In Case 14/79

RALPH LOEBISCH, an official of the Council of the European Communities, residing at 107 Avenue des Aubépines, 1180 Brussels, represented and assisted by Edmond Lebrun, of the Brussels Bar, of 68 Rue Camille Lemonnier, 1060 Brussels, with an address for service in Luxembourg at the Chambers of Tony Biever, Advocate, 83 Boulevard Grande-Duchesse Charlotte,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by John Carbery, Adviser in the Legal Department of the General Secretariat of the Council of the European Communities, acting as Agent, with an address for service in Luxembourg at the offices of the Director of the Legal Department of the European Investment Bank, 2 Place de Metz,

defendant,

APPLICATION for a finding that the applicant occupies a post of Director in Grade A 2 and is therefore entitled to be graded in Grade A 2 with effect from 1 April 1974 or at least from 4 May 1978, and for the annulment of the implied decisions rejecting and dismissing the request and complaint made for this purpose,

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and Lord Mackenzie Stuart, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

The applicant, who is a German national, a doctor of law and a languages graduate, entered the service of the Council in Brussels on 1 February 1958, the date when the EEC and EAEC institutions were set up, after working since 3 September 1956 for the Inter-Governmental Conference and the Interim Committee responsible for the working out and implementation of the Treaties establishing the EEC and the EAEC.

When he became integrated under the Staff Regulations and in accordance with Article 102 (4) (b) thereof he was appointed an official in Grade L/A 4 and Head of a Translation Group at the Council with effect from 1 January 1962.

He was promoted to Grade L/A 3 with the title of Head of a Translation Division with effect from 1 January 1973.

Finally the Secretary General, Mr Hommel, informed him in a note dated 30 April 1974 that as from 1 April 1974 he was "placed at the disposal of Directorate-General A, Directorate II: Operations — Translation Department, as Head of Translation Department".

Since the applicant's predecessor in this post, Mr Noack, had been promoted to Grade A 2 *ad personam*, the applicant therefore expected to be promoted, after his appointment as Head of the Translation Department, to Grade A 2 with retroactive effect to the date of his "appointment". Since nothing of the kind happened he made a request to the appointing authority on 12 May 1978 to be graded in Grade A 2 with effect from 1 April 1974. He made a further application on 17 May 1979 for this grading to take effect at the latest as from 4 May 1978, the date of the entry into force of Council Regulation (EEC) No 912/78 of 2 May 1978 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities (Official Journal L 119 of 3 May 1978 p. 1).

Since the applicant did not receive any reply to this complaint, with the result that there was in law, pursuant to Article 90 (2) of the Staff Regulations, deemed to be an implied decision rejecting the complaint, he filed this application which was lodged at the Court Registry on 25 January 1979.

The procedure followed the normal course. On 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.

II — The conclusions of the parties

The *applicant* claims that the court should:

1. Declare that the application is admissible and well founded;

2. Declare that the post of Head of Translation Department of the defendant institutions to which the applicant has been appointed is a post of Director in Grade A 2 and that the applicant must therefore be graded in Grade A 2 with effect from 1 April 1974 or at least from 4 May 1978;

3. Order the defendant to grade the applicant in Grade A 2 with effect from 1 April 1974 or at least from 4 May 1978;

4. Annul the defendant's refusal to grade the applicant in Grade A 2 with effect from 1 April 1974 or at least from 4 May 1978 and the implied decisions rejecting his request and complaint which were made for this purpose;

5. Order the defendant to pay the costs.

The *Council* contends that the Court should:

— Dismiss the applicant's applications as unfounded;

and

— Order the applicant to pay the costs to the extent to which the defendant does not bear them pursuant to Articles 70 and 95 (2) of the Rules of Procedure.

III — Summary of the submissions and arguments of the parties

Since the question of admissibility does not arise the applicant has put forward two principal submissions.

The *first submission* is based on infringement of Article 5 and of Annex I A to the Staff Regulations and breach of the principle that the grade must correspond to the post and also on breach of the principle that posts and grades are to be organized according to rank in the European civil service and of the principle of good administration.

