to him correspond to his grade and basic post.

In particular it is not contrary to Article 7 of the Staff Regulations for an official to be assigned to work which, though different from that which he was originally carrying out, is not incompatible with his grade and is intended to provide him with a new career opening.

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 10 December 1985 *

Mr President,
Members of the Court,

1. The application dated 2 July 1984 initiating this action contains a series of claims made by Lars Bo Rasmussen, an official of the Commission of the European Communities in Grade A6, against the Commission. He is seeking:

(a) his immediate reinstatement in his post;

(b) his assignment to a post corresponding to his grade, experience and qualifications;

(c) payment of a daily allowance and of compensation for the non-material damage suffered by the applicant owing to the disruption of the normal development of his career and the insecure administrative situation in which he has been placed;

(d) the annulment of the rejection of his complaint; and

(e) an order that the Commission should pay all the costs, including the costs which are recoverable under Article 73 of the Rules of Procedure.

2. On 1 March 1975 Mr Rasmussen, who has a degree in economics, a further degree in political science and an excellent knowledge of languages, was employed by the Office for Official Publications of the European Communities in Luxembourg in order to draw up the monthly and annual alphabetical indexes and methodological tables of the *Official Journal*. The computerization of the system by which the index was prepared necessitated a reorganization of the office and Mr Rasmussen, who had no knowledge of the new electronic technology, found it hard to adapt and began to entertain misgivings as to his career prospects. From 1975 he tried to obtain posts in Grade A5 not only in the Commission (and in particular in the Translation Service) but also in Parliament and the Court of Auditors.

* Translated from the Italian.

At the beginning of 1981 the Director of the Publications Office reached a personal agreement with the Director-General of the Statistical Office for Mr Rasmussen to work in the latter department. That arrangement was initially intended to last a year from 15 March 1981 but was then extended for a further year. Mr Rasmussen was 'placed at the disposal' of the Statistical Office on the understanding that the Publications Office would continue to pay his salary while the expenses of any missions on which he might be sent were payable by the Statistical Office.

In a note dated 22 February 1982, when he had been in his new job for about a year, Mr Rasmussen asked the Director of the Publications Office whether the measure in question constituted a proper transfer and, if it did not, requested him to place his name on the list of officials in Grade A7/6 whose posting had not been changed over the previous three years. A month later, on 9 March 1982, in his observations on his periodic report, the applicant acknowledged that the experience which he had obtained in the Statistical Office was useful but expressed concern over the irregularity of his administrative situation. As is clear from a letter dated 14 May 1982, in which the Director of the Publications Office requested the Director-General for Personnel and Administration to consider the possibility of assigning Mr Rasmussen permanently to the Statistical Office, his concern was shared by the administration.

In his first complaint dated 1 September 1982, Mr Rasmussen requested the Commission to ask the Council to transfer his post from the budget of the Publications Office to that of the Commission, with a view to assigning him to the Statistical Office, and to cancel the procedures for promotion to Grade A5 for the 1982 financial year. On 8 February 1983 the Member of the Commission with special responsibility for personnel, Mr Burke, replied that his complaint was devoid of purpose: he had been recommended for promotion to Grade A5 for the 1983 financial year and the Commission had taken steps to resolve his administrative problems in the framework of the programmes to promote mobility.

On 11 March 1983 the Director of the Publications Office informed Mr Rasmussen that because his output was unsatisfactory, his employment in the Statistical Office would cease on 15 March. However, he also informed him that: (a) the Consultative Committee of the European Steel and Coal Community had stated that it was prepared to take him for a trial period; (b) it was possible for him to be assigned to Directorate-General V in the Commission in Brussels. In two notes dated 8 February and 18 March 1983, Mr Rasmussen informed the Commission's mediator that, although for personal reasons he was unable to move to Brussels, he would be prepared to accept an assignment to the Consultative Committee of the ECSC provided that it was permanent. Barely a month later (15 April), however, that possibility was also eliminated as a result of a letter written by the applicant to the Secretariat of the Committee in which he stated that he was only interested in a post in Grade A5.

On 16 May 1983 the applicant wrote to the Director General for Personnel again voicing his dissatisfaction with his position. In particular, he expressed concern that although his posting with the Statistical Office had ended he had not been given a

permanent posting corresponding to his experience and qualifications. In that note Mr Rasmussen stated that he would be entirely satisfied with the post of a reviser in the Translation Service. On 28 July, the Director for Personnel, Administration and Translation of the Commission in Luxembourg informed Mr Rasmussen that in order to be assigned to a post as a translator he would have to pass a competition. At the same time, he sent him an initial description of work to be carried out in the field of terminology, pointing out that by performing such duties he would be able to prepare for a competition organized to meet the needs of the Language Service.

