may adversely affect officials are based is intended to enable the official concerned to know why a decision was adopted in his regard and to take steps to defend his rights and interests.

That requirement is satisfied when the measure against which an action may be brought has been adopted in circumstances known to the official concerned, which enable him to apprehend the scope of a measure which concerns him personally.

8. Even if an official has grounds for complaint regarding the administration's slowness in his regard, where he makes such excessive charges in pursuing his case that the defendant institution is compelled to hold an administrative inquiry the result of which ought to have dissuaded him from continuing his action, his conduct makes the entire proceedings vexatious in character and as a result he must be ordered to pay the whole of the costs.

In Joined Cases 36, 37 and 218/81

PIETER WILLEM SETON, an official of the Commission of the European Communities residing at La Hulpe (Belgium), represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jörn Pipkorn, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob, of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATIONS for the annulment of the applicant's periodic report for the period 1973 to 1975 and the Commission's decision assigning him to a new post and for an award of damages,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

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 — Summary of the facts

A — Cases 36 and 218/81

Pieter Willem Seton, who was engaged by the Commission on 15 June 1959, was established by decision of 19 December 1962 as a principal administrator in Grade A 4 at the Directorate General for Transport with effect from 1 January 1962.

By Decision of 22 March 1974 Mr Seton was appointed head of the specialized branch dealing with harmonization of social legislation at the Directorate for the General Development of the Common Transport Policy and Air and Sea Transport with effect from 1 January 1974.

On 19 March 1976 Mr Seton was notified of his periodic report for the period 1 July 1973 to 30 June 1975.

By a letter dated 2 April 1976 Mr Seton made a number of comments on several points in that report, in particular on the description of his duties and the assessment of his ability, conduct in the service, technical knowledge and experience. He also requested that the report be referred to the appeal assessor in accordance with Article 6 of the General Provisions for Giving Effect to Article 43 of the Staff Regulations of Officials adopted by the Commission on 18 July 1971.

On 15 November 1976 the Director General, acting in his capacity of appeal assessor, amended the periodic report by supplementing the description of the applicant's duties. On all the other points he agreed with the assessments made by the first assessor.

On 19 November 1976, relying on Article 7 of the General Provisions for Giving Effect to Article 43 of the Staff Regulations, Mr Seton requested that the periodic report be submitted to the Joint Committee on Staff Reports and he submitted further observations.

In the opinion delivered on 14 April 1978 and notified to Mr Seton on 21 April the Joint Committee on Staff Reports found that no reasons were given such as to justify an assessment of his ability and conduct in the service lower than that in the previous report. The committee came to the conclusion that the report in question should be reconsidered.

In a letter of 6 February 1979 the first assessor informed the appeal assessor of the express reasons for the assessments he had made. He stated in particular that as head of a specialized branch Mr Seton was required to meet higher standards, that he had not proved to have sufficient managerial and organizational skills ("ability") and that he had not treated his subordinates correctly or managed to create a good working atmosphere ("conduct in the service").

On 17 July 1980 Mr Seton lodged a complaint with the Commission under Article 90 of the Staff Regulations challenging in particular the assessments made by the assessor and complaining of the delay in the drawing up of the periodic report.

On 30 July 1980 the appeal assessor notified Mr Seton of his periodic report, as supplemented by the first assessor's comments, and informed him that his report was now final.

On 28 October 1980 Mr Seton lodged a second complaint against the actual contents of the report which had been notified to him on 30 July.

B — Case 37/81

In 1980, having regard in particular to certain recommendations made in the report of 24 September 1979 containing proposals to reform the Commission of the European Communities and its departments, drawn up at the Commission's request by five independent persons under the chairmanship of Dirk Spierenburg, the Commission began to reorganize several of its directorates general with the aim in particular of reducing the number of administrative units of which they were composed.

As a result, on 8 October 1980 it adopted with effect from 1 November measures to reorganize the Directorate General for Transport. As part of that reorganization it decided in particular to abolish the specialized branch headed by Mr Seton and to assign him to the new Market Policies (Working Conditions) Division. Mr Seton was officially notified of that decision in a letter from the Director for Personnel of 30 January 1981 and later in a memorandum from the Director General for Personnel and Administration of 9 February 1981.

In his new division Mr Seton was required to take charge of the field covering the harmonization of working conditions under the authority of a head of division.

On 30 January 1981 Mr Seton lodged a complaint with the Commission pursuant to Article 90 of the Staff Regulations against the decision to transfer him.

On 23 May 1981 an administrative inquiry carried out as a result of Mr Seton's complaint arrived at the conclusion that "the abolition of the specialized branch (previously managed by Mr Seton) as an independent administrative unit had become desirable for the proper operation of the service, to which the well-being of the individual had to take second place".

By a letter of 23 July 1981 the Commission informed Mr Seton that his complaint hed been rejected and stated the reasons.

II — Written procedure

After receiving no reply to his complaint of 17 July 1980 during the four months after it had been lodged, Mr Seton brought an action on 18 February 1981 against the implied decision rejecting it. That action was registered under number 36/81.

Mr Seton's complaint of 28 October 1980 failed to elicit any reply during the four months after it had been lodged and was therefore by implication rejected on 28 February 1981. An express decision rejecting his two complaints was notified to Mr Seton by a letter from a Member of the Commission dated 13 May 1981 which Mr Seton received on 20 May 1981. On 20 July 1981 Mr Seton brought an action against the decision rejecting his complaint of 28 October 1980. That action was registered under number 218/81.