The submission is divided into two parts.

First part

Infringement of Article 5 and of Annex I A to the Staff Regulations and breach of the principle that the grade must correspond to the post

The *applicant* maintains that the Council was wrong to refuse to grade him in Grade A 2 since his duties correspond to the basic post of director and therefore to Grade A 2, seeing that he has been appointed to a post of head of a department of 300 persons of whom 250 have university degrees and rank as Grade A and for whom he has responsibility.

The *Council*, by way of a preliminary observation, first points out that for linguists in the service there are only posts in Grade L/A 8 to Grade L/A 3 and that even Council Regulation (EEC) No 912/78 of 2 May 1978 (to which reference has already been made) has not introduced a post of Grade L/A 2. Thus there could not be a vacancy within the

meaning of Article 4 of the Staff Regulations since there is not a basic post of director. Finally it also points out that in the light of Article 6 of the Staff Regulations the number of posts in each grade must be indicated for budgetary purposes; it is therefore the budgetary authority alone which can either create a new post or convert an existing post into one of a higher category and it has not done this as far as the duties of Head of the Translation Department are concerned.

The Council, relying on the case-law of the Court (Case 61/70, *Gianfranco Vistosi* v *Commission of the European Communities* [1971] ECR 535; Case 61/76, *Jean Jacques Charles Geist* v *Commission of the European Communities* [1976] ECR 1349; Case 21/68, *André Huybrechts* v *Commission of the European Communities* [1969] ECR 85; Case 33/67, *Dietrich Kurrer* v *Council of the European Communities* [1968] ECR 127) according to which the appointing authority is alone responsible for its internal organization, refutes the applicant's arguments and maintains that consequently only the appointing authority may decide "whether it is expedient that the Translation Department be directed by a Grade A 2 official".

The *applicant* points out first that as a result of Mr Noack's departure there was a vacant post within the meaning of Article 4 of the Staff Regulations and that Article 6 of the Staff Regulations cannot be invoked since, on the one hand, it is not a question of either creating or converting a post but a matter of acknowledging that the post which is occupied corresponds to Grade A 2 and, on the other hand, practical difficulties cannot be pleaded in order to state what the law is.

He points out that, although Regulation No 912/78 does not provide for a Grade L/A 2, the reason for this is solely to enable officials in the service who have been on the administrative side to become Director of the Translation Department, that is to say, to fill a post in Grade A 2.

Although the applicant agrees with the Council's argument concerning an institution's internal organization, he goes on to say that the appointing authority must nevertheless respect the rights which employees have under their Staff Regulations in accordance with the case-law of the court (Case 61/70, *Gianfranco Vistosi* already quoted; Case 66/75, *Hébrant (née Macevicius)* v *European Parliament* [1976] ECR 593; Case 16/67, *Henri Labeyrie* v *Commission of the European Communities* [1968] ECR 293; Case 48/70, *Giorgio Bernardi* v *European Parliament* [1971] ECR 175, Case 35/72, *Walter Kley* v *Commission of the European Communities* [1973] ECR 679), and accordingly the Council's argument is "irrelevant", since the latter, by appointing a Head of Translation Department, decided to create the post and that post is a post of director, because, in the first place, the head of department has supervisory powers over six heads of division and the head of a division is logically under the orders of a director; in the second place this head of department is the official who makes the first periodic reports on the six heads of division; in the third place the decision of the Councils of 7 October 1963 — describing the duties and powers of officials of the General Secretariat of the Councils of the European Communities — defines the post of director as follows: "He directs a large administrative unit under the direct authority of a Director-General or, exceptionally, of the Institution" and the Translation Department, which consists of 300 persons, is a large administrative unit.

