OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 3 MARCH 1983 [1]

Mr President,
Members of the Court,

1. The present action, brought on 15 September 1981 by Margherita Hebrant, née Macevicius, against the European Parliament, forms part of a dispute between the applicant and the Director-General for Research and Documentation of that institution which has now lasted about 10 years and which has already produced three decisions from this Court. The present application seeks to annul the decision of the Parliament whereby Mr Reid was appointed to the only Grade A 3 post then vacant and to obtain the applicant's promotion to that grade.

2. For a summary of the facts it seems to me useful to retrace the various stages of the "affaire Hebrant". The applicant, an Italian who is a qualified librarian, was engaged by the Parliament on 1 December 1967 as an administrator in Grade A 5. From that date she undertook duties relating to the management and administration of the library. On 1 January 1973 she was promoted to Grade A 4.

The reorganization of the General Secretariat of the Parliament on the accession of the United Kingdom, Denmark and Ireland was particularly extensive in the Directorate-General of Parliamentary Documentation and Information. It was divided into two directorates-general: Information and Public Relations on the one hand and Research and Documentation on the other. In 1972 Mr Taylor, a British national, was appointed head of the latter directorate and from 1 March 1974 he also took over direct responsibility for the library. Meanwhile in 1973 the library itself was divided into two sections, the first being the Cataloguing and Administration Division, later changed to Cataloguing and Library Administration and directed by the applicant, and the second being References and Official Documents, later re-named Reference, Information and Documentation.

In planning the reorganization of the library, Director-General Taylor proposed to substitute the decimal system of classification for the analytical system which had been in use up to that point. Finally he chose a mixed system, retaining the analytical classification for the existing collections and applying the decimal system to new acquisitions and works of special interest.

From the outset the applicant declared her opposition to such a change and she remained opposed to it even after the Office of the President of the Parliament had, on 23 September 1974, authorized Mr Taylor to proceed with the reorganization. On 7 November 1974 an *ad hoc* working party was formed under the chairmanship of Mr Reid, likewise a British national, who had been engaged by the Parliament on 25 February 1974

1 — Translated from the Italian.

as a temporary servant in Grade A 5. The first time the applicant came before this Court was to challenge that appointment. In a judgment of the Second Chamber of 20 May 1976 (Case 66/75, [1976] ECR 593) the application was dismissed. The Court observed that in appointing Mr Reid the Parliament had exercised its powers of internal organization and that the applicant's responsibilities were not therefore downgraded in such a way as to abnegate the relationship between the duties assigned to her on the one hand, and her grade and post on the other.

Within the Directorate-General, however, tension merely increased. The applicant came to this Court a second time to challenge the periodic report on herself for the period 1973 to 1974 which, in her opinion, contained inadequate assessments. However, in a judgment of 12 May 1977 (Case 31/76, [1977] ECR 883), the First Chamber of the Court rejected the application on the ground that the arguments put forward by the applicant were unfounded.

As we shall see more clearly in due course, the applicant's third action is closely bound up with the subject-matter of the present dispute. Both in fact concern the respective careers of the applicant and of Mr Reid. In various preparatory documents relating to the budget and the organization of the Parliament the Secretary-General and the Committee on Budgets had, during the years 1978 and 1979, referred to the conversion of posts in Grade A 5/4 to Grade A 3 posts for the heads of the Cataloguing and Library Administration Division and the Reference, Information and Documentation Division. In a memorandum of 5 September 1979 regarding the adoption of the 1980 budget Mr Taylor, in accordance with the budgetary restraints fixed by a resolution of the Parliament of 10 May 1979, proposed that only the post of Head of the Reference, Information and Documentation Division should be converted to Grade A 3 for the budgetary year 1980. The proposal was approved by the Secretary-General and by the Committee on Budgets. Consequently, on 14 July 1980 Vacancy Notice No 2677 was published advertising a vacant post of head of division: the post of Head of the Reference, Information and Documentation Division had in fact been upgraded in the list of posts for 1980.

The applicant applied to this Court for the third time in opposition to the presumed nomination of Mr Reid for promotion to Grade A 3. By an Order of 18 November 1980 (Case 141/80, [1980] ECR 3509), the Third Chamber declared the application inadmissible inasmuch as it was directed against a measure which did not adversely affect the applicant (namely, proposals and decisions of the competent authorities of an institution relating to the drawing up of the budget).

So we come to the current dispute. Five applications were submitted for the post advertised in Vacancy Notice No 2677. After examining them the appointing authority appointed Mr Reid to Grade A 3 as head of the Reference, Information and Documentation Division of the Parliament by a decision of 24 October 1980 which was published on 25 November.