On 18 February 1981 Mr Seton had brought an action against the Commission's decision to assign him to a new post. That action was registered under number 37/81.

On the same date Mr Seton, acting pursuant to Article 91 (4) of the Staff Regulations of Officials, applied to the Court for a stay of execution of the decision contested in Case 37/81. That application was dismissed by order of the President of the Second Chamber of the Court of 12 March 1981 ([1981] ECR 813).

By order of 29 October 1981 the Court (Second Chamber) decided to join Cases 36, 37 and 218/81 for the purposes of the procedure and the judgment.

The written procedure followed the normal course.

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

The Court (Second Chamber), considering that the written procedure had provided it with sufficient information about the other aspects of the dispute, requested the parties in their argument at the hearing to concentrate on the question whether the reassignment of an official to duties corresponding to his grade and his abilities may constitute a "decision adversely affecting an official" within the meaning of the second paragraph of Article 25 of the Staff Regulations.

III — Conclusions of the parties

The *applicant* claims, as his conclusions now stand, that the Court should:

(a) *in Case 36/81:*

Declare the procedure for drawing up his periodic report for 1973 to 1975 null and void;

(b) *in Case 218/81:*

Declare his periodic report for the period 1973 to 1975, including the final decision of the appeal assessor, null and void;

(c) *in Case 37/81:*

Declare the new assignment or transfer procedure concerning him non-existent or at any rate irregular;

Declare the measure adopted null and void;

(d) *in Cases 36 and 37/81:*

Order the Commission to pay the applicant by way of compensation for material damage and non-material damage together such an amount to be fixed by the Court as it considers fair and reasonable;

In the alternative, should the Court consider that it cannot award joint compensation in Cases 36 and 37/81, order the Commission to pay such compensation as the Court considers to be fair and reasonable, either for the material and non-material damage together or for the material and non-material damage separately;

(e) *in the Joined Cases:*

Order the Commission to pay the costs in all three cases;

(f) in the final alternative:

Order certain facts of which the details are set out in the reply to be verified by the evidence of witnesses;

Order the Commission to produce papers, documents and memoranda;

Order certain facts set out in Application 37/81 to be considered by experts or verified by the evidence of witnesses.

The *Commission* contends that in each of the three cases the Court should

Dismiss the application as unfounded, and

Order the applicant to pay the costs.

IV — Submissions and arguments of the parties in the written procedure

A — Cases 36 and 218/81

The procedure for drawing up the periodic report

The *applicant* considers that the assessor's consistent delay and that of the persons to be consulted in the drawing up of his report for the period 1973 to 1975 and the inability of the administration to observe reasonable time-limits made the whole procedure, which was completed only as the result of his complaint, null and void.

The *Commission* itself regrets the delay in the drawing up of the periodic report and its final form. It contends, however, that it would be paradoxical to ask for it to be annulled for that reason alone. The applicant adduces no evidence of having any interest in such a step.

The periodic report

The *applicant* contests the regularity of his periodic report for several reasons.

(a) The Commission's decision of 13 May 1981 expressly rejecting the com-

plaint of 17 July 1980 was not preceded by consultation of the Joint Committee on Staff Reports as required by the Guide to Staff Reports.

Taken as a whole, the Guide to Staff Reports constitutes a measure for giving effect to the Staff Regulations which is binding on the institution. The rule relied upon in this case is in any event worded in such a way that it binds the Commission as against its officials. Consultation of the Joint Committee on Staff Reports is by no means an empty formality. In this instance it would have offered a genuine advantage as it concerned an amended report.

(b) The reasons which the assessor gave in his letter of 6 February 1979, which were adopted by the appeal assessor in his letter of 30 July 1980, are allegations going well beyond the assessments contained in the original periodic report and are contradicted by the applicant's very favourable report for the previous period. They are offensive towards the applicant and are not compatible with the appeal assessor's function which is to act as a conciliator between the official assessed and his assessor and not to make the report worse.

(c) The letter of 6 February 1979 and the appeal assessor's decision constitute a misuse of power. Their purpose was to prepare the way for the measure by which he was deprived of his headship of the specialized branch dealing with harmonization of social legislation, and placed under an official who was previously in the same grade as the applicant. They even made it possible to remove him from the service of the Commission, either by compulsorily terminating his service or assigning him non-active status or by the application of Article 51 of the Staff Regulations.

A whole series of documents, facts and circumstances set out in detail by the applicant prove, he claims, that his immediate superior, who was the first assessor, was biased against him and show how their relations gradually deteriorated. In particular the applicant contends that in disregard of his own career interests he had tried to harmonize conditions of competition in the transport field whereas his superior was anxious to give preference to the interests of the carrier organizations and of certain governments and block the progress of certain projects and the implementation of several regulations.

Those assertions are by no means refuted by the fact that the periodic report in question was drawn up in 1976, which is before the period leading up to and ending in the reorganization of the directorate general within which the applicant was reassigned. The appeal assessor's report was in fact notified to him on 30 July 1980, when the preparations for the reorganization had already been published. Moreover, in the first reform proposal it was planned to take periodic reports into account to make a selection of the heads of specialized branches who would remain principal administrators, so the contested reporting procedure may be regarded as having been

conducted with that aim in view. This, the applicant claims, explains in particular why doubts were expressed as to the applicant's ability to perform his duties as head of a specialized branch. The systematic criticism which was suddenly made of him in the periodic report for 1973 to 1975 and in which the appeal assessor concurred demonstrates the misuse of power.