The applicant, in order to prove that his post does in fact fall within Grade A 2,

also asserts that a promotion was in fact involved, since he was appointed on 1 April 1974 on the recommendation of the Promotion Committee and promotion implies being appointed to the next higher grade pursuant to Article 45 (1) of the Staff Regulations. It is true that according to Article 45 (2) of the Staff Regulations a transfer from one "service" to another — in this case moving from L/A 3 to A 2 — can take place only on the basis of a competition, but Article 29 (2) of the Staff Regulations provides that for the recruitment to Grade A 1 or A 2 "a procedure other than the competition procedure may be adopted by the appointing authority", and the applicant asserts that the exception has become the rule in the case of the appointment of the Head of Translation Department to Grade A 2 in the other European Institutions. And on the other hand promotion implies that the applicant may not refuse his new posting.

Finally the applicant takes the view that "this being so it does not matter much that the career bracket of Head of Translation Department does not exist as such in the list of career brackets for linguists", but that it is a question of describing an administrative situation "in the light of the reality of the situation" and that it is therefore necessary to "link the applicant's post to one of the basic posts, and that can only be the basic post of director".

The *Council* in its rejoinder stresses by way of a preliminary observation that the General Secretariat would have to be reorganized — if the applicant were to become a director — since the Translation Department forms part of the Second Directorate for which a director who has already been appointed is responsible.

The Council refutes the applicant's argument designed to prove that the post which he occupies is that of director in Grade A 2, by maintaining that the applicant is confusing, on the one hand, appointment to a grade with assignment to a post and, on the other hand, being placed at the disposal of a department. In this case he was placed at the disposal of a department so there has never been any appointment to a post of Head of Translation Department which the applicant seems to acknowledge in his request — according to the Council's argument — since it was drawn up by him as follows: "... I request you to apply for and authorize the conversion of the L/A 3 post, at present occupied by the undersigned, into an A 2 post"; it is the words "conversion of the L/A 3 post, at present occupied" which constitute this acknowledgment.

The Council's final argument is that "Head of Translation Department" is not a post within the meaning of the Staff Regulations and that there has not therefore been an infringement of either Article 5 or Annex I A to the Staff Regulations.

As far as concerns the *Hébrant (née Macevicius)* case (already mentioned), upon which the applicant relies, the Council maintains that it applies only to officials who obtained their grade expressly or by implication before becoming subject to the Staff Regulations. As far as this case is concerned there has never been a post of Director of Translation Department, since this department is not a directorate, as it is placed under the authority of a director in Directorate II.

The Council also disputes the argument regarding promotion by pointing out in

the first place that the applicant — having been a member of the Promotion Committee — could very easily have refused his appointment, especially as it was a question of choosing between him and Mr Van Royen; and in the second place that the duties of the Head of Translation Department have always been performed by an official in Grade L/A 3, except during the short period when Mr Noack had been graded A 2 *ad personam;* and finally that the Court held in Case 176/73, *Claudette Van Belle* v *Council of the European Communities* [1974] ECR 1361 that Article 29 of the Staff Regulations must be strictly interpreted and that there is no right to promotion.

Second part

Breach of the principle that posts and grades are to be organized according to rank in the European civil service and of the principle of good administration

The *applicant* submits that he has supervisory authority of six officials in Grade L/A 3 who are heads of a division and that since he has the same grade as his subordinates, this situation is a breach of the principle that posts and grades are to be organized according to rank. He is also under the authority of a director assisted by a head of a division who acts in his stead if he is absent; this is a breach of the principle of good administration.

The *Council* rejects this argument and emphasizes that the Staff Regulations nowhere forbid the exercise of "supervisory authority by an official over other officials of the same grade as himself". In support of this argument it refers to the case-law of the Court (Joined Cases 4 and 30/74, *Giuseppe Scuppa* v *Commission of the European Communities* [1975] ECR 919).

The *Council* also considers that, since the applicant is the most senior official in his grade, he is in a position to exercise authority, all the more so because the six heads of division who are responsible for each language section facilitate his task. On the question of the applicant's being subordinate to another official, the Council submits that, in addition to the fact that he has always been under the authority of a director since his appointment, it is the "appointing authority in the exercise of its organizational powers which has made this decision", and that "such subordination cannot be regarded as having an adverse effect on his career or authority".

