the applicant to bring this application is due in part to the organizational arrangements made previously by the administration. In the circumstances, it is appropriate to apply the second paragraph of Article 69 (3) of the Rules of Procedure pursuant to which the Court may order even a successful party to pay costs which the Court considers that party by its conduct to have caused the opposite party to incur.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Commission to bear the costs, including those of the applicant.**

Due Pescatore Chloros

Delivered in open court in Luxembourg on 22 October 1981.

J. A. Pompe
Deputy Registrar

O. Due
President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 17 SEPTEMBER 1981 [1]

Mr President,
Members of the Court,

I — It may happen that officials have reason to complain that they are compelled to perform duties on a higher level than those for which they are remunerated by virtue of their grade. Much less frequent is the case where they insist on performing duties on a higher level than those which may be expected of them, without claiming, in any way the corresponding salary. However, it is the latter situation which forms the subject-matter of these proceedings.

1 — Translated from the French.