OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 13 MARCH 1969[1]

Mr President,
Members of the Court,

The case to which my opinion refers today concerns the dismissal of an official in the course of the re-structuring of the administration brought about by the merger of the Community executives. Permit me to remind you briefly of the facts of this case.

The applicant, a Netherlands national, entered the service of the High Authority of the European Coal and Steel Community in September 1953. In April 1959 he transferred to the Commission of the European Economic Community where he was Head of the Transport Rates and Conditions Directorate of the Directorate-General for Transport, receiving the salary corresponding to Grade A 2. In addition to this Directorate the Directorate-General for Transport at that time also included the Directorate for The Organization of the Transport Market and for Coordination of Investment and Economic Studies. In implementation of the Treaty establishing a single Council and a single Commission of the European Communities the Transport Directorate of the Directorate-General Economy and Energy of the former High Authority was in addition transferred to the Directorate-General for Transport.

The single Commission undertook the task, which was assigned to it by Annex I to the Merger Treaty, of re-structuring and rationalizing its departments. This task had to be completed by 30 June 1968. In order to achieve this goal it was according to the Council's instructions imperative to abolish a series of posts. For this purpose when the Council laid down the new Staff Regulations of Officials of the European Communities on 29 February 1968 it issued a special regulation which entered into force on 5 March 1968. The Commission drew up a new detailed list of posts on 6 March 1968, which only provided for three instead of four Directorates in the Directorate-General for Transport. It appointed officials to these three posts in a decision of 20 March 1968. The applicant was thereby relieved of the duties which he had previously carried out and at the same time appointed on a provisional basis Principal Adviser in the Directorate-General for Transport without any alteration in his grade. In a letter of 31 May 1968 the President of the Commission notified the applicant that he could not be assigned a permanent post; his name had therefore been included in the list of officials 'à l'encontre desquels dans les semaines à venir une mesure en vue de cessation de service ... peut être prise' ('in respect of whom a measure terminating their service in the next few weeks ... may be taken). On 19 June 1968 the applicant lodged a formal complaint under Article 90 of the Staff Regulations against the decision of 20 March 1968, after he had already notified the President of the Commission in a letter of 14 April 1968 of his reservations relating to the said decision. Finally in a decision of 26 June 1968 the Commission in accordance with Article 4(1) of Regulation No 259/68 of the Council terminated the service of the applicant with effect from 1 October 1968.

It is against this decision that the application of 27 July 1968 is mainly directed. The applicant claims that it should be annulled. In addition he asks, 'to the extent to which it may be necessary', that the decision of 20 March 1968 and another decision of 30 May 1968 mentioned in a letter from

1 — Translated from the German.

the President of 31 May 1968 should be annulled and also asks for a declaration that he shall continue to be entitled to receive his salary and to enjoy all the benefits attaching to his post.

The Commission on the other hand takes the view that the application is inadmissible in so far as it is directed against the decision of 20 March and 30 May 1968. Further, it must be dismissed as unfounded. I will consider the details of its arguments and those of the applicant and the other facts of the case in the course of my legal examination.

My legal evaluation leads me to the following conclusions.

I — Questions relating to admissibility

We must first consider the Commission's objections that some of the applicant's claims are inadmissible. I will undertake this examination now, although it only refers to claims qualified by the words 'to the extent to which it may be necessary'.

1. *The application for the annulment of the decision of 20 March 1968*

As I have said the Commission doubts whether the claim relating to the decision of 20 March 1968 is admissible. It takes the view that decisions altering an official's duties does not affect his rights under the Staff Regulations, and does not give rise to any ground for complaint, if the new duties assigned to the official concerned correspond to his grade.