The *applicant* disputes point by point the arguments put forward by the Council by submitting:

In the first place that, even though the Staff Regulations do not lay down that an official may not exercise supervisory authority over other officials of the same grade as himself, this cannot be a valid argument for, if it were, it would lead to abuses since the appointing authority might take the place of the Staff Regulations and refuse to appoint the head to the higher grade to which he is entitled and that the problem of the test to apply would inevitably arise; when is it necessary for a head to be in a higher grade?

In the second place the Council's argument relating to seniority is irrelevant since the fact of being the superior officer implies a higher grade.

In the third place the *Giuseppe Scuppa* judgment does not apply to this case. This judgment in fact relates to seniority between officials of the same grade only in the event of its being necessary to co-ordinate their activities; the applicant does not co-ordinate the work of the six

heads of division but he directs them, since from the organizational point of view they are answerable to him: their post is not on the same level as his. Thus the applicant has the power to make periodic reports on the six heads of division whereas in the *Giuseppe Scuppa* case the head of division who had supervisory authority did not have the power to make periodic reports on Mr Scuppa who was also head of a division. The applicant invokes in support of this submission the judgment of the Court of 15 December 1965 in Case 15/65, *Werner Klaer* v *High Authority of the ECSC* [1965] ECR 1045.

In the fourth place the argument to the effect that the applicant's duties are facilitated by the work done by the six heads of division is "irrelevant" because all the members of a directorate belong to divisions and are nevertheless under the authority of the director.

The applicant also submits in the alternative that Council Regulation (EEC) No 912/78 (which has already been mentioned) amended the wording defining the post of an official in Grade L/A 3 by stating in Article 13 thereof that the latter was head of a division and no longer head of the division.

Consequently the applicant submits that the head of all the divisions is a director, that the Council should amend Annex I to the Staff Regulations so as to comply with Regulation (EEC) No 912/78 and not rely on it for its defence, as the Court has already held in its judgments in Joined Cases 20 and 21/63, *Jean Maudet* v *Commission of the European Economic Community* [1964] ECR 113 and in Joined Cases 79 and 82/63, *Jean Reynier and Piero Erba* v *Commission of the European Economic Community* [1964] ECR 259.

The *Council's* reply to the first two of the points raised by the applicant is that "the exercise of authority by the most senior official in the grade" is a principle which is well known in public and administrative law and it points out that there is no right to promotion.

As far as the third and fourth points are concerned, whilst the Council does not deny that the *Giuseppe Scuppa* case is different from the case in point, it submits that the *Klaer* judgment cannot be relied on either since, in that case, the ECSC had never denied that Mr Klaer was in Grade A 1; the latter rightly claimed that he was entitled to perform duties which corresponded to his grade. The Council concludes this argument by submitting that "the Translation Department is in fact answerable to the Director of Operations/Translation. Consequently the posts within the Language Department are subordinate to the post of director responsible for the Translation Department".

The Council also calls attention to the fact that the duties of the Head of Translation Department are not a post within the meaning of the Staff Regulations with the result that there cannot be any right to regrading.

Finally in connexion with the interpretation of Regulation (EEC) No 912/78 the Council stresses that the amendment of the title ("head of the division" to "head of a division") was also effected in the case of Grade L/A 4 and that in these circumstances it would be premature to draw any conclusions from that amendment, especially as "when the Council adopted those amendments it never for a moment intended to extend the top end of the career brackets of the Translation Department".

In conclusion the Council states that "the Council has a Director of Directorate-General II for Operations/

Translation who has been duly appointed by the appointing authority and who exercises actual supervision of the Translation Department".

The second submission relating in the alternative to infringement of Article 5 (3) of the Staff Regulations and breach of the principles of equal treadment between officials and of equity

This submission is also divided into two parts.

First part

Infringement of Article 5 (3) of the Staff Regulations

The *applicant* calls attention to his duties and powers and maintains that they have not had any corresponding career bracket since he has remained in Grade L/A 3.

The Council points out that the applicant performs only the duties of a co-ordinator under the authority of a director and that it has not created any A 2 post. An appointment to Grade A 2 can only, according to Article 1 of the Staff Regulations, be effected by an instrument issued by the appointing authority; thus the applicant's duties correspond fully to Grade L/A 3 and consequently Article 5 (3) has not been infringed.

