

2. Since the purpose of the duty to state the grounds on which a decision is based is both to permit the person concerned to determine whether the decision is defective, making it possible for its legality to be challenged, and to enable it to be reviewed by the Court, it follows that the extent of that obligation must be determined on the basis of the particular facts of each case.

The duty to state the grounds on which a decision is based, within the meaning of the second paragraph of Article 25 of the Staff Regulations, is satisfied if the circumstances in which the contested measure was adopted and notified to those concerned make it possible for those persons to recognize the essential factors which guided the administration in its decision.

In Case 176/82

THÉO NEBE, an official of the Commission of the European Communities in Grade A 4, represented by G. Vandersanden of the Brussels Bar, with an address for service in Luxembourg at the Chambers of J. Biver, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by J. Pipkorn, a member of its Legal Department, acting as Agent, assisted by R. Andersen of the Brussels Bar, with an address for service in Luxembourg at the office of O. Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the Commission of 24 November 1981 concerning the reassignment of the applicant with effect from 1 December 1981 from Division VI/D/1 to Division VI/G/4,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: S. Rozès

Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

On 1 November 1962 the Commission appointed the applicant pursuant to Article 29 (2) of the Staff Regulations of Officials which provides for a recruitment procedure other than the competition procedure, which may be adopted by the appointing authority in exceptional cases *inter alia* for recruitment to posts which require special qualifications. The Commission assigned the applicant, who is an expert in milk products and their manufacture, to the Milk Products Division of the Organization of the Markets in Livestock Products Directorate within Directorate-General VI, Agriculture; the division was subsequently named Division VI/D/1, Milk Products.

On 1 January 1973 the applicant was promoted to Grade A 4.

On 23 July 1980 the Commission adopted a number of principles governing staff mobility and requested the Commissioner responsible for personnel and administration to put forward proposals for implementing those principles. The Commissioner in question submitted his proposals in a memorandum dated 27 October 1980. In

the memorandum the Commissioner stated that the new procedure was "not intended to replace the present system of transfer provided for by Article 29 (1) (a) of the Staff Regulations but to encourage increased staff mobility." The Commissioner's proposals were adopted by the Commission on 29 October 1980.

On 13 October 1981 in the course of an interview with the applicant the Director-General of DG VI, Mr C. Villain, offered him a new assignment in Division VI/G/4, Clearance of Accounts, Irregularities and Frauds. The applicant objected to the proposal but Mr Villain, in a memorandum of 29 October 1981 addressed to the applicant, affirmed his intention to assign him to the aforementioned division and emphasized the urgent need to assign to that division an expert with the qualifications possessed by the applicant.

On 4 November 1981 Mr Villain sent to the Director-General for Personnel a memorandum concerning "mobility within DG VI". Annexed to the memorandum was a list of transfers upon which a decision was to be made. The list contained approximately 40 names, of which the applicant's was one. It stated that he was to be transferred from Division VI/D/1 to Division VI/G/4 with effect from 1 December 1981.

On 24 November 1981 the Director-General for Personnel and Administration adopted a decision assigning the applicant to Division VI/G/4 with effect from 1 December 1981. The decision refers to Article 7 (1) of the Staff Regu-

lations and states that it was adopted "in the interest of the service".

On 18 December 1981 the applicant lodged a complaint against that decision "concerning reassignment under the mobility procedure".

As there was no response to his complaint he brought the present action on 12 July 1982.

Upon 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. Nevertheless the Court asked the Commission several questions to which it replied in writing.

Thus the Commission informed the Court by a letter of 12 April 1983 that:

"1. The 'mobility within DG VI' suggested by the Director-General of DG VI in his memorandum of 4 November 1981 was implemented by a series of individual decisions adopted by the Director-General for Personnel and Administration in his capacity as the appointing authority. Those decisions were taken either on 24 November 1981, as in the case of the applicant, or on 14 December 1981... They relate to officials in Category A 5/A 4, such as Mr Nebe..., and officials in Categories A 7/A 6...

Those decisions, which were all adopted pursuant to Article 7 (1) of the Staff Regulations, certainly drew on the principles laid down in the mobility guidelines adopted by the Commission on 23 July 1980. But

they were not adopted pursuant to the Commission's decision of 29 October 1980 concerning the manner in which the decision of 23 July 1980 was to be implemented.

