OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 27 October 1988 *

Mr President,
Members of the Court,

1. By your judgment of 23 March 1988 you dismissed the action brought by Mr A. Hecq, a senior technical assistant in Grade B 3, against the decision adopted by the Commission of the European Communities to 'remove' him from the Buildings section, where he was in charge of a team of technicians, and to give him sole responsibility for heating and sanitation in five new buildings occupied or to be occupied by the Commission (Case 19/87).

2. This Opinion relates to the second action brought by Mr Hecq, for the annulment of 'the decision adopted by an unknown person on an unknown date withdrawing from him the responsibility for heating and sanitation in the Commission's building in Square Frère Orban, Brussels' (one of the five buildings for which he had been given responsibility at the beginning of 1986), and 'the implied decision rejecting his complaint submitted through official channels under Article 90 (2) of the Staff Regulations'.

3. In reply to a question put by the Court, the Commission stated that the decision to withdraw responsibility for the 'Orban' building from Mr Hecq was adopted on 27 January 1987 by the Head of the Buildings Department in the Directorate-General for Personnel and Administration. The Head of the Buildings Section implemented that decision on the same day. It is established that the applicant was informed orally of the decision.

4. I would refer to the Report for the Hearing for a fuller account of the facts. I propose to examine in order the three series of complaints on which the applicant founds his application for annulment.

I — Breach of the principle of correspondence between grades and posts and lack of competence of the official who adopted the contested decision

5. Article 5 (4) of the Staff Regulations provides: 'A table showing basic posts and corresponding career brackets is given in Annex I. By reference to this table each institution shall . . . define the duties and powers attaching to each basic post'.

6. The first subparagraph of Article 7 (1) provides: 'The appointing authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his category or service which corresponds to his grade'.

* Translated from the French.

7. In the application, the applicant claimed that 'the measures contested in this application are a direct consequence of those contested in application 19/87'. They partake of the same illegality (breach of the principle of correspondence between grades and posts) which therefore entails the illegality of the measures contested here. Since, by its judgment of 23 March 1988, the Court dismissed Mr Hecq's first action, the decisions to which it referred cannot be considered to have been illegal. The applicant therefore withdrew that submission during the hearing.

8. In order to pursue my reasoning, however, I must consider whether the decision of the Commission contested in the present action does not in itself constitute an infringement of the two provisions of the Staff Regulations cited above.

9. In that regard, I consider that the principles on which the Court based its first judgment also apply in relation to the reduction in Mr Hecq's responsibilities which took effect on 27 January 1987.

10. In paragraphs 6 and 7 of the judgment of 23 March 1988, the Court declared, with regard to the submission alleging infringement of Articles 5 and 7 of the Staff Regulations:

'... it must be pointed out that in its judgments the Court has held that the Community institutions have a broad discretion to organize their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition however that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post (judgment of 23 June 1984 in Case 69/83 *Lux* v *Court of Auditors* (1984] ECR 2447).

It is clear from Articles 5 and 7 of the Staff Regulations that an official has the right to expect that the duties which are assigned to him should as a whole be in keeping with the post which corresponds to the grade which he occupies in the scale of posts. However, for a measure for the reorganization of departments to affect that right adversely, it is not sufficient that it should bring about a change in, or even any diminution of, the official's responsibilities, but it is necessary that, taken together, his new responsibilites should fall clearly short of those corresponding to his grade and post, taking account of their character, their importance and their scope'. [1]

11. It is, however, clear that the modification of the applicant's duties is not so far-reaching as to mean that his new responsibilites are not, as a whole, in keeping with the grade which the applicant occupies in the scale of posts.

12. The withdrawal of one building from the applicant's charge is not as radical a measure as the modification of his duties involved in Case 19/87, nor does it detract in any way from the fact that he has sole responsibility for the buildings remaining in his charge and that he may still be regarded as being in charge of a section of the administrative unit to which he belongs. In a memorandum sent on 11 March 1986 to the Director for Administration, the applicant in

1 — Judgment of 23 March 1988 in Case 19/87 *Hecq* v *Commission* [1988] ECR 1681, paragraphs 6 and 7.

fact pointed out that, in both his own opinion and that of the Director, four buildings constituted a maximum number beyond which 'it would not be reasonably possible for him to carry out his work conscientiously and efficiently'.

13. It may therefore be concluded that the applicant's remaining responsibilities still correspond to the duties of a Senior Technical Assistant in Grade B 2 or B 3 as set out in the Commission decision containing a description of the duties and powers attaching to the basic posts provided for in Article 5 (4) of the Staff Regulations,[2] and that his position under the Staff Regulations has not been adversely affected.

14. At the hearing, however, the applicant made a fresh submission, which he claimed the Court could examine of its own motion, to the effect that the person who adopted the contested decision was not competent to do so. Only the Director for Administration, and not the Head of the Specialized Department to which Mr Hecq belongs, had the power to withdraw responsibility for a building from him.

15. I should like to make three remarks with regard to that submission. First of all, in my view, the only issues which the Court may raise of its own motion are those relating to its own lack of competence or that of the institution responsible for the measure involved. In the present case, the powers of the Commission as an institution to organize its own services cannot be challenged.

2 — Decision of 28 May 1973, subsequently amended and published in *Staff Notices* IA No 373, of 9.7.1982.