The *applicant* submits that "it is sufficient to establish that a post of Head of Translation Department has been created to which the applicant has been appointed", and he must consequently be given the appropriate grade. For, although the Council is free to create a post, that post, once it has been created, must be given a grade pursuant to the Staff Regulations, and since this grading is a matter of law it is not within the discretion of the administration.

The applicant also disputes *the Council's description of his duties, especially the term "co-ordination"*, reiterating his reasoning in connexion with the first submission: he directs the six divisions and has the entire responsibility for them.

The *Council*, repeating once again that the applicant was not appointed to a post of director but to a post in Grade L/A 3 in 1973 and that he does not perform the duties of a director since they are performed by the Director for Operations/Translation, submits that the applicant's duties are to co-ordinate activities and it relies on the arguments already put forward in the first submission and on the biennial report on the applicant (1 November 1975 to 31 October 1977), which establishes that the latter performs the duties of a co-ordinator under the authority of the Director of Directorate II.

Second part

Breach of the principle of equal treatment between officials and of the principle of equity

The *applicant* submits that, since the Head of Translation Department of the Court of Justice is graded in Grade A 2, the Heads of the Translation and Interpretation Departments of Parliament are graded in Grade A 2 and the Head of the Interpretation Department of the Commission is also graded in Grade A 2, he is the only head of department with heads of division under his authority who has not been graded in Grade A 2 and that he has therefore been discriminated against.

The *Council* submits that this argument is not relevant because, in the first place,

each institution is free to arrange its internal organization as it wishes, (Joined Cases 44, 46 and 49/74, *Marie-Louise Acton and Others* v *Commission of the European Communities* [1975] ECR 383) and, in the second place, there is at the Commission a Head of Translation (General Matters) Division whose grade is L/A 3 and who co-ordinates the work of the six translation divisions, each of which is under the direction of a head of division whose grade is also L/A 3.

Furthermore the appointment of Mr Noack to Grade A 2 in a personal capacity does not entitle the applicant to the same appointment and, in fact, the applicant is only applying for promotion. There is no right to promotion as the case-law of the Court (Case 189/73, *Gijsbertus Van Reenen* v *Commission of the European Communities* [1975] ECR 445; Case 25/77, *Lucienne De Roubaix, née De Leye* v *Commission of the European Communities* [1978] ECR 1081; Case 5/70, *Maurice Prelle* v *Commission of the European Communities* [1970] ECR 1075; Case 77/70, *Maurice Prelle* v *Commission of the European Communities* [1971] ECR 561) "shows that, even when an official performs duties normally performed by an official in a higher grade, he cannot claim the right to be promoted. It may be inferred *a fortiori* that, if he does not perform such duties, which the applicant has not done, he has even less justification for claiming such a right".

The *applicant* first repeats the reasoning put forward in his first submission concerning the freedom which each institution has to decide its own internal organization within the ambit of the Staff Regulations and then asserts that the example of the Head of Translation (General Matters) Division of the Commission is not conclusive because, since he does not have the power to make periodic reports on the other heads of division, he only co-ordinates their activities whereas the applicant "exercises the rights and performs the duties of a superior officer" and assumes entire responsibility for the six divisions. Moreover the Council is aware that the Head of Translation Department has to fill a Grade A 2 post because, in the report of the Working Party on the Staff Regulations to the Permanent Representatives' Committee on the amendments which were to be effected by Regulation (EEC) No 912/78 (Council document R 269/77 (STAT 9) (FIN 59) of 9 February 1977 annexed to the application) the reason given for not creating a Grade L/A 2 was that it was necessary to afford the administrators the opportunity of assuming the direction of such a department.

Finally the applicant asserts that "the considerations put forward by the Council in connexion with the absence of any right to promotion are beside the point", because he has not applied for promotion but for "the regularization of his grading on the basis of the law". Furthermore this case differs from the Court's decided cases which have been quoted because "the duties in question are not those of a post higher than the one to which he has been appointed but of the post to which he has in fact been appointed", and the applicant could not refuse to perform his new duties in contrast to the situation of an official performing the duties of a post in a higher grade than his own.