It appears to me to be doubtful, having regard to the previous case-law of the Court, whether this view can be accepted even if one disregards the applicant's argument that in its decision of 20 March 1968 the Commission first made a first and decisive selection which had a crucial influence on the later decision to terminate the applicant's service. In fact the Court has already held in its judgment of 5 March 1966[1] that a transfer (that is to say the assignment to a new post) can amount to a measure adversely affecting an official which he can challenge, when it is not in the interests of the service but is a misuse of powers. In that connexion it was in that case sufficient for the purpose of establishing the admissibility of the application to give a cogent statement of the relevant facts. Similarly the Court acknowledged in its judgment of 11 July 1963[2] that withdrawing from an official part of the duties assigned to him could amount to an infringement of his rights and justify an appeal by him to the Court. On the basis of these decided cases it must indeed be admitted that the assignment to the applicant of new duties (in this case—but only on a provisional basis—the duties of a Principal Adviser instead of those of a Director) can adversely affect the applicant, and all the more so if his claim that they did not involve any work at all is correct. The admissibility of this head of the conclusions should not therefore be called in question.

2. *The claim for annulment of the decision of 30 May 1968*

The position would appear to be different so far as the decision of 30 May 1968 is concerned. As we learnt from the written procedure the Commission on this day resolved 'd'envisager de procéder à une mesure de cessation définitive de fonctions' ('to consider whether to adopt a measure terminating the service of officials'). This resolution related to the posts of certain officials including the applicant. The minutes of this meeting continue as follows: 'Monsieur le Président informera les intéressés de cette intention, afin qu'ils puissent soumettre leurs observations éventuelles à la Commission avant que

1 — Joined Cases 18 and 35/65 [1966] E.C.R. 117.
2 — Case 16/67, Rec. 1968, p. 445.

celle-ci arrête sa décision finale' ('The President shall inform the persons concerned of this intention so that they can submit any comments they may wish to make to the Commission before it makes its final decision'. The applicant was informed accordingly by a letter of 31 May 1968.

It is thus clear that by this measure the legal position of the applicant in the service had not yet been affected in a definite way. It is on the contrary to be regarded as a preparatory measure, giving notice of decision, whose content was as yet undetermined, would be taken at a later date. This view is supported by the fact that the applicant—and the other officials concerned—were called upon to submit their comments. It is also supported by the fact that after the time for submitting comments had elapsed one of the officials of Grade A 2 mentioned in the list was appointed Director and that other officials concerned were assigned posts 'de la carrière immédiatement inférieure ('in the next lower career bracket') (this is to be inferred from an undated communication of the Vice-president of the Commission which is on the applicant's personal file). Thus with regard to the decision of 30 May 1968 it is no more possible to say that it has a direct and adverse effect upon the applicant than it was possible to maintain the same argument with reference to the opinion —which moreover was *obligatory*— given by the Establishment Board under Article 102 of the Staff Regulations. In this connexion I refer to the judgment of the Court of 1 July 1964[1] and invite you to declare that the claim for the annulment of the decision of 30 May 1968 is inadmissible.

The applicant's claims do not give rise to any other questions of admissibility. With regard to the admissibility of any of the applicant's individual *submissions* I will consider this later when I examine the applicant's arguments.

1 — Case 26/63 [1963] E.C.R. 341.

II — The substance of the case

In view of the foregoing examination I only have to deal with the decisions of 20 March and 26 June 1968 so far as the substance of the case is concerned. When considering them it is necessary to note that the applicant is of the opinion that the decision of 26 June 1968 is a repetition of the measure of 20 March 1968. For this reason he does not make any specific submissions relating to the decision of 20 March but on the contrary directs all his submissions, except when they clearly refer solely to the decision of 26 June, against both of the said decisions without distinction. This must be borne in mind in order to understand what follows:

First complaint

The applicant's most important submission is that the decisions in question were defective, because they were not preceded by an examination of the comparative cases of officials capable of being affected by a measure under Article 4 of Regulation No 259/68 of the Council. This without any doubt is the main issue in this case. In dealing with it several questions have to be distinguished. It must first be considered whether such a comparative examination was at all necessary in the case of officials of the applicant's grade. Secondly we have to find out whether the examination took place, at what date and in what manner.