(d) The factors which caused the assessor and appeal assessor to make their assessments of the applicant more adverse than those made in the first version of the periodic report are manifestly wrong.

It is clear in particular from his letters of 2 April and 19 November 1976 that the assessor tried to list and describe the applicant's duties in a restrictive way. Furthermore, the protection by the applicant's immediate superior of one of his immediate subordinates had an adverse effect on his authority and the running of the branch.

The *Commission* considers that none of those complaints is well founded.

(a) Neither the Staff Regulations nor even the general provisions adopted by the Commission on 27 July 1979 for giving effect to Article 43 of those regulations provide for the Joint Committee on Staff Reports to be consulted in the event of a complaint. This is mentioned only in the Guide to Staff Reports, a document which explains and interprets the general provisions.

According to the case-law of the Court, there is no infringement of an essential procedural requirement if the decision alleged to have been disregarded does not constitute an implementing provision prescribed by the Staff Regulations but is an internal measure which was introduced by the institution of its own accord and which cannot therefore be regarded as having the character of strict law.

Furthermore, the Joint Committee was consulted during the course of the proceedings and gave an opinion which was taken into account. Under those circumstances further consultation at the complaint stage would not have been likely to produce any new factors. Consequently it is necessary to apply the case-law of the Court according to which an irregularity in the procedure cannot make the final decision void unless it is shown that, but for the irregularity, the outcome of the administrative procedure might have been different.

(b) The appeal assessor supplemented the periodic report with detailed reasons in order to comply with the opinion of the Joint Committee on Staff Reports. The report, less favourable than the applicant's previous report, certainly did not please him. It cannot, however, be described as insulting or considered an indictment.

There is no contradiction between the report and the assessment made in the previous period. It is in the very nature of the process of periodic assessment that assessments previously made should change; the new assessments of the applicant stem from his change of duties at the end of the previous period of assessment.

(c) The contested report dates from 19 March 1976 and it was finally approved in 1979 by the appeal assessor who did not change it. It is therefore hardly plausible that the applicant's

immediate superiors prepared a less favourable report in 1976 in order to prepare the way for the abolition, in 1980, of the specialized branch of which he was in charge.

The report of the administrative inquiry of 23 May 1981 shows that the serious allegations rashly made by the applicant are unfounded.

(d) The description of the applicant's duties was supplemented at his request by the appeal assessor. Further comments were added to his report on quite minor points. The disagreement between the applicant and a subordinate has no bearing on these cases.

The claim for damages

The *applicant* seeks compensation for the material and non-material damage allegedly caused him by the circumstances in which his periodic report for 1973 to 1975 was drawn up and by the actual contents of that report.

(a) The negligent delay in drawing up the report caused the applicant material damage consisting in the fact that between July 1975 and the date on which the report was notified to him (30 July 1980) he was prevented from being promoted to four posts which became vacant. The Commission was thus guilty of a wrongful act or omission by putting or leaving the applicant in a less favourable situation than other officials eligible for promotion.

(b) In any event the applicant suffered non-material damage owing to the fact that his personal file was irregular and incomplete when the provision of a compulsory periodic report is a guarantee to an official of the regular progression of his career.

(c) The determination of damages is a question of what is fair and reasonable. In determining them account should be taken in particular of the fact that the measures of which the applicant complains stem from the same desire to diminish his standing as well as of the intentional nature of the Commission's wrongful conduct.

The *Commission* contests the basis of the applicant's claims for damages.

(a) The applicant did not challenge in good time the decisions by which the appointing authority made the promotions to which he refers. It is therefore hardly appropriate for him to claim that his chances of promotion have been adversely affected.

(b) No evidence has been adduced of the alleged non-material damage.

(c) The applicant has adduced no evidence capable of proving an intention "to diminish his standing".

B — Case 37/81

The regularity of the decision to transfer the applicant

The *applicant* contends that the Commission's decision to assign him to a new post is void on the grounds that the person who adopted that decision had no power to do so, that the second paragraph of Article 25 of the Staff Regulations was infringed, that no regard was had to the interests of the service and on the grounds of infringement of Articles 5 and 7 of the Staff Regulations and misuse of powers.

(a) According to the Commission's decision of 5 October 1977 on the exercise of powers conferred by the Staff Regulations on the appointing authority, the decision changing the applicant's posting should have been taken by the Member of the Commission responsible for staff matters and not by a director at the Directorate General for Transport. It is therefore void for having been adopted by an authority having no power to adopt it.

An amendment to the decision of 5 October 1977 transferring to the Director General for Personnel and Administration the power to reassign officials in Grades A 4 to A 8 was not published and could not be relied upon as against third parties until 5 November 1980. However, the decision to change the applicant's posting appears to have been adopted before that date.

In any event the only explanation for the instruction received by the applicant on or about 1 November 1980 to vacate the room which he occupied as head of a specialized branch and to occupy another room is that the decision to transfer him had already been taken, at a time, therefore, when the director general still had no power so to act.