Consequently the applicant asks for the grade which corresponds to the post "to which he has been formally assigned by the appointing authority" and submits that this right has been acknowledged by the Court (Case 102/63, *Jacques Boursin* v *High Authority of the European Coal and Steel Community* [1964] ECR 691.

The *Council* repeats its argument concerning the freedom of each institution to decide upon its own internal organization.

With reference to the position of the heads of translation departments of the other institutions it stresses in the first place that the Head of Translation Department of the Court of Justice is graded in Grade A 2 *ad personam* and that the duties of a head of translation department, head of interpretation department and head of languages department are not identical: hence the only valid comparisons are those with the other heads of translation departments.

It also repeats its reasoning, put forward in the second part of its first submission, concerning the interpretation of the modifications effected by Regulation No 912/78.

The Council also submits that the applicant is indeed asking for promotion because he himself acknowledges in his application that he is applying for the conversion of his Grade L/A 3 to Grade A 2. In reply to the applicant's arguments the Council points out that in this case the expression "post" within the meaning of the Staff Regulations and the expression "duties" are being confused: the applicant, who occupies a post in Grade L/A 3, has been appointed to carry out the duties of Head of the Translation Department. The Council stresses moreover that this appointment took place in 1974 and that the applicant made his application in 1978.

Finally it takes the view that, although the *Boursin* judgment confirms that each official is entitled to be graded in the grade corresponding to his post, in this case the duties corresponding to the post of director are performed by the Director of Directorate II.

Consequently the applicant does not perform the duties of a director and is not entitled to be appointed to Grade A 2.

IV — Oral procedure

At the sitting on 20 September 1979 the representatives of the parties developed orally the submissions in their pleadings and answered questions put by the Court.

The *applicant* stated his case in which he endeavoured to show in turn that his duties constituted a post, that he had in fact been appointed to perform those duties (which he stated had been confirmed in "Les Communications au Personnel" ("Staff Information") of 28 May 1974) and that he must receive the grade corresponding to that post.

The *Council's* Agent answered the questions put by the Judge-Rapporteur relating to the use of the expression "being placed at the disposal of" a department, which was used by the administration when Mr Loebisch was assigned to his post, and relating to the power to make periodic reports on his colleagues in the same grade.

The Advocate General delivered his opinion at the sitting on 25 October 1979.

Decision

1 By an application which reached the Registry on 25 January 1979 Ralph Loebisch, Head of the Translation Department of the General Secretariat of the Council of the European Communities, instituted proceedings claiming that he should be appointed to Grade A 2 and also asking for the annulment of the implied decisions rejecting his request and complaint which were made for that purpose.

2 The applicant entered the service of the Council of Ministers as a translator on 1 February 1958. On 25 May 1973 he was promoted to Grade L/A 3 and appointed "Head of the Translation Division". The Translation Department of the Council consists of six separate divisions, one for each of the six official languages of the Communities, and each under the authority of a head of division. The six heads of division are under the authority of the "Head of the Translation Department" who himself is under the authority of the Director of Directorate II "Operations — Translation Department", the latter being responsible to Directorate-General A of the General Secretariat.

Mr Noack, who had been promoted from Grade L/A 3 to Grade A 2 *ad personam,* filled the post of Head of the Translation Department until he retired on 13 January 1974. The applicant received the following note from the General Secretariat of the Council on 30 April 1974:

"Note for the attention of Mr Loebisch. I beg to inform you that as from 1 April 1974 you are placed at the disposal of Directorate-General A, Directorate II: Operations — Translation Department, as Head of the Translation Department".

The applicant, relying on the argument that his predecessor was appointed to Grade A 2, on two occasions has applied to the appointing authority to be graded in Grade A 2, with effect either from 1 April 1974 or at least from 4 May 1978, the date when the amended Staff Regulations of Officials of the European Communities entered into force. He has brought proceedings against the implied decision of the appointing authority rejecting his successive requests and has asked the Court, exercising its unlimited jurisdiction, to declare that his post is that of a director and to order the appointing authority to grade him in the grade which corresponds to the post so defined, that is to say in Grade A 2.