The first question presents few difficulties. The Commission also takes the view that such an examination had to be carried out. At first sight this might seem surprising for Article 4(2) of the said regulations reads as follows: 'When the Commission intends to take the measures provided for in paragraph (1) in respect of officials in grades *other than A 1 and A 2* it shall draw up a

list of the officials to be affected . . . in each grade . . . taking into account the official's ability, efficiency, conduct in the service, family circumstances and seniority'. It would however be wrong to infer from this provision that the Commission could select with complete freedom the officials of A 1 and A 2 who were to be retired. For it must not be forgotten that the provision which I have quoted was designed to resolve an *exceptional* problem, namely the reduction of the number of posts as a result of the merger of the Community executives. The termination of an official's service arising out of this merger cannot be compared with retirement under Article 50 of the Staff Regulations in the normal course of administration. Even if in the case of officials of Grades A 1 and A 2 the Commission did not have to comply strictly with the criteria of Article 4(2) but had a wider discretion, it had to exercise that discretion *objectively*. This entailed in particular an objective evaluation in the interests of the service of several considerations, in other words what the parties agree to call a comparative examination of the cases of officials whose retirement from or retention in the service had to be considered.

If we go on to ask whether in the present case such an examination took place, it is clear that we must dwell in the first instance on the minutes of the Commission's meeting. In fact these minutes of the meeting of 20 March 1968 mention in two places 'Après s'être fait communiqués les dossiers personnels de l'ensemble des fonctionnaires des grades A 2 en service auprès de la Commission, et après avoir procédé à un examen comparative attentif, la Commission prenant en consideration l'intérêt du service et les exigences d'une saine rationalisation arrête les décisions suivantes' ('Having called for the personal files of all officials of Grade A 2 and having undertaken a careful comparative examination the Commission, taking into account the interests of the service and the necessity for a sensible rationalization, adopts the following decisions'). However we cannot be content with this statement, because the applicant, who does not deny that a *general* examination was carried out, places great emphasis on the argument that his *individual case* was not considered during this examination before the issue of the decision of 20 March 1968. He explains this in the following manner: several months before, in December 1967, he intimated to his Director-General that he was willing to retire *voluntarily* from the service. One reason he gave was that he had been unable to comply with an order of the Commission to sell a Rhein motor barge which he owned. The decisive reason for his statement that he was willing to retire was however a proposal of the Commission for the introduction of a regulation governing the retirement of officials as a result of the rationalization of the administration. His statement was therefore *conditional* —as he repeatedly made clear and also brought to the notice of a member of the Commission. When it turned out that the circumstances giving rise to his conditional statement had ceased to exist (because negotiations for the sale of his motor barge were promising and because the Commission's proposals had not been adopted by the Council in their original form) he expressly stated in a letter of 11 March 1968 to his Director-General that his decision to retire voluntarily from the service no longer applied. Nevertheless in its decision of 20 March 1968 the Commission proceeded on the assumption that the applicant intended to leave the service and *for this reason* did not consider him when they filled the three remaining posts of Director in the Directorate-General for Transport.

This appears to correspond with the facts as we learn from a letter of 20 March which one of the members of