(b) It is established by case-law that a transfer which is made without the agreement of the official concerned is a measure which adversely affects him and must therefore be communicated to him in writing at once in accordance with Article 25 of the Staff Regulations. In that regard the written communications dated 30 January and 9 February 1981 appear to have been made late and to contain no, or an inadequate, statement of the reasons on which they were based. Reference to oral communications and previous letters is not sufficient. They provide no adequate reasons for the abolition of the specialized branch run by the applicant or for the decision to remove him from that post, they were ambiguous and did not come from the competent authority.

(c) In view of the applicant's age, the measure in question permanently blocks his career. Since it was adopted pursuant to Article 7 (1) of the Staff Regulations, which refers to the interest of the service, it should have been applied upon conditions analogous to those applying to a measure adopted under Article 50 of the Staff Regulations which the Court has held to be based on the assumption that the official concerned may give his views on the question whether the measure envisaged is in the interest of the service. That was not the case in this instance.

(d) According to the established case-law of the Court, a transfer may not have as its purpose or effect adversely to affect an employee's material and non-material interests and career prospects considered in relation to his previous duties. His remaining duties must correspond to his grade and post, account being taken of their character, importance and scope.

In this instance, because of the serious reduction of his chances of being promoted to a post in Grade A 3, the applicant's present duties no longer

correspond to his previous duties. He claims that his sphere of responsibility and his standing have been diminished. The contested decision has placed him in such a position that, in view of his age, his career is irredeemably compromised.

(e) The applicant contends that the contested decision constitutes a misuse of power. His former immediate superiors sought to impose a disguised disciplinary measure upon him because he had repeatedly opposed them over the application of the EEC Treaty and of regulations and directives; they also wished to create a situation enabling him to be removed at short notice from the service of the institution.

He contends that a whole series of facts and circumstances, which he sets forth in detail, and a number of documents confirm this misuse of power.

The *Commission* considers that the contested decision is quite regular and lawful.

(a) The Commission's decision of 5 October 1977 on the exercise of powers conferred by the Staff Regulations of Officials on the appointing authority was amended by a decision of the Commission which entered into force on 1 April 1980 and was published in Administrative Notices on 5 November 1980. As amended the decision confers on the Director General for Personnel and Administration the power to reassign officials in Grades A 4 to A 8 and their posts.

In this case the decision of the Director General for Personnel and Administration reassigning the applicant was formally adopted by the competent authority on 30 January 1981 with effect from 1 November 1980. The fact that the applicant's posting was changed as from 1 November is not such as to contradict that statement inasmuch as the decision to reassign him was adopted pursuant to the Commission's decision of 8 October 1980 abolishing the applicant's specialized branch and reassigning him.

The Commission's decision on the exercise of powers is in any event an internal rule which has no effect on the exercise of officials' rights under the Staff Regulations. Its implementation is not therefore subject to formal publication.

(b) It is doubtful whether the second paragraph of Article 25 of the Staff Regulations applies in this case which involves a decision which is inseparable from the entire reorganization of the directorate general and which is certainly not the subject of an individual decision.

In the Commission's view, the statement of the reasons on which the decision in question was based meets the requirements set by the Court in its decisions. At the preparatory stage the applicant was informed in broad terms of the reorganization planned and was kept well posted of its progress whilst the decision was preceded and followed by a number of written and oral communications which enabled the applicant to foresee and then to become acquainted with its content and the reasons on which it was based.

As to the complaint of delay in communicating the decision, it should be remembered that the new scheme for the organization of the directorate general was presented to all officials at a meeting held on 15 October 1980 and was communicated in writing on 30 October. The communications of 30 January and 9 February 1981 merely confirmed to the applicant a decision of which he was already aware.

(c) The judgments of the Court on which the applicant relies were delivered in situations entirely different from his own. His rights under Articles 5 and 7 of the Staff Regulations were not infringed in any way; therefore no prior consultation was necessary.

In fact the applicant had plenty of opportunity to make his views known on the abolition of the specialized branch which he managed.

(d) In the Commission's view, the Community institutions are at liberty to arrange their own internal organization according to the tasks entrusted to them and to assign the staff available to them in the light of such tasks. When staff are so assigned it is implicit in Article 7 of the Staff Regulations that, if an official's duties are changed, a comparison should be made between his present duties and his administrative grade and not between his present and previous duties. The applicant's new duties correspond precisely to one of the descriptions of the duties involved in the basic post of principal administrator ("Head of one particular sector of activity in a division").

The Court has held that if the differences in the nature of the tasks and in the situation of officials in the same basic post are justified by their different duties, such differences do not permit an official, who, when changing from one post to another, ceases to enjoy those special characteristics of his work, to conclude that his interests have been adversely affected. In this case there is no reason to believe that the contested reassignment has adversely affected the applicant's career prospects.

(e) The applicant's present duties are perfectly consistent with those which must be assigned to a principal administrator in Grade A 4 and his standing is in entire accord with the requirements of the Staff Regulations.

What is more, the decision to reorganize the directorate general as a result of which the applicant was reassigned was taken by the members of the Commission empowered to take that decision and not by the applicant's immediate superiors whose alleged motives, which are categorically denied, are therefore immaterial.