3 Since the parties dispute both the facts and the law it is advisable to consider in turn the decisive factors on the Court's file, that is to say the implication of the note of 30 April 1974, the nature of the applicant's present duties and their place in the Council's detailed list of posts, the alleged discrimination against the applicant compared with his predecessor, and finally whether he may be entitled to a particular grading or promotion.

4 By the note of 30 April 1974 the applicant was "placed at the disposal" of a directorate "as Head of the Translation Department". Whatever the title or terms of a document may be and whatever description may have been applied to it, its scope should be defined with reference to its real nature. The note of 30 April constitutes a transfer of the applicant in the interests of the service which has no effect on his grade; that document cannot constitute an actual appointment since there is no such career bracket as Head of Translation Department in the list of career brackets applicable to translators.

5 The applicant has remained an official in Grade L/A 3, since the posts of head of a translation division and head of languages department are both assigned to Grade L/A 3 in the list of detailed posts of the General Secretariat of the Council.

6 It is now necessary to consider whether the duties of Head of the Translation Department of the said General Secretariat correspond or not to the tasks which an official in Grade L/A 3 may in the ordinary course be required to perform.

7 In this connexion the applicant refers to the fact that the Translation Department of the Council is a large administrative unit which contains about 250 graduates. The answer to this argument must be that it is impossible to find in the Staff Regulations anything to support the argument that the grade to which an official is appointed depends upon the number and status of his subordinates.

8 The applicant also relies on the fact that he is the immediate superior of the other heads of translation divisions. This argument scarcely applies to the

administrative co-ordination of the work of the department; this duty is not in fact of such a kind as automatically to eliminate the subordinate status of the officials whose activities are subject to such co-ordination, which it is perfectly normal to entrust to an official of the same grade.

9 The applicant also relies on the supervisory powers which he exercises over his colleagues by making periodic reports on them. Although it is true that the reporting officer is usually in a higher grade than the officials whose ability, efficiency and conduct in the service he has to assess, there is no provision of the Staff Regulations against such a practice; and there is no logical reason why it should not be feasible to entrust a senior experienced official with the duty of making periodic reports on officials having the same grade as his own. It is therefore unnecessary for a director to be the first reporting officer for heads of translation divisions.

10 The applicant has drawn attention to the fact that the post at issue in this case was previously filled by an official in Grade A 2, which corresponds to the duties of a director. It is necessary to stress in this connexion that Mr Noack, the former Head of the Translation Department, had been appointed to Grade A 2 *ad personam;* it may be inferred from this *a contrario* that the post itself is not in fact classified as Grade A 2 post, since the applicant's predecessor was only appointed to this grade owing to a discretionary promotion having regard to his personal merits and probably to the fact that he was at the end of his career.

11 Finally the applicant regards the Council's behaviour towards him as a breach of the principle of equity; he performs duties as a director which justify an appointment to Grade A 2 in the other institutions. The answer to this argument must be that each institution controls its own detailed list of posts and has a wide discretion as regards its internal organization. It may be noted that the Council thought it advisable to place a director — who moreover at the same time directs another administrative unit — at the head of the applicant's department and that the department has therefore not been deprived of direction.

12 It is thus apparent that as a mater of fact there is no position under the Staff Regulations to which the applicant could claim to be promoted. Even if such a position were created, following an alteration of the detailed list of posts under the Council, the appointing authority would still be free to assess the applicant's merits with a view to his possible promotion.

13 The applicant's claims are therefore not well founded and must consequently be dismissed.

Costs

14 Pursuant to Articles 69 and 70 of the Rules of Procedure the parties must bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby

1. **Dismisses the application as unfounded;**

2. **Orders the parties to pay their own costs.**

Touffait Pescatore Mackenzie Stuart

Delivered in open court in Luxembourg on 13 December 1979.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Second Chamber