OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 30 JUNE 1983 [1]

Mr President,
Members of the Court,

1. The problems raised in these proceedings are similar to those with which I dealt in my Opinion in Case 131/82, although in this case they relate to the post of chief adviser in Grade A 2 in Directorate General XVII for Energy.

I shall summarize the facts. From September 1977 the post was held by Jean-Claude Renaud, the applicant in these proceedings. He was informed by the President of the Commission on 4 May 1981 that it was intended to retire him in accordance with Article 50 of the Staff Regulations of Officials. In his reply on 19 May 1981 Mr Renaud specifically asked to be assigned to another post in the same grade. In a further letter of 24 June 1981 the President confirmed the intention to apply Article 50 and gave an assurance — attaching a list of vacant posts in Grade A 2 — that the Commission would consider the possibility of complying with his request. By decision of 8 July 1981 Mr Renaud was retired with effect from 1 November 1981.

Subsequently, by letter of 9 September 1981, followed by a note of 5 October 1981, Mr Renaud applied for the post of Director of Directorate D in the Directorate General for External Relations, the subject of Vacancy Notice No COM/1226/81. But even before a decision was taken regarding the appointment to that post, he submitted a complaint (on 12 October 1981) to the appointing authority asking that the measure retiring him be annulled. Having received no reply within the prescribed period (the express rejection was notified to him only by a letter of 3 June 1982) and since he had not been assigned to a post in the same grade by 1 November 1981, Renaud brought an action before the Court on 11 May 1982. He requested primarily the annulment of the decision of 8 July 1981 and of the implied decision rejecting his complaint relating thereto; in the alternative he requested: (a) annulment of the decision not to assign him to another post in the same grade and, in particular, not to appoint him as Director of Directorate D in Directorate General I for External Relations; (b) annulment of the decision whereby, after retiring him, the Commission filled other posts in his grade and, in particular, the post referred to under (a) above; and (c) annulment of the implied decision rejecting his complaint relating thereto.

I should also point out that, by decision of 6 April 1982, another candidate was appointed, by way of promotion, to the post sought by Renaud. After he was informed of this, by note dated 28 April 1982, Mr Renaud submitted a further

1 — Translated from the Italian.

complaint to the Commission which he described as "in the alternative" ("subsidiaire") to the action brought on 11 May. He then supplemented the requests made to the Court on that date by requesting annulment of the express rejection of his complaint of 12 October 1981 and of the implied rejection of his complaint of 28 April 1982, to which I have just referred.

2. I shall consider first the principal heads of claim. Renaud's criticisms of the measure retiring him are the same as those expounded by Angelini in Case 131/82. I refer therefore to the opinion which I delivered in that case and would point out that there seems to be no room for any doubt as to the lawfulness of the measure adopted with respect to the applicant.

Directorate General XVII was the subject of a reorganization which appears to be wholly rational and, as we have been assured, took into account the "screening" reports submitted by the Ortoli group on the functioning of that department and on the development of activities in the energy sector. It is not appropriate for me to go into detail regarding that initiative. It is sufficient to point out that Directorate A (which absorbed some of the staff of which Renaud was a member) dealt with all the activities of a horizontal nature; that Renaud's duties in the area of international problems were rationally distributed among several directorates; that, after his retirement, his post was transferred to another Directorate General, whilst the latter transferred one of its own officials to the Directorate General for Energy, together with the post occupied by him, so that he could take over Directorate D, the area of responsibility of which had also been changed.

In this dispute also no importance attaches to the fact that the details of the reorganization to which I have referred were decided upon at a meeting of the Commission held on 15 July 1981, that is to say one week after the adoption of the measure retiring the applicant. I should point out on the other hand that that measure was adopted before the decision to dispense with the post occupied by the applicant — but there is no proof of that. We know, on the contrary, that the abolition of a number of posts of chief adviser had already been decided upon in principle and that that intention was confirmed, as is apparent from an extract from the minutes, at a meeting of the Commission held on 8 July 1981, that is to say on the day on which the decision to retire the applicant was adopted.

At this point, it is unnecessary to assess the evidence put forward by Renaud. It cannot in any way change the arguments which lead me to regard the primary claims put forward by him as unacceptable.

3. I shall now consider the claims submitted in the alternative. Renaud objects in the first place to the fact that he was not assigned to another post in his grade and reproaches the defendant for not exploring any possibilities of so doing on its own initiative. When the Commission applies Article 50 of the Staff Regulations — he asserts — it is under an obligation to consider all prospects of reassignment of an official who is retired.