The grave allegations made by the applicant are partly based on error and are also groundless, as the report of the administrative inquiry of 23 May 1981 makes clear. The existence of differences of opinion between the applicant and his superiors cannot be considered to indicate a misuse of power.

The claim for damages

The *applicant* contends that the machinations and failures of the Commission or of senior officials for which it is responsible have caused him damage which cannot be adequately made good merely by annulling the contested decision. The Commission should therefore be ordered to pay damages in such an amount as the Court may determine.

In the *Commission's* view, the application for damages must be dismissed. The application for annulment is groundless, and the applicant has not proved or even alleged any wrongful act or omission on the part of the Commission.

In any event the contested decision cannot have caused the applicant any damage, material or non-material.

V — Oral procedure

At the hearing on 17 March 1983 oral argument was presented by Marcel Slusny, for the applicant, and by Daniel Jacob and Jörn Pipkorn, for the defendant, and answers were given to questions put by the Court.

On the question of the concept of a measure "adversely affecting" an official within the meaning of the second paragraph of Article 25 of the Staff Regulations the *applicant* contended that it is clear from the case-law of the Court that an official's new posting, as part of an administrative reorganization, in the same grade and the same basic post may affect his future prospects and may be of such a nature as adversely to affect him in so far as it entails a change in the duties entrusted to him. In the present case the applicant's new duties entail a real *capitis diminutio* for him as they are on a lower level, involve less responsibility and compromise his career prospects.

The *Commission* pointed out that the applicant continues to fill one of the basic posts corresponding to his grade, which, according to the Court's case-law, is the crucial factor. In fact his present duties are at least of the same level as his previous duties and his career prospects have in no way been adversely affected.

As regards the other issues the parties elaborated on the contentions and arguments which they had advanced in the written procedure.

The Advocate General delivered his opinion at the sitting on 5 May 1983.

Decision

1 By applications lodged at the Court Registry on 18 February and 20 July 1981 Pieter Willem Seton, an official of the Commission of the European Communities, assigned as a principal administrator in Grade A 4 to the Directorate General for Transport (DG VII), brought actions for the annulment first of his periodic report for the period 1973 to 1975 (Applications 36 and 218/81) and secondly of his reassignment to a new post within the same directorate general (Application 37/81). Applications 36 and 37/81 also contain claims for compensation for material and non-material damage assessed by the applicant at BFR 500 000 and BFR 2 000 000 respectively.

Applications 36 and 218/81 (periodic report)

2 It appears from the papers before the Court that on 19 March 1976 Mr Erdmenger, Director of Division VII A 4 of the Directorate General for Transport and the immediate superior of the applicant, who at that time was head of the specialized branch dealing with harmonization of social legislation, drew up the applicant's periodic report for the period 1973 to 1975.

3 Three aspects of that report produced objections from the applicant, Mr Seton. He considered that:

The description of his duties in part 4 (b) was incomplete;

The analytical assessments in part 4, in which the assessor had awarded the mark "Average" for the applicant's ability and conduct in the service, were insufficient when compared with the previous report in which Mr Seton obtained the mark "Above average";

Whilst acknowledging Mr Seton's technical knowledge and experience, the report contained an unjustified criticism in so far as it was said that his management of his administrative unit left room for improvement.

4 In response to the applicant's objections the appeal assessor, Mr Le Goy, director general, amended the periodic report by supplementing the description of duties but as far as the rest of the report was concerned he confirmed the assessments made by the first assessor.

5 On 14 April 1978 the Joint Committee on Staff Reports found on appeal from Mr Seton that the assessor's general assessments were not sufficient justification for changing the marks awarded for ability and conduct in the service as compared with those awarded in the previous report.

6 On 6 February 1979 Mr Erdmenger expressly stated the reasons for his assessments as requested in that opinion. He stated that as head of an independent branch Mr Seton had assumed new responsibilities during the period of assessment, that in the performance of those duties he had not shown sufficient aptitude for organizing and managing his unit and that he

had not treated his subordinates correctly or succeeded in creating a good working atmosphere. Those considerations justified, he stated, the reduction of the two marks in question as compared with those obtained in the previous period. On 30 July 1980 those findings were confirmed by the assessor and attached to the periodic report.

7 On 17 July 1980 Mr Seton had made a complaint under Article 90 of the Staff Regulations against the assessment of the first assessor. Having in the meantime received notification of the appeal assessor's opinion he submitted a second complaint on 28 October 1980.

8 Mr Seton did not receive a reply to his complaints and on 18 February 1981 he therefore lodged Application 36/81 seeking the annulment of the entire assessment procedure on the grounds of "consistent delay".

9 Subsequently, the Commission rejected his complaints by a decision of 13 May 1981 and Mr Seton then lodged Application 218/81 on 20 July 1981. In that application he advanced four additional submissions alleging:

That, contrary to the provisions of the Guide to Staff Reports, the Joint Committee on Staff Reports was not consulted;

That the appeal assessor ignored his rôle of conciliator by merely confirming the adverse judgments of the first assessor;

That some of the assessments in the report were manifestly wrong;

That there was a misuse of power inasmuch as by means of his unfavourable report Mr Erdmenger prepared the ground for removing the applicant from his post of head of department.