2. The decision of 29 October 1980 was implemented in respect of *all* departments of the Commission by the publication of a 'preliminary list' of officials in Categories A 7/A 6 and B 5/B 4 who had not had a 'significant change of assignment' for three years or more. The list was published on 15 February 1982 in the Staff Courier No 353. On the basis of the response to the publication of the list a final list of officials in Categories A 7/A 6 and B 5/B 4 who had not had such a change of assignment was published on 15 October 1982 in the Staff Courier No 383. That list... comprises 16 officials in Category A 7/A 6 and six officials in Category B 5/B 4 employed in DG VI.

The mobility thus envisaged was gradually effected by individual decisions on the part of the appointing authority."

II — Conclusions of the parties

After having provided further details in the course of the oral procedure, the applicant claims that the Court should:

Acknowledge that the application is well founded and consequently annul the decision of 24 November 1981 altering the applicant's assignment;

Order the defendant to pay the costs.

The Commission contends that the Court should:

Dismiss the action;

Order the costs to be paid in accordance with the relevant legal provisions.

III — Submissions and arguments of the parties

First submission: infringement of Article 7 (1) of the Staff Regulations

The *applicant* emphasizes that the contested decision is governed by Article 7 (1) of the Staff Regulations and that therefore it must be based, in principle, "solely on the interest of the service".

He states that whilst it cannot be denied that that concept requires the exercise of a discretionary power by the Community administration, it is necessary to ascertain whether the administration has exercised it for the proper reasons. If it has not, the decision must be regarded as vitiated by an error of law.

The applicant submits that the whole of his professional career has been involved in the study of the milk products sector. It was precisely on account of his outstanding specialist qualifications that the Commission recruited him by the exceptional method of direct appointment as provided for by Article 29 (2) of the Staff Regulations to fill a specific post the duties of which correspond in every respect to his knowledge. Consequently, the interests of the service and respect for the legality of that exceptional method of recruitment require that the applicant should remain assigned to the special duties which formed the justification and basis for his recruitment.

Moreover, both the situation existing in Division VI/D/1 as a result of the applicant's departure and the alleged need to strengthen Division VI/G/4 by transferring him to it are contrary to the interests of the service. In the applicant's opinion his absence from Division VI/D/1 is responsible for the poor operation of that division. It is true that work was being delayed in Division VI/G/4 but that defect is attributable to the complicated nature of the supervisory procedures relating to the closing of accounts. Furthermore the applicant's specialized experience was of no assistance there.

In addition the assessment by the appointing authority of the interests of the service must include the functioning of the departments in their external relations, where the compulsory re-posting of the applicant gave rise to astonishment.

Finally, even if the interest of the service is a concept the scope of which must be assessed primarily by the appointing authority, it would be unreasonable not to take into account at all the interest of the person concerned. Since the appointing authority took account of neither the applicant's expertise nor his wishes, the administration was in breach of the duty to have regard for his welfare [Fürsorgepflicht].

The applicant therefore concludes that the reference to the interests of the service to justify his assignment to new duties constitutes an error of law vitiating the contested decision.

The *Commission* emphasizes that all officials, regardless of their method of recruitment, are subject to the same rules contained in the Staff Regulations and may, whoever they are, be transferred or reassigned in the interest of the service. Neither the Director-General of DG VI nor the appointing authority exceeded the limits of the broad discretionary

power available to them in the circumstances when they considered that the applicant would be better employed in Division VI/G/4 than in Division VI/D/1 precisely on account of his qualifications.

Furthermore, the personal interests of the applicant were taken into account in this case. In fact since he is now in charge of a group, which was not previously the case, he is performing duties which are regarded as priority duties by the authorities responsible and as corresponding to his grade and qualifications. The applicant cannot, therefore, allege breach of the duty to have regard for his welfare.

Consequently, the contested decision did not infringe Article 7 (1) of the Staff Regulations in any manner whatsoever.

Second submission: infringement of the Commission's decision of 29 October 1980 on staff mobility

The *applicant* maintains that the Commission's decision of 29 October 1980 was disregarded inasmuch as he was compulsorily reassigned despite the fact that the conditions laid down in the decision were not met in his case.

The *Commission* replies that the applicant's reassignment was not a direct consequence of the implementation of the mobility procedure, which is not intended to replace the present system of transfer referred to in Article 29 (1) (a) of the Staff Regulations. Reassignment is certainly subject to the rules set out in Article 7 (1) of the Staff Regulations with regard to the protection of the rights and legitimate interests of the officials in question, but in the present case those rules were scrupulously

complied with. There is therefore no legal basis for this submission.