Having received no reply to her administrative complaint, the applicant brought the present action pursuant to Article 90 (2) of the Staff Regulations.

3. As a preliminary matter the defence raises an objection of inadmissibility under two headings: lack of interest in bringing the action and absence of a measure adversely affecting the official. The Parliament maintains that it is not open to the applicant to challenge the appointment since she herself did not apply for the vacant post, and it adds that in any case the appointment of Mr Reid has not caused her any damage. To these objections the applicant replies that she does have an interest in challenging a decision which confers advantages on a third party which she did not enjoy. She observes further that she did not apply both for the sake of consistency (her opposition to the development of the department *de quo* being well known), and because the requirements laid down in the notice of vacancy were drafted in such a way as to lead her to believe that in any event Mr Reid had already been selected.

4. Let us first examine the objection relating to lack of interest. It seems to me well founded. According to a principle generally recognized in the administrative law of the Member States, there is an interest in bringing an action when the decision which is sought from the court is capable of satisfying the substantive interest prejudiced by the administration. It is therefore necessary to show that a real and personal benefit may result from the decision on the application; or, in more technical terms, according to the maxim *"pas d'intérêt, pas d'action"*, it is necessary to be in a legally protected position which justifies recourse to judicial intervention.

In particular, in order for an applicant to have an interest in challenging the appointment or the promotion of an official other than himself, he must be able to demonstrate his own suitability for the job. When the requirements for the appointment are specifically laid down, it is not sufficient that the applicant should possess them all: for the application to be admissible he must have given an indication of aspiring to the appointment. Only in so far as he takes part in the relevant procedure can the applicant be in the legally protected position which I have just outlined, acquiring the right to occupy the post according to regular practice, and hence the right to a review of the defects which might invalidate the acts by which the administration has exercised its discretion.

The case-law of this Court confirms those elementary observations. In deciding whether a party may obtain the annulment of appointments or of promotions, the Court has so far held that he may do so only where the applicant has taken part in the procedure for allocating the post (judgments of 19 March 1964 in Case 27/63, *Raponi* v *Commission* [1964] ECR 129; 24 June 1969 in Case 26/68, *Fux* v *Commission* [1969] ECR 145; 28 May 1975 in Case 79/74, *Küster* v *Parliament* [1975] ECR 725). As far as I know the Court has departed from this criterion only once, in the judgment of 29 October 1975 in Joined Cases 81 to 88/74, *Marenco and Others* v *Commission* ([1975] ECR 1247). It was necessary there to ascertain whether the appointment of various officials was lawful or not, and the Court held that certain parties who had not submitted applications for the vacant posts also had an interest in challenging the appointment. The Court did so, however, only on the ground that they could have submitted applications had the administration held an internal competition (paragraph 10 of the decision).

In this dispute, however, it seems to me that all the circumstances demonstrate the lack of interest of the applicant, who could quite easily have submitted her own application and, as she herself states, deliberately did not do so.

Nor is the applicant assisted by the reliance she places on a passage from the Opinion of Advocate General Roemer in Joined Cases 24/58 and 34/58, *Chambre Syndicale de la Sidérurgie de l'Est de la France and Others* v *High Authority of the ECSC* ([1960] ECR 281, at p. 304). The subject of those proceedings was a decision of the High Authority fixing special tariffs for the carriage by rail of mineral fuels intended for use in the steel industry. The Advocate General pointed out, as a preliminary matter, that there is an interest in bringing an action when the decision attacked would have an adverse effect on the applicant's legal position and when the applicant might draw an advantage from its annulment. In that case he argued that, although it did not impose a duty on the applicants, the decision adversely affected them by leaving in existence advantages for the benefit of other undertakings from which they were excluded. Now, I can perceive no analogy between that situation and that of the present applicant who, and it is worth repeating, by not submitting an application *voluntarily* deprived herself both of the advantage of being promoted to Grade A 3 and of a position which would permit her to pursue any necessary remedies.

5. I now turn to an examination of the objection based on the alleged absence of an act adversely affecting the official, bearing in mind that, according to the consistent rulings of this Court, only a provision capable of affecting a certain legal status may be thus described (judgments of 1 July 1964 in Case 26/63, *Pistoj* v *Commission* [1964] ECR 341; 1 July 1964 in Case 78/63, *Huber* v *Commission* [1964] ECR 367; 10 December 1969 in Case 32/68, *Grasselli* v *Commission* [1969] ECR 505; 11 July 1974 in Joined Cases 177/73 and 5/74, *Reinarz* v *Commission* [1974] ECR 819). Therefore to be recognized as having an interest to pursue, the applicant would have to demonstrate that the appointment of Mr Reid had affected her position under the Staff Regulations, for example by restricting the duties and the authority which she previously enjoyed.