10 In support of the last submission the applicant maintains word for word the arguments advanced in the dispute about his reassignment. Since that contention will be examined in connection with Application 37/81, for the

purposes of Applications 36 and 218/81 its examination may therefore be limited to the submissions relating to the delay in drawing up the periodic report and the fact that the Joint Committee on Staff Reports was not consulted and to the allegations that the appeal assessor ignored his true rôle and that certain assessments were wrong.

The submission regarding the delay in drawing up the periodic report

11 The intervals between the dates set out above show that in fact four years and three months elapsed between the date on which the applicant made his observations on the first version of his periodic report and the date on which it was finally confirmed by the appeal assessor. That statement, however, calls for a number of observations.

12 First of all, it should be observed that the first assessor did not delay in drawing up the periodic report immediately after the assessment period has expired on 19 March 1976 and that the subsequent slowing down of the procedure was mainly due to the complaints raised by the applicant. Those complaints no doubt represent a legitimate exercise of the remedies afforded by the Staff Regulations and the provisions adopted to give effect to them. However, in exercising those remedies the applicant should have been aware that this would necessarily delay the assessment procedure. In particular, the appeal made to the Joint Committee on Staff Reports on 19 November 1976 caused a delay of one and a half years as that committee's opinion was not delivered until 14 April 1978.

13 Although it is therefore true that the assessors were unduly slow in acting upon that opinion, the applicant has not been able to prove that the delay was prejudicial to him in any way. He complains that during the period in question various posts fell vacant to which he could have been promoted. It need only be observed that, if he was a candidate, the applicant did not lodge any complaint or bring any action in this regard.

14 In any case delay in the adoption of certain definitive views during the course of the assessment procedure is not such as by itself to affect the

validity of the resultant report. It must therefore be concluded that this submission, and consequently the whole of Application 36/81, must be dismissed for lack of any interest on the part of the applicant.

The submission that the Joint Committee on Staff Reports was not consulted

15 The applicant contends that, according to the Guide to Staff Reports, the Commission ought to have consulted the Joint Committee on Staff Reports before making its decision of 13 May 1981 rejecting his complaint. No such consultation took place however.

16 It is true that the Guide to Staff Reports provides that the Joint Committee must be consulted when the official assessed lodges a complaint under Article 90 of the Staff Regulations. However, in this instance it must be borne in mind that the applicant had himself appealed to the Joint Committee at en earlier stage of the procedure and had obtained satisfaction inasmuch as that committee's opinion led the assessors to give express reasons for certain assessments which he had challenged.

17 In those circumstances, to require the Joint Committee to be consulted for a second time would amount to excessive formalism the effect of which would be to paralyse the smooth functioning of the assessment procedure. The facts set forth above show not only that the applicant was able to make full use of his rights of complaint under the Staff Regulations and the implementing provisions adopted pursuant to them but also that his complaints received serious attention from his superiors, who expressly stated their reasons for an assessment which might have appeared inappropriate to the applicant and not sufficiently reasoned to the Joint Committee.

18 It follows that this submission must also be dismissed.

The submission that the appeal assessor ignored his true rôle

19 The applicant accuses the appeal assessor of having adopted, quite uncritically, the assessments made by the first assessor in his letter of 6 February

1979 in response to the Joint Committee's opinion. The applicant contends that in thus confirming what he considers to be "unjustified accusations" the appeal assessor disregarded his proper task which is to act as a "conciliator" in the dispute between an official and his assessor.

20 In making that submission the applicant fails to understand the rôle of the appeal assessor. His task is to check, quite independently, the assessments made by the first assessor. He is therefore perfectly entitled to confirm the first assessment if he thinks that appropriate.

21 This submission must therefore also be dismissed.

The submission that some of the assessments in the periodic report are manifestly wrong

22 The applicant contends that the assessors' critical observations regarding his ability to manage a specialized branch and on his relations with his colleagues are manifestly wrong and quite groundless. He attributes them to his superiors' animosity towards him due to differences of opinion about the policy pursued by the directorate general and bias shown on behalf of one of his colleagues whose promotion his immediate superiors wished to ensure.

23 In this regard it must be stressed that assessors have the widest discretion when judging the work of persons upon whom they must report and that it is not for the Court to interfere with their assessments save in the case of error or manifest exaggeration.

24 On this point it need only be recalled that in his original periodic report the applicant's performance was marked as "average" and it was only at the applicant's insistence that the assessors expressly stated the reasons which, in their view, justified a less favourable assessment than that awarded for the previous period of assessment. The applicant has not adduced any convincing reason for believing that in making their judgments the assessors exceeded

the discretion allowed them or were guided by considerations alien to the spirit of objectivity in which periodic reports must be drawn up.

25 This submission must therefore also be dismissed.

Application 37/81 (reassignment)

26 Before the occurrence of the events which gave rise to this case Mr Seton managed as head of department the specialized branch dealing with harmonization of social legislation, in Division A 4 of Directorate General VII (Transport). At its 575th meeting on 8 October 1980 the Commission adopted a plan to reorganize the Directorate General for Transport in pursuance of the Spierenburg Report which drew attention to the proliferation of divisions and specialized branches and recommended a reduction in the number of such units. One of the measures adopted at that meeting was the abolition of the specialized branch dealing with harmonization of social legislation and Mr Seton was transferred to the new Division B 1, the Market Policy and Working Conditions Division, whose task in future was to carry out *inter alia* the work previously done by the branch which was abolished. In that division Mr Seton was required to manage the sixth sector, on harmonization of working conditions, under the authority of the head of division.