16. Secondly, the normal powers of Head of a Division or Specialized Department include, in my view, the power to allocate the work of his administrative unit among the members of its staff. In its judgment of 17 May 1984 in Case 338/82 *(Albertini and Montagnani* v *Commission* [1984] ECR 2123, at pp. 2144 and 2145), the Court also considered an administrative order made by a Head of Division. The Court held that such an order was part of the normal exercise of authority inasmuch as the applicant's position under the Staff Regulations was not adversely affected. We have seen that this is true of the present case.

17. Finally, the fact that the decision relating to the reassignment of duties which formed the subject-matter of Case 19/87 was taken by the Director cannot constitute an argument to the contrary. In my view, the principle of parallelism of form could only apply if a previous decision, taken at a higher level, were to be revoked. In the present case, we have only a partial reduction in duties, which had previously been envisaged by the Director as a future possibility.

18. For all the above reasons, the Head of the Specialized Department was entitled to take the decision, and this submission must therefore be dismissed.

II — Failure to have regard to the interests of the service and to state the grounds on which the contested decision was based

19. The applicant claims that there has been an infringement of Article 7 (1) of the Staff Regulations inasmuch as the contested decision was not based on the interests of

the service. It is, moreover, impossible to ascertain the real object of the decision inasmuch as, being an implied decision, it did not state the grounds on which it was based; any administrative measure adversely affecting an official must state the grounds on which it is based, under Article 25 of the Staff Regulations.

20. I think it is appropriate to look first at the question of the statement of the grounds on which the decision was based.

21. The second paragraph of Article 25 of the Staff Regulations provides:

'Any decision relating to a specific individual which is taken under the Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based.'

22. With regard to the absence of communication in writing, I should like to refer to a line of decided cases in which the Court has held that

'since the communication is an act subsequent to the decision and therefore has no influence over its contents, this infringement cannot result in the annulment of the decision challenged' (see in particular the judgment of 29 October 1981 in Case 125/80 *Arning* v *Commission* [1981] ECR 2539, at p. 2552, paragraph 9).

23. Secondly, the measure to which this application relates constitutes neither a transfer (moving an official to a vacant post) nor a reassignment (moving an official and his post from one administrative unit to another). It involves merely a partial redistribution of the workload within a basic administrative unit. As we have just seen with regard to the first submission, the measure does not affect the official's position under the Staff Regulations, nor does it infringe the principle that the post to which an official is assigned should correspond to his grade.

24. As the Court declared in paragraph 46 of its judgment in *Albertini and Montagnani* v *Commission*, cited above:

'... it is not possible to regard as a measure adversely affecting an official, within the meaning of Article 25 of the Staff Regulations, and as such subject to the requirement that the administrative authority should state the grounds on which it is based, a measure of internal organization which is not of such a nature as to affect the official's position under the Staff Regulations or to infringe the principle that the post to which he is assigned should correspond to his grade ... It is part of the normal exercise of authority within an administration for a superior to assign, in conformity with the abovementioned principle, duties to officials on the basis of their particular aptitudes; measures adopted for that purpose require no special justification'.

25. The applicant's argument that the decision here does nevertheless adversely affect him by reason of the mere fact that the Commission replied in writing to the substance of his complaint must also be rejected: every measure must be assessed in accordance with its intrinsic nature.

26. It may therefore be concluded that the submission based on the failure to state the grounds of the decision must also be dismissed.

27. Moreover, a measure which does not adversely affect an official and which for that reason 'requires no special justification' (in the phrase used in the judgment in *Albertini and Montagnani*) is in effect presumed to have been adopted in the interests of the service. At the hearing, the applicant in fact confirmed that he did not consider the decision in question to be a disguised disciplinary measure.

28. The complaint that the Commission failed to have regard to the interests of the service is therefore also unfounded, and the second submission must be dismissed in its entirety.

III — The submission alleging a breach of the general principle of sound administration and of the administration's duty to have regard to the interests of its officials

29. The applicant criticizes the fact that the Appointing Authority did not give him an opportunity of putting his point of view and that the decision was therefore adopted without taking his interests into account.

30. In that connection, it should be observed that during the course of the contacts which took place between the applicant and the Director for Administration on 21 February, 5 and 20 March 1986, the applicant had the opportunity of expressing his desire to be responsible for only four buildings. The number of buildings was none the less maintained at five, but, in memoranda dated 5 and 24 March, the Director reminded Mr Hecq that it had been agreed that his workload would be assessed as new buildings were let and would be adjusted if necessary.

31. Mr Hecq could not, therefore, have been unaware that the extent of his duties had not been definitively fixed and that changes were likely to occur. The administration could even assume that the applicant would take a rather favourable view of the reduction in the number of buildings for which he was responsible. That reduction could not, in any event, be regarded by him as an unforeseeable and inexplicable occurrence.

32. Finally, I should like to point out, as the Court did in paragraph 20 of the first judgment relating to Mr Hecq, that

'it is clear from the case-law of the Court that although the Staff Regulations contain precise guarantees of officials' rights under them, the administration of the Community institutions is not under any duty to seek the individual views of officials on measures of reorganization which may affect their position'.

33. The third submission must therefore also be rejected, and the application dismissed in its entirety.

34. With regard to costs, I propose that the Court apply Article 70 of the Rules of Procedure.