the Commission who attended the meeting of 20 March sent to the applicant's Director-General on 22 March. This states first of all that the applicant's decision of 11 March 1967 (the writer meant 1968), that is to say, the withdrawal of his willingness to retire voluntarily from the service was made too late. The letter goes on to say: 'En effet, à la suite de la décision de la Commission de réduire au nombre de trois les quatre directions sortant des anciens organigrammes, un choix douloureux *aurait dû être opéré* entre les quatre titulaires, dont les qualités personnelles et professionnelles sont excellentes. La décision que M. Reinarz vous avait communiquée en son temps *nous a permis d'éviter ce choix pénible, tout en tenant compte des desiderata personnels* de M. Reinarz. Comme vous ne l'ignorez pas, *la Commission a tenu compte de cette proposition et a donc désigné les trois autres* titulaires pour assumer les fonctions des trois directions nouvelles' ('As a result of the Commission's decision to reduce the four Directorates in the former detailed list of posts to three a painful choice *would have to have been made* from among the four Directors whose personal and professional qualifications are excellent. The decision which Mr Reinarz communicated to you at that time *has enabled us to avoid this painful choice and at the same time to give effect to the personal wishes* of Mr Reinarz. As you are aware the Commission took note of this proposal and therefore designated the other three Directors for the new Directorates').

This establishes that the applicant was excluded from the examination which was carried out on 20 March 1968 for the purpose of filling the post of Director of the Directorate-General for Transport and indeed for reasons which at the relevant time were no longer valid. Nor can the Commission deny this, as it endeavours to do in the face of the unambiguous wording of the said letter of 22 March 1968, by pointing out that the necessity to consider the interests of the service in any case meant that in evaluating the various points of view the applicant as an individual was also considered, because it is obvious that to ask the question whether it is *against* the interests of the service to retire the applicant is not the same thing as carrying out an examination to decide which of four Directors, all of whom are equally interested in retaining their posts, should be retired against his will. If it were shown that the final selection of the officials to be retired was made in March 1968, the only possible conclusion would be that the selection was defective because in exercising its discretionary power the Commission had overlooked an essential factor.

However, having regard to the facts of this case it is by no means certain *whether* in its decision of 20 March 1968 the Commission first made a first and final selection of officials to be retired from the service. The Commission, referring to later events, in particular to the decision of 26 June 1968, denies that it did so. In point of fact it is conceivable that a *final* comparative examination did not take place until after 20 March 1968 and in fact included the individual case of the applicant who—as we know—both on 14 April and on 19 June 1968 gave notice that he insisted on making reservations concerning the decision of 20 March. A careful examination of the facts is necessary to ascertain the truth of this matter. Let us recall what happened during the months in question.

As we have been told the Commission adopted on 6 March 1968 its detailed list of posts for the higher grades, which entailed the retirement of *one* Director from the Directorate-General for Transport. On 20 March 1968 three of the previous Directors of this Directorate were confirmed in their posts and the applicant was appointed Principal Adviser on a provisional basis. On 25

March the Council of Ministers adopted the Commission's budget for 1968. As expected it included drastic staff reductions; the number of Grade A 2 posts was reduced from 120 to 95. Until 18 April officials affected could submit applications for *voluntary* retirement. Accordingly, as had already been provided for at the meeting of 20 March, the list of those officials whose retirement had to be considered was drawn up on 30 May. In accordance with the express invitation of the Commission they had to submit by 20 June the comments they wished to make on the intention which had been communicated to them. This was followed by the further preparation of the measures for the termination of the service of officials which were adopted on 26 June, and which were based on a communication of the Vice-president of the Commission following preparatory recommendations of the chef de cabinet (as is apparent from a note of 24 June contained in the applicant's personal file).