27 It is common ground that during the year prior to the Commission's decision that reorganization led to consultations within the directorate general in which the applicant was involved. On 20 October 1980 a meeting took place to inform all the officials of the directorate general of what was planned and on 30 October the new scheme of organization was communicated to them.

28 By a letter of 30 January 1981 from the Director of Personnel the applicant was officially notified of his assignment to Division VII B 1. That letter was confirmed on 9 February 1981 by a letter from the Director General of Personnel and Administration.

29 On 30 January 1981 the applicant lodged a complaint with the Commission under Article 90 of the Staff Regulations. In that complaint he attributed his reassignment to the ill-will of his former director with whom he took issue

on several problems concerning the views adopted by the directorate general on transport policy. In specifying his grounds for complaint he questioned the objectivity of his immediate superiors, accusing them of being sensitive to pressure from carrier organizations and certain governments to the point of failing to implement provisions of the Treaty and certain regulations and directives adopted under the Treaty.

30 In response to those accusations and having regard to a request for assistance made under Article 24 of the Staff Regulations by the director in question the Commission charged Mr Verheyden, Director General of the Office for Official Publications of the European Communities, to carry out an administrative inquiry into the facts alleged in Mr Seton's complaint. After interviewing the applicant as well as the other persons concerned Mr Verheyden produced a report on 23 May 1981 in which whilst acknowledging the applicant's human qualities he found that he was "quite unable or unwilling to accept that in a hierarchy each grade assesses situations at its own level and with the means available and that the view taken by a director responsible for working out the entire common transport policy or that of a director general for transport might differ from that of a head of specialized branch for reasons which are quite objective and honourable". Of the measure changing Mr Seton's administrative position Mr Verheyden said in his report that "the unsatisfactory way in which this was communicated to Mr Seton is no doubt regrettable" and he added that "it is however wrong to say that it was adopted unexpectedly or that Mr Seton had no opportunity to voice his views on the matter". The report arrived at the finding that "the abolition of the specialized branch as an independent administrative unit had become desirable for the proper operation of the service, to which the well-being of the individual had to take second place".

31 Following that report the Commission rejected the applicant's complaint on 23 July 1981 and at the same time reprimanded the applicant about the "rash" manner in which he had made the accusations against his former director.

32 The applicant lodged his application on 18 February 1981 together with an application for the adoption of an interim order suspending the decision to reassign him. After finding that "within the new department to which he has been transferred following the reorganization of Directorate General VII the

applicant will be able to carry out the duties corresponding to his grade and that nothing has happened to him which could be reversed were his application to be granted", the President of the Second Chamber of the Court, by an order of 12 March 1981 ([1981] ECR 813), dismissed the application for an interim order on the ground that the matter was not one of urgency.

33 In his application the applicant puts forward five submissions alleging that the authority which adopted the decision to reassign him had no authority to do so, that he was not properly consulted on the planned measure concerning him, that his administrative position and rights guaranteed by Articles 5 and 7 of the Staff Regulations were infringed, that contrary to Article 25 of the Staff Regulations a statement of reasons was not provided and that there has been a misuse of power.

The submission as to lack of authority

34 The applicant contends that the decision to reassign him ought to have been adopted by the member of the Commission responsible for staff matters and that the decision is in any case contrary to the provisions adopted by the Commission on the delegation of powers.

35 It is clear from the foregoing that the applicant's reassignment within his directorate general was decided upon as part of a general reorganization measure adopted by the Commission on 8 October 1980 which was subsequently put into effect by a series of successive measures in which the responsible officials of both the directorate general concerned and of the Directorate General for Personnel and Administration were involved.

36 The individual measure adopted with regard to the applicant was notified in two separate communications of 30 January and 9 February 1981 signed by duly empowered officials of the Directorate General for Personnel and Administration. It is therefore unquestionable that the reassignment was effected in accordance with the will of the Commission and within the proper limits of the powers delegated within its administration.

37 That submission must therefore be dismissed.

The submission that the applicant was not duly consulted

38 The applicant considers that in view of the important consequences which the abolition of his former branch and his transfer to other duties entailed for him that measure ought to have been preceded by thorough consultation to enable him to express his opinion on the question whether the measure planned was in the interest of the service.

39 As to that complaint, it need only by remarked that, although the Staff Regulations contain precise guarantees of officials' rights under them, the Community administration is not under any duty to seek the individual views of officials on measures of reorganization which may affect their individual position. The only guarantee afforded to officials by the Staff Regulations in this regard is the duty laid down in Article 25 of the Staff Regulations to state the grounds on which individual decisions which may adversely affect their position under the Staff Regulations are based.

40 This submission must therefore be dismissed.

The submission that the applicant's administrative position was affected

41 The applicant considers that the measure involving his reassignment adversely affected his material and non-material interests recognized in Articles 5 and 7 of the Staff Regulations as well as his career prospects. He takes the view that the fact that he was deprived of the management of a specialized branch and was transferred to another administrative unit in which he no longer enjoys the same independence amounts to a repudiation of the guarantees provided by the Staff Regulations.