The Parliament denies that that or any similar restriction occurred, and there is in fact no evidence of it. The applicant complains, however, that it is the *procedure* whereby the appointment was made which is defective, and therefore capable of constituting and act adversely affecting an official. The qualifications and experience required in the notice of vacancy are said to have been drawn from the *curriculum vitae* of Mr Reid; and, she adds, it was no accident that he was the only official to apply for that post.

It seems to me that that reasoning is invalidated by a certain confusion between a prejudicial act and an illegal act which, as Advocate General Trabucchi stated in his Opinion relating to Case 35/72, *Kley* v *Commission* ([1973] ECR 679, at p. 696), are different concepts. The first, he said, "has a purely procedural nature in the sense of acting as a filter for the *admissibility* of applications quite independently of their *merits*".

Let us nevertheless examine the arguments adduced by the applicant. First, there is the submission that the notice of vacancy had, so to speak,

photocopied the attributes and the experience of Mr Reid. Once again the Parliament denies this; but even if the charge were well founded, the applicant would not have the right to challenge the notice before this Court. In fact, this Court itself observed in the Order of 18 November 1980 that she had not submitted the necessary administrative complaint within the period provided by the Staff Regulations of Officials, and that prevented the Court from considering at that time whether the notice constituted an act adversely affecting an official, for example by having imposed requirements which compromised the career prospects of a candidate.

As for the second argument, that Mr Reid was the only official to apply, I simply cannot understand its relevance. Since when has the fact that there was only one applicant been regarded as a defect? And that is not all. As well as being technically unsound or better still, absurd, the argument is groundless. The applicant's allegation is not even supported by the facts. On the contrary, a document produced by the defendant shows that as many as five applications were submitted for the post in question.

The points I have put forward so far lead me to believe that the applicant's suit is patently inadmissible.

6. It is, none the less, necessary also to examine the criticisms of substance. The applicant's case rests in the first place on the assumption that the stagnation of her career, by contrast with the meteoric career of Mr Reid, offends two principles: that of the legitimate expectation of legal and economic progress and, more generally, that of equity. The applicant maintains that the many setbacks she has suffered appear to result from the criticisms of the reorganization of the library which she has made since 1973 in the interests of the Communities (Articles 11 and 12 of the Staff Regulations).

However, the applicant's criticisms are unfounded. In the first place it cannot be said that her career has been blocked by reason of her differences with Director-General Taylor: in fact it is true that after the appointment of the latter she was promoted to Grade A 4. Nor do her legitimate expectations appear to have been compromised if one considers them in the context of the promises made to her by the administration. To establish a legally actionable expectation the assurances must be concrete; and that does not seem to me to be the case regarding the proposal to re-grade the applicant's post, which appears in a memorandum sent by Director-General Taylor to the Secretary-General of the Parliament in 1978 and which was later dropped for budgetary reasons. At most that note may be said to have constituted a preparatory document and it is therefore insufficient to found expectations which are of sufficient substance to be recognizable in law.

On the other hand, the applicant did not develop the argument relating to the failure to observe the principles of equity. I presume that she refers to the sluggishness of her own advancement in contrast to that of Mr Reid, which has admittedly been very rapid. I shall deal with that aspect in connection with another, related submission, however.

7. The subject of the latter submission is Article 5 (3) of the Staff Regulations which provides that "identical conditions

of recruitment and service career shall apply to all officials belonging to the same category or the same service". The applicant considers that that has been breached. While she has not had promotion since 1 January 1973, she says, Mr Reid, engaged at Grade A 5 in 1974, was promoted to Grade A 4 in 1978 and to Grade A 3 in 1980.

However, even from that point of view the grievance appears to me to be groundless. It is quite impossible to argue from the principle of equal treatment enshrined in Article 5 (3) that officials are entitled to identical careers. It is well-known that the Community civil service does not confer a true personal right to promotion from one position to another since selection depends upon the discretionary appraisal of the appointing authority. On this subject the Court has declared that there is no personal right to promotion even when the necessary qualifications are held (judgment of 25 November 1976 in Case 123/75, *Küster* v *Parliament* [1976] ECR 1701). The Court has said that the decisive criterion for promotions is the interest of the service: the only guarantee for the protection of employees relates to acts by which the appointing authority has exercised its discretion (judgment of 16 June 1971 in Case 61/70, *Vistosi* v *Commission* [1971] ECR 535; Order of 15 June 1976 in Case 61/76 R, *Geist* v *Commission* [1976] ECR 1349).