An examination of this course of events and an understanding of the purpose and significance of the individual stages of this procedure does in fact produce the impression that the final selection of the officials who were to remain in the service had already taken place before 20 March. In fact it would have been pointless to fill the vacancies under the new detailed list of posts—and moreover without any reservation—and only to decide afterwards who could be confirmed in a particular post. In the case of those officials who as the result of the measures of 20 March were not assigned a definite post there were only two possible alternatives, either that the budget of 25 March would sanction the provision of additional posts (which having regard to the fact that the Commission and the Council were in regular and close contact with each other was very unlikely) or that, as a result of applications for voluntary retirement which had to be lodged by 18 April, posts would become vacant which the Commission could fill. Only *to this extent* can it be said that there had not yet been a comparative examination of the cases of officials who were to be retired. On the other hand it appears highly improbable that there was to be another *comprehensive* examination of all the officials who came in for consideration. This impression is confirmed by the before-mentioned letter of 22 May 1968 by a member of the Commission to the Head of the Directorate General for Transport. The last sentence reads: '*une remise en question de choix* conduirait, en Commission, à une rediscussion d'un équilibre géographique très péniblement acquis' ('*if the selection of the officials is called in question,* this would lead to another discussion within the Commission concerning a geographical balance which was only achieved with great difficulty'). This makes it clear that a repetition of the comparative examination was not contemplated. In fact there is no mention in the minutes of the later meetings as there is in those of the meeting of 20 March 1968 of 'a careful comparative examination' of the personal files of all Grade A 2 officials. No such words appear in the minutes of the meeting of 30 May. A 'fresh examination of all the personal files' is certainly mentioned in the minutes of the meeting of 26 June; however it is reasonable to suppose that this 'examination' only refers to the files of officials who were mentioned in the list of 30 May as officials likely to be retired. This assumption is supported by the fact that only these officials were given the opportunity of submitting their comments (in the event of any change in the preliminary selection comments could not have been submitted by other officials having regard to the time-limit which expired on 30 June). In particular this assumption is supported by certain words in the communication of the vice-president of the Commission preparing the ground for the meeting of 26 June and a note

of the chef du cabinet of 24 June.

If, however, after considering all these factors we have to proceed on the basis that the definitive preliminary selection of officials to be retired was actually made on 20 March 1968, that the applicant was not at that time included in the necessary comparative examination and that later administrative measures were not preceded by an examination on as broad a basis as the examination of 20 March, we come to the conclusion that not only was the decision of 20 March 1968 defective but also that of 26 June to terminate the service of the applicant. The application is therefore well founded, that is to say, the said decisions must be annulled.

In view of this conclusion it is not in fact necessary to examine the other submissions. For the sake of completeness I intend, however, to examine them if only very briefly.

Second complaint

In his second submission the applicant claims first that the statement of the reasons upon which the decision of 26 June is based is inadequate. In particular, he says, it does not state whether during the comparative examination of officials of Grades A 1 and A 2 Principal Advisers were considered, which categories were compared with each other and in accordance with what criteria the comparison was made.

On this point let me say immediately that the wording of the decision does not seem to contain any obscurities, when it mentions 'un examen comparatif des divers situations des fonctionnaires de grades A 1 et A 2' ('an examination of the comparative situations of officials of Grades A 1 and A 2'). This naturally did not mean an examination of *every* factor to be considered but only a comparison of comparable situations, that is to say, an examination of the comparative situations of officials of Grade 1 and an examination of those officials of Grade 2. Further, it seems to me to be clear that the examination covered all established officials in Grade A 2 including therefore the so-called 'Principal Advisers'. I do not find that the decision is lacking in clarity on these particular points.

Apart from this it is in my opinion very doubtful whether decisions which were taken under Article 4 of Regulation No 259/68 of the Council affecting officials of Grades A 1 and A 2 required any substantive statement of the reasons upon which they were based. Although we have seen that the Commission did not have complete freedom of action, may still be of significance that it is precisely Grades A 1 and A 2 which have been excluded from Article 4(2). In dealing with these cases the Commission therefore was bound to take into account not only the criteria laid down in this article but also, in the objective exercise of its discretionary powers, other criteria, which cannot be exhaustively enumerated and—to the extent to which they include value judgments—are not subject to review by the Court. Relying on the principle which can be inferred from Article 50 of the Staff Regulations (after comparing it with Articles 49 and 51) I would therefore reject the view that it is necessary to state the reasons for decisions for the retirement of officials of Grades A 1 and A 2, at any rate to the extent to which their *substantive* considerations are concerned, that is to say, the considerations over and above a mere statement of the legal principles applicable to the decisions and a recital of the procedure leading up to them. In connexion with his second submission the applicant claimed in addition—and this really has nothing to do with the duty to give reasons for decisions—that the Commission would have had to retain the applicant in the service, if objective criteria such as seniority, scientific qualifications, experience and family responsibilities had been taken into consideration. This is the only conclusion,