42 On this point it must be observed that, although the abolition of the specialized branch may have caused the applicant to lose a certain independence, it did not nevertheless alter his position under the Staff Regulations in any way. The new duties assigned to the applicant come within the

description of duties adopted in a Commission decision (undated) published in Staff Courier No 272 of 4 September 1973 the Annex to which provides as follows with regard to the category to which the applicant belongs:

Career bracket	Basic post	Description of duties	Title
A 4 — A 5	Principal Administrator	Head of one particular sector of activity in a division Head of a specialized department Qualified official engaged in planning, advisory or supervisory duties in one sector of activity Assistant to Head of Division	Principal Administrator or Head of Department

43 It is clear from that table that both the new and the old post filled by the applicant fall within the description of the typical duties involved in Career Bracket A 4/A 5.

44 It therefore appears that the applicant was reassigned in accordance with the principle established in Article 5 (4) of the Staff Regulations that basic posts and career brackets should correspond and that his reassignment did not contravene Article 7 which states that the appointing authority must, acting solely in the interest of the service, assign each official to a post in his category which corresponds to his grade. It is clear from all the foregoing that the applicant was reassigned as part of a reorganization conceived with the general interest in mind and carried out subject to the strictest observance of the provisions cited above.

45 That submission must therefore be dismissed.

The submission that reasons were not given

46 The applicant relies *inter alia* on Article 25 of the Staff Regulations which states that: "Any decision adversely affecting an official shall state the grounds on which it is based". However, the reassignment decisions, he claims, contain no statement of the grounds on which they are based except a vague reference to the "reorganization of the Directorate General for Transport" in the letter of 9 February 1981.

47 The scope of the obligation under Article 25 of the Staff Regulations to state the grounds on which decisions are based must be ascertained from the purpose of that provision which is to protect an official against the possibility that his position under the Staff Regulations may be adversely affected in any way. The statement of the reasons on which measures which may adversely affect officials are based is intended to enable the official concerned to know why a decision was adopted in his regard and to take steps to defend his rights and interests.

48 That requirement is satisfeid when the measure against which an action may be brought has been adopted in circumstances known to the official concerned, which enable him to apprehend the scope of a measure which concerns him personally.

49 It appears from the papers before the Court that the applicant knew of the Commission's decision concerning the reorganization of his directorate general and was aware of the consequences which that reorganization must have upon his own administrative position. Under those circumstances, the reference in the communications at issue to the reorganization of Directorate General VII is a sufficient indication of grounds for the purposes of Article 25 of the Staff Regulations.

50 This submission must therefore also be dismissed.

The submission as to misuse of power

51 Finally, the applicant alleges that the measure adopted to reassign him involved a misuse of power. He takes the view that the abolition of the specialized branch which he had managed and the changing of his duties are nothing other than a disguised disciplinary measure inflicted upon him on account of the differences of opinion between himself and his superiors on various questions of transport policy with the ultimate aim of removing him from the service of the Commission. The unfavourable assessments of his work contained in the periodic report which is the subject of the other two actions had the same purpose. The applicant refers to various clashes between himself and his superiors and it is in connection with this line of argument that he has made the accusations of weakness and bias referred to above.

52 The complaints made by the applicant demonstrate a failure on his part to comprehend the difference between the defence of his own administrative

position and the differences of opinion which inevitably exist within an administration, especially at the level at which various policies are worked out in the complex Community setting.

53 If Mr Seton had reasons for disapproving of his superiors' actions he could have made his criticisms to the competent authorities. The Commission's reaction to the accusations made in the complaint of 30 January 1981 and the task assigned to Mr Verheyden demonstrate that the Commission was sensitive to the applicant's comments and that it endeavoured to form an objective view of the differences of opinion that existed.

54 It should also be pointed out that the measures of reorganization which led to the abolition of the specialized branch previously managed by the applicant and the decision to reassign him were adopted by the Commission at the highest level so that it is illusory to attempt to establish a link between those measures and Mr Seton's personal dispute with his immediate superiors.

55 As to the applicant's contention that the disagreement with his superiors was reflected in his periodic report, it should again be recalled that the first version of the report shows great reserve on the part of the assessors in expressing certain criticisms of the applicant's management of the specialized branch of which he was in charge. More explicit criticism was expressed only in response to the complaint lodged by the applicant with the Joint Committee on Staff Reports.

56 The submission alleging misuse of power must therefore be dismissed in respect of both Applications 37 and 218/81.

57 It follows from the foregoing that the applications must be dismissed in their entirety, including the claims for damages.

Costs

58 Article 70 of the Rules of Procedure provides that, without prejudice to the second subparagraph of Article 69 (3) of those rules, which concerns costs which one party has unreasonably or vexatiously caused the opposite party to incur, institutions must bear their own costs in proceedings brought by officials.

59 It follows from the foregoing that the applicant should not enjoy the advantage given to officials by Article 70 of the Rules of Procedure. He no doubt had grounds for complaint as regards the slowness of the last stage of the assessment procedure. However, in pursuing his case he made such excessive charges that the Commission was compelled to institute an administrative inquiry. The result of that inquiry ought to have dissuaded the applicant from continuing his action. Thus his conduct made the entire proceedings vexatious in character and he must be ordered as a result to pay the whole of the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the applications;**

2. **Orders the applicant to pay the whole of the costs, including those in the proceedings for the adoption of an interim order.**

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 1 June 1983.

J. A. Pompe
Deputy Registrar

P. Pescatore
President of the Second Chamber