The decision to re-grade a post, or at any rate to create a post of higher grade for a particular section among the posts available in the institution is therefore made in the light of that interest. I shall return to that point in a moment.

8. The applicant alleges that Articles 7 (1) and 45 (1) of the Staff Regulations of Officials have also been breached. Those rules, I remind you, provide that "the appointing authority shall, acting solely in the interest of the service ... assign each official by appointment or transfer to a post in this category or service which corresponds to his grade" and that "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 reports on them".

The applicant states that the interest of the service could have led to the allocation of a post of head of division to the section of the library which she directs. For this point she relies upon the judgment given by the Third Chamber of the Court in Case 2/80, *Dautzenberg* v *Court of Justice* ([1980] ECR 3107), whereby the promotion of an official to the grade corresponding to the post of Head of Division was annulled, defects having been found in the procedure, in particular inadequate appraisal of the needs and of the priorities of the various sections.

However, the circumstances dealt with in the *Dautzenberg* judgment differ in various respects from those which we are dealing with here, as the defendant has not failed to point out in its pleading. Furthermore, I believe that the Court may refer to the reasoning followed in that case in order to judge any defects in the procedure which led to the

appointment of Mr Reid. As Advocate General Warner pointed out in his Opinion in the *Dautzenberg* case: "The Staff Regulations do not in terms provide for the 'conversion' of posts. What is loosely called the 'conversion' of a post consists strictly speaking ... in the deletion of a post from the list referred to in Article 6 of the Staff Regulations and the insertion in that list of a new post in a higher grade. That new post then falls to be filled in accordance with the procedure laid down in Articles 4 and 29 [of the Staff Regulations] ... Before that procedure can be embarked upon, however, the duties attaching to the new post must be determined. Where the duties attaching to each of several existing posts would in themselves justify their being transferred to the new post, the choice between them must be made by reference to the degree of responsibility appertaining to them respectively and not by reference to the respective merits of their current incumbents" ([1980] ECR 3107, at p. 3122).

In the light of those rules and of the principle stated by the Court in that judgment, according to which "... it is the importance of the different branches or posts as well as of the duties and responsibilities incumbent upon them which must be the principal criterion by virtue of which it is appropriate to decide whether a given branch must be directed by — or whether a given post must be assigned to — an official in a grade corresponding to a post of head of division rather than a post of principal administrator" (ibid., at p. 3117, paragraph 9 of the decision), it does not appear that the defendant institution merits criticism; that is to say, no defects of any kind are apparent in the way in which it exercised its discretion in so far as the needs and the interests of the service are concerned. In particular, the decision to re-grade the post of Head of the Reference, Information and Documentation Division appear to me to be adequately justified: in this respect I refer to the proposal of Director-General Taylor, which, moreover, meets the requirements of the Parliament's Committee on Budgets. The latter had, in fact, requested the reinforcement of that service for the benefit of members elected to the Parliament by direct election.

It should next be observed that, by contrast to the situation of the other institutions, the Parliament enjoys a special financial autonomy in administrative matters. According to Resolution No 1 recorded in the minutes of the meeting of the Council of 22 April 1970, it is for the Parliament to approve expenditure relating to its own functioning, and the Council "undertakes to make no amendments to the estimate of expenditure of the European Parliament" (Treaties establishing the European Communities, 1978 version, p. 885).

From that it follows, as the defendant institution has pointed out, that the Parliament's Committee on Budgets is not only an instrument of financial procedure but, at least to a certain extent, forms part of the appointing authority itself; hence the necessity to abide by proposals which it makes concerning the posts available in the institution.

9. Finally, I note that the applicant asks to be appointed as head of section in place of Mr Reid.

The request is peculiar when one considers that she did not apply for the aforementioned post within the time-limits laid down by the notice of vacancy. What is more important, however, is that it is clearly inadmissible. The Court's powers of review extend solely to the lawfulness of the act which is challenged. In no circumstances may the Court substitute itself for the appointing authority.

10. For all the reasons set out above, I conclude by proposing that the Court should declare the application brought by Margherita Hebrant (née Macevicius) inadmissible, or in the alternative, declare it unfounded. As for costs, in view of such patent inadmissibility and lack of foundation I consider that the applicant should not benefit from the provision in Article 70 of the Rules of Procedure. It is therefore appropriate that she should bear the entire costs of the proceedings.