according to the applicant, that can be drawn from the statement made in the letter of a member of the Commission of 22 March that the personal and professional qualifications of all four Directors of the Directorate-General for Transport were excellent. Neither is it possible however to accept the applicant's submission on this point. In my opinion it is sufficient, in order to justify my disagreement, to refer to the fact which has just been mentioned that the selection provided for in Article 4 had to be carried out after taking into account several criteria, for example by considering the general personality of the officials concerned and additional factors which cannot be evaluated by the Court. It appears therefore to be impossible in any case for the Court to make in its judgment a *positive* declaration of the kind which the applicant has requested.

Therefore there is in fact nothing in the second complaint which helps to substantiate the application.

Third complaint

Equally unhelpful is the third submission that the decision of 26 June does not state whether the Commission examined the *personal files* of the officials concerned. This submission was not developed further by the applicant in his reply and appears to have been dropped, apparently because on the basis of the minutes of the relevant meeting of the Commission he was able to convince himself that it in fact examined 'all the files'.

Fourth complaint

I can also deal briefly with the fourth submission that the statement of the reasons for the decision is incorrect because it refers to statements contained in the applicant's letter of 19 June. According to the applicant this letter does not—as the Commission asserts—contain comments on the notification of his dismissal but a formal complaint against the decision of 20 March. Furthermore, it was not answered in the appropriate manner.

In dealing with this complaint it is unnecessary to answer the question whether the last-mentioned argument is a submission put forward too late in the proceedings or whether its admissibility must be accepted because it can be said that there are references in the application. In any case the applicant's argument which now has to be examined does not help his case. If the facts of this case are properly understood, there is no ground for complaining that the Commission was wrong to regard parts of the applicant's complaint of 14 June as the comments which it asked him to submit on 31 May and that it was wrong to treat them accordingly, because in fact this complaint contains the *adoption of a definite attitude* on the question of his dismissal. Furthermore it is of no importance for the purposes of the decision in the applicant's case whether the complaint of 19 June was answered in a particular letter or not. The decision to dismiss him also annulled the assignment to him of the post of Principal Adviser and provided the applicant with the opportunity of making a complaint against the decision of 20 March.

Fifth complaint

The fifth complaint on the other hand raises a more serious issue. The applicant submits that one of the four Directors of the Directorate-General for Transport reached the retirement age at the beginning of September 1968 and therefore had to leave the service. In spite of this, says the applicant, the Commission decided when finalizing the measures to be adopted under Article 4 of Regulation No 259/68 of the Council to assign to this official a Directorate with the obvious intention of assigning the post later to an official of the same nationality (which it did in January 1969). The Commission does not dis-

pute these facts but submits that it was entitled, when selecting the officials who were to be retained in the service, to take into account efficiency and not only age, and also to maintain the principle of geographical balance. This preoccupation is moreover found in the beforementioned letter of a member of the Commission of 22 March which states: 'qu'une remise en question de choix conduirait en Commission à une rediscussion d'un équilibre géographique très péniblement acquis' ('if the selection of the officials is called in question this would lead to another discussion within the Commission concerning a geographical balance which was only achieved with great difficulty').