This view cannot be accepted. In his letter of 24 June 1981 the President of the Commission expressly stated that

Renaud's applications for vacant posts would be considered, like those of every other candidate, "in accordance with the procedures in force": not on the Commission's initiative, therefore, but on the basis of documents whereby the applicant formally manifested his interest in a given post. I do not believe that there are any grounds for criticizing that procedure in the light of rules which do not give overriding preference to an official's permanent tenure of office. I should add that it is not particularly onerous for applicants to submit proper applications.

One problem therefore remains: to determine whether the failure to assign Renaud to posts for which he applied in the proper manner is unlawful. It is to be noted in the first place, in that regard, that only the post of head of Directorate D in the Directorate General for External Relations is involved. It is true that, in his complaint of 12 October 1981, the applicant objects to the fact that he was not put in charge of Directorate A in Directorate General XVII; but such a complaint is no substitute for a formal application. According to Vacancy Notice No COM/1232/81, the application should have been submitted by 11 September 1981 (see Annex to the rejoinder).

The applicant doubtless fulfilled the prescribed requirements for the posts in question. This was recognized by the Consultative Committee for appointments to Grades A 2 and A 3 in its opinion issued on 13 October 1981: "Mr Renaud", it reads, "possessed the qualifications prescribed in the vacancy notice and ... there is no reason to conclude that he would not be suitable for the post in question". However, of the three candidates who, according to the Comittee, "deserve particular consideration" Renaud was not chosen. After "a comparative examination of the merits of the candidates" and in view of the characteristics of the post, Mr Beseler was appointed to the post by means of promotion.

4. Like Angelini in Case 131/82, Renaud asserts that that choice is vitiated because the grounds on which it was based were not sufficiently stated; and, as in Angelini's case, it seems to me that that cannot constitute a ground for annulment. However, another question specific to this case on the other hand deserves to be dealt with in depth.

Renaud, it has been stated, is indisputably qualified for the post which was declared vacant. Can it be argued on the basis of Article 50 of the Staff Regulations that an official who is retired and whose suitability is established is to be accorded precedence over the candidates of a lower grade?

Renaud obviously is of that opinion. He relies upon two principles; the principle of security of tenure which, although to a lesser extent, applies also to officials in Grade A 2, and the principle of equity, whereby an official who would have to leave the service in the event of an unfavourable decision deserves more vigorous protection than an employee whose career advancement would merely be slowed down by such a decision. The Commission emphasized that there was no trace in Article 50 of any preferential right to re-employment. In situations like the one under consideration, the Commission points out, the interests of the service, which require that the most suitable candidate be chosen, must prevail.

Of the two lines of reasoning the second seems to me to be better founded. In fact, the third paragraph of Article 50 does no more than prescribe that an

official who is retired and is "not assigned to another post in his category or service corresponding to his grade" is entitled to an allowance calculated in accordance with Annex IV; and indeed no preferential right of re-employment can be founded on a rule of that kind, which concentrates wholly on financial safeguards for an official who is retired without any fault on his part. Nor can such a right be derived from the principles to which the applicant refers. As is evident from Article 50 itself and the case-law relating thereto, officials in Grades A 1 and A 2 do not enjoy security of tenure; and the principle of equity is too general for the consequences claimed by the applicant to be deduced from it. At most, that principle may justify preference for an official who is retired where he has the *same* merits as the other candidates.

The question therefore remains whether by choosing Beseler the Commission acted unlawfully. In view of the fact that by virtue of the case-law of the Court a decision of that kind may be vitiated only by manifest errors of assessment, the answer to the question must be in the negative.

I would refer in that respect to the duties associated with the vacant post as described in Notice No COM/1226/81 (Annex 2 to the rejoinder); and I would refer to the observations of the Commission regarding the scientific publications of the candidate who was chosen and his considerable specific experience acquired over long years of service in the Directorate General for External Relations. When that fact is compared with the qualifications of the applicant, referred to in the opinion of the Consultative Committee of 13 October 1981 (long experience acquired before entering the service of the Commission "of the problems of external trade" and responsibility for studying the problems "of external relations in the field of energy" as chief adviser to the Directorate General for Energy), the Commissions's view that Beseler is more suitable is fully justified.

It seems therefore to be adequately demonstrated that the claims put forward in the alternative are also without foundation.

5. In view of all the foregoing considerations, I propose that the Court dismiss the action brought on 11 May 1982 by Mr Jean-Claude Renaud and order the parties to bear their own costs in accordance with Article 70 of the Rules of Procedure.