In his second complaint (1 December 1983) Mr Rasmussen requested the Commission to regularize his administrative position and to satisfy his claim that he should be promoted to Grade A5, as under normal circumstances he certainly would have been. In his reply dated 17 June 1984, Mr Burke stated that he regretted that the attempts to assign the applicant to another post had so far been unsuccessful and drew his attention to the notice of Internal Competition No COM/52/84 to fill the post of a Danish-language translator. A few days later, however, Mr Rasmussen lodged the present application, which was received at the Court Registry on 4 July 1984.

On 16 July 1984 the Director of the Publications Office notified Mr Rasmussen of the aforesaid notice of competition and in a note dated 19 July 1984 the Director for Personnel in Luxembourg informed him that he could submit an application for a transfer to the Language Service and that, in order to enable him to prepare for the competition, it had been decided that he should be placed at the disposal of the Translation Service. It is also clear from the file that the applicant did not submit an application for the competition on the ground that, if he had done so, he would have lost any chance of being promoted to Grade A5.

3. In his four submissions Mr Rasmussen alleges infringement of the following provisions of the Staff Regulations of Officials:

(a) Articles 5 and 7 which are based on the general principle of the right to work and guarantee an official a post corresponding to his grade and category;

(b) Article 25, which provides that any decision relating to a specific individual which is taken under the Staff Regulations must be communicated to the official concerned and must state the grounds on which it is based, at least if it adversely affects him; in this submission, the applicant complains that his transfer to the Statistical Office did not take the form of secondment;

(c) Article 38 (g), which provides that when secondment in the interests of the service ends an official must at once be reinstated in the post formerly occupied by him;

(d) Article 45 and the principle of non-discrimination. In particular, the applicant complains that, unlike other officials, he has not had an opportunity of being promoted to Grade A5.

4. Before assessing whether those submissions are well founded, it is necessary to examine a plea of inadmissibility raised by the Commission. It alleges that the claims set out in the application did not appear in the vague and general complaint received from Mr Rasmussen on 1 December 1983. In particular the complaint did not contain

any request that he should be reinstated in the Publications Office and therefore excluded any such possibility. The request that he should be assigned to an appropriate post, on the other hand, does not take account of the fact that the decision of 17 June 1984 drew the applicant's attention to the notice of Internal Competition No COM/52/84.

That plea cannot be upheld. The applicant rightly relies upon the judgments of the Court (judgments of 30 October 1974 in Case 188/73 *Grassi* v *Council* [1974] ECR 1099, and of 1 July 1976 in Case 58/75 *Sergy* v *Commission* [1976] ECR 1139), in which the Court held that the wording of the complaint is not binding for the contentious stage of the proceedings, at least in so far as the legal basis and the subject-matter of the complaint are not changed. There is undoubtedly a fundamental continuity between Mr Rasmussen's complaint and his application to the Court. On the other hand, it is clear that the decision of 17 June 1984 did not state that the applicant was to be assigned to a particular post in accordance with his wishes.

5. I will begin by considering submission (a). According to the applicant, the administration is obliged under Articles 5 and 7 of the Staff Regulations to assign an official to a post which corresponds to the grade which he occupies in his category. That rule is so fundamental that no derogation may be made from it by agreement between the official and the institution concerned. Furthermore, by allowing himself to be placed at the disposal of the Statistical Office in order, in the interests of the service, to resolve his own career difficulties, Mr Rasmussen did not conclude any agreement. In fact, as soon as he discovered that his administrative position was irregular, he asked for it to be regularized. He stated that a transfer to the Language Service would be satisfactory to him only if he was classed as a reviser.

Moreover, according to Mr Rasmussen, Articles 5 and 7 of the Staff Regulations lay down the principle of the right to work. In the legal systems of some Member States, a breach of that principle, in the form of a failure to assign an employee to an appropriate post, constitutes a breach of an obligation which entitles the employee to resign without notice and obliges the employer to pay damages in lieu of notice.

In my opinion, that complaint is unfounded. I do not deny that the administration is obliged under Articles 5 and 7 of the Staff Regulations to assign an official to a post in his category and grade; however, it seems to me clear that those rules do not give an official the right to obtain a *specific* post and from that I infer that the corresponding obligation imposed upon the institution is not an obligation to achieve a particular result. From the file it is clear that, in the light of Mr Rasmussen's sudden loss of his position as a result of the reorganization of the department in which he was employed (see judgment of the Court of 20 May 1976 in Case 66/75 *Macevicius* v *Parliament* [1976] ECR 593), between 1981 and 1984 the administration made every effort to obtain a satisfactory post for him.