Before examining this complaint which has to be made on the assumption, contrary to the previous conclusion, that the comparative examination *took place*, it must be remembered that all these operations in 1968 were exceptional measures taken in order to reduce the staff and to rationalize the Commission's departments. For many whose careers could be regarded as legally secured for the duration of their working lives and who would have continued in the service of the Community had it not been for the merger of the executives these measures meant that their careers had been prematurely terminated. Having regard to these considerations the obvious policy for the Commission to adopt when selecting from among several officials who—as the letter of 22 March stated—all have excellent personal and professional qualifications, was to arrange in the first instance for the retirement of officials whose periods of service were in any case about to come to an end. Even having regard to the interests of the service, little weight could be attached to their efficiency when evaluating the various considerations which had to be taken into account, because the Commission was obliged to dispense with their services in a few months' time. On the other hand account had to be taken of the interests of younger officials who were entitled to entertain legitimate expectations that their European career would continue although they had no absolute right in this respect.

When in the face of such considerations, which at first sight certainly appear to be plausible, the Commission raises the objection that a decision on these lines would have meant that there would have been, apart from one Italian Director, only two Directors from the Benelux countries and one German Director in the Directorate-General for Transport, such an objection may indeed have some force having regard to the principle of geographical balance. However, in order to be able to accept that there are weighty reasons, based on the interests of the service, for avoiding such an imbalance it must be shown that in the other grades of the Directorate-General for Transport (for example among the officials of Grades A 3 or A 4) provision had not been made for any technical experts from the country to which the Director who was retired in September belonged. The concern with the preservation of a geographical balance, which under the Staff Regulations is in any event of secondary importance, does not in fact justify the separate considerations of each grade in each department. The fact that the Commission has not supplied such evidence is bound in fact to produce the impression that its selection of officials to be retired which led to the termination of the applicant's service was not made objectively. It can in particular be challenged on the ground that it appears that one of the posts of Director for which the applicant could have been considered was *reserved* for a national of another country, which is incompatible with the principles of Article 7 and the third paragraph of Article 27 of the Staff Regulations as interpreted in the case-law of the Court.

This could at least be regarded as an

important ground for alleging that the contested decisions have another defect, which—if the application could not be granted for other reasons—could possibly enable it to succeed or ought at least to provide good cause for obtaining further clarification of the facts of this case.

Sixth complaint

The sixth complaint in certain respects forms part of the observations in connexion with the complaint that the statement of the reasons for the decision is inadequate. It is that it was in the interests of the service, having regard to the applicant's seniority, the duties he performed for the High Authority, his experience and his scientific qualifications, not to have dispensed with his services. I can on this point refer to my previous submissions and merely re-emphasize that the weighing of such criteria, which to some degree involves arriving at value judgments, against other relevant considerations is not within the jurisdiction of the Court, unless there is evidence of a manifest irregularity. Thus the sixth complaint, too, reveals nothing of relevance for the purpose of determining the outcome of the application.

Seventh complaint

Finally the applicant submits that the contested decision amounted in fact to concealed disciplinary measures. This arises from the fact that another official was called upon to be the Director of the Directorate for which he had previously been responsible. Since however, there is no ground for taking disciplinary measures against the applicant and since in addition the prescribed procedure was not followed, the decisions can also be annulled on this ground.

It is also unnecessary to spend much time on this complaint. In fact the applicant wholly failed to substantiate it. In particular he produced no evidence to support the conclusion that the Commission intended to take disciplinary measures. We cannot therefore deduce from this argument any legal conclusions: indeed—as the Commission submits—this claim must be regarded, in the absence of any reasons in support of it, as *inadmissible.*

III — Summary and conclusion

After taking into account all these considerations my opinion may be summarized as follows:

The examination of the facts of this case lead to the conclusion that the measures adopted to terminate the service of the applicant were taken in a manner which amounted to a misuse of the Commission's discretionary powers in that the applicant was not included in the comparative examination of officials whose dismissal from or retention in the service had to be considered. The decisions of 20 March and 26 June 1968 must therefore be annulled. It follows at the same time from this conclusion that the applicant is still in the service of the Commission. In these circumstances there are no grounds for an award of damages which is the subject of an alternative claim by the applicant.

As the application is successful the Commission must bear the entire costs of the proceedings.