It did not succeed, it is true. But it could not be blamed for that failure, which resulted rather from objective circumstances and especially from Mr Rasmussen's repeated refusals of the offers which were

made to him. Thus, once the administration discovered that he could not be transferred with his post to the Statistical Office because his output had not proved satisfactory, it tried to assign him to the following departments:

(a) Directorate-General XIII (Information Industries and Innovation) and the Centre for Information, Research and Documentation of the Community; when those departments were themselves computerized, Mr Rasmussen was not considered suitable to work there;

(b) the Secretariat of the Consultative Committee of the European Coal and Steel Community; that assignment was ruled out by the applicant's wish to combine his move to another position with promotion to Grade A5;

(c) Directorate-General V (Employment, Social Affairs and Education); in this case, the assignment involved a transfer to Brussels which Mr Rasmussen refused on personal grounds (his purchase of a house and sentimental ties);

(d) the Translation Directorate in Luxembourg; for that purpose, the Commission organized an internal competition, which it itself stated to be purely a formality; Mr Rasmussen, however, chose not to submit an application, stating that he was interested only in a post as a reviser (L/A5) and not as a translator (L/A6).

Nor was the principle of the right to work breached when Mr Rasmussen was transferred by being placed at the disposal of the Translation Service. The applicant consented to that measure and it was decided in his interest. He continued to receive his salary and, notwithstanding his assertions, the duties assigned to him correspond substantially to his grade and qualifications (see judgment of 16 June 1971 in Case 61/70 *Vistosi* v *Commission* [1971] ECR 535, paragraphs 14 and 15 of the decision).

6. In his second submission Mr Rasmussen alleges that Article 25 of the Staff Regulations has been infringed. He contends that because the measures by which he was placed at the disposal of other departments were decisions relating to a specific individual, they should have stated the grounds on which they were based and should have been communicated to him in writing, posted in the premises of the institution to which he belonged and published in the Monthly Staff Bulletin.

That complaint is also unfounded. As Advocate General Sir Gordon Slynn stated in his Opinion in Case 263/81 (*List* v *Commission* [1983] ECR 103, at p. 121): 'The Staff Regulations do not expressly mention putting an official "at the disposal" of a particular department', although it is referred to in Article 3 (3) of the Guide to Staff Reports. It is therefore arguable that such a measure 'is not taken under the Staff Regulations' and as such does not have to meet the requirements laid down in Article 25. It does not 'change the official's post or grading and is simply a measure of internal organization', adopted with the agreement of the official concerned.

7. In his third submission the applicant claims that there has been an infringement of Article 38 (g), which states that when his secondment ends an official is at once to be

reinstated in the post which he formerly occupied. The applicant alleges that by refusing to reinstate him the Commission has infringed the principles that legitimate expectations and acquired rights should be protected.

This complaint is no more convincing than the others. It cannot, in my view, be objected to on the ground that Mr Rasmussen was not seconded but was placed at the disposal of the Statistical Office, because it is clear that, since the interests offered by such arrangements are similar, Article 38 applies to both. It fails for a different reason: it does not take account of the fact that reinstatement presupposes that the post from which the official to be reinstated was removed for a certain period still exists. The post in the Publications Office to which Mr Rasmussen wishes to return still exists from an administrative point of view, but in practice it is no longer the same, in the sense that the duties which it entails are different (or require different knowledge) from those for which (or with a view to which) the applicant was appointed. Therefore Mr Rasmussen is entitled to be assigned to a post corresponding to his experience and abilities (see part 5, *supra*); but he cannot ask to be reinstated in his original post.

8. In his fourth and final submission the applicant claims that Article 45 of the Staff Regulations was infringed and the prohibition of discrimination between officials was breached. Article 45 provides as follows: 'Promotion shall be exclusively by selection from among officials who have completed a minimum period in their grade, after consideration of the comparative merits of the officials eligible for promotion and of the report on them'. According to Mr Rasmussen, it is impossible to consider the comparative merits of an official who, like him, is deprived of an actual post and unable to carry out his own duties; consequently, the basic requirements for him to be promoted are not met and he is thereby discriminated against as compared with other officials.

This submission is also unfounded. As the Commission has pointed out, the fact that an official is placed at the disposal of a department does not preclude the application of Article 45; thus, although Mr Rasmussen was posted to the Statistical Office with effect from 15 March 1981, he was recommended for promotion in the 1983 financial year. Furthermore, as I have stated above, the measure in question is provided for in the Guide to Staff Reports: thus, instead of reducing the number of factors on the basis of which the reporting officer can make a comparison, it increases them. Therefore on that basis it is absurd to speak of discrimination.

Lastly, since the applicant has failed to prove that the administration has deliberately prejudiced the course of his career, he cannot be held to have suffered non-material damage. The claim for compensation in that respect is therefore unfounded.

9. For all the reasons set out above, I propose that the action brought on 2 July 1984 by Mr Lars Bo Rasmussen against the Commission of the European Communities should be dismissed and the parties should be ordered to bear their own costs in accordance with Article 70 of the Rules of Procedure.