Third submission: inadequate statement of the grounds on which the decision was based

The *applicant* contends that the contested decision, like any measure adversely affecting an official, must state the grounds on which it is based in accordance with Article 25 of the Staff Regulations. In fact in the present case no grounds are stated except the general reference to "the interest of the service". The factors on which the decision was based which may be elicited from the record of events prior to the decision, for example the interview between the applicant and Mr Villain which took place on 13 October 1981, are inconsistent, inadequate or incomplete. Thus, those factors clearly show that the applicant's reassignment was decided by reference to the so-called mobility policy, although the essential requirements for the implementation of that policy were not complied with.

The *Commission* reiterates that the measure adopted in relation to the applicant was a reassignment in the interests of the service. In order to decide whether the duty to give reasons under Article 25 of the Staff Regulations was complied with consideration must be given not only to the wording of the decision itself but also to all the circumstances in which it was adopted and brought to the applicant's notice, as well as the staff memoranda and other communications on which it was based.

In the present case it is clear that the applicant received ample information as to the reasons for his reassignment. In fact, not only did the Director-General explain to him in the course of an interview that he intended to propose his reassignment to Division VI/G/4 but he

also gave him the opportunity to state his objections to such a proposal. The Director-General replied to those objections in his memorandum of 29 October 1981, in which he explained the reasons which led him to consider re-assigning the applicant.

Consequently, it must be considered that a sufficient statement was given of the grounds on which the contested decision was based.

Fourth submission: misuse of powers

The *applicant*, who does not dispute the usefulness of a policy in relation to staff mobility which is put into practice effectively, claims that it follows from the above-mentioned arguments that the contested decision cannot be justified in any manner whatsoever on the basis of the interests of the service in the light of the requirements involved in the application of that policy. The applicant therefore concludes that in compulsorily

reassigning him to Division VI/G/4 the appointing authority pursued purposes other than the objective application of the Staff Regulations and the mobility policy.

The *Commission* emphasizes that in reassigning the applicant compulsorily the appointing authority was exercising the power conferred upon it by the Staff Regulations in the interests of the service, precisely the purpose for which it has been given the power. Thus in the present case it neither exceeded that power nor misused it.

IV — Oral procedure

The applicant, represented by G. Vandersanden, and the Commission, represented by R. Andersen, presented oral argument at the sitting on 28 April 1983.

The Advocate General delivered her opinion at the sitting on 19 May 1983.

Decision

- 1 By application lodged at the Court Registry on 12 July 1982 Mr Théo Nebe, an official of the Commission in Grade A 4, brought an action for the annulment of the decision of the Commission of 24 November 1981 reassigning him with effect from 1 December 1981 from Division VI/D/1 to Division VI/G/4.
- 2 The applicant, who is an expert in milk products and their manufacture, entered the service of the Commission in 1962. He was appointed pursuant to Article 29 (2) of the Staff Regulations of Officials which provides that a recruitment procedure other than the competition procedure may be adopted by the appointing authority in exceptional cases, *inter alia* for posts requiring

special qualifications. Until 1 December 1981 the applicant performed his duties in Division VI/D/1, Milk Products, of Directorate-General VI, Agriculture.

- 3 In July 1980 the Commission adopted certain guidelines in relation to the mobility of officials in Grades A and B and requested the Commissioner responsible for personnel and administration to put forward proposals for their implementation. The Commissioner submitted his proposals in a memorandum dated 27 October 1980. In the memorandum he proposed that preliminary lists should be published each year indicating, *inter alia*, all the officials from Grade A 8 to Grade A 4 who had not had a significant change of assignment for a given period. Officials who meet that condition but whose names are not on the list may request their inclusion on it. Similarly, officials whose names do appear may, in certain circumstances, request that their names be removed. Thus, officials in Grades A 4 and A 5 may request that their names be removed if their duties and qualifications are sufficiently specialized. Such requests are accepted in particular in the case of officials in Grade A 4 who have completed an especially long period of service. Once the final list has been drawn up the appointing authority invites the officials appearing on it to indicate their preferences with regard to reassignment and the Directorate-General to submit their mobility proposals. Subsequently, the appointing authority adopts individual decisions of reassignment or transfer according to a fixed procedure. Finally, the Commissioner's proposals emphasize the fact that the new procedure is intended not to replace the present system of transfer provided for by Article 29 (1) (a) of the Staff Regulations but to encourage increased staff mobility.

- 4 Those proposals were adopted by the Commission on 29 October 1980.

- 5 On 12 March 1981, in a memorandum issued for the attention of the staff of Directorate-General VI, the Director-General for Agriculture emphasized that the mobility policy applied, in principle, on a voluntary basis, but that did not exclude, according to the memorandum, the possibility of compulsory reassignment should the need arise.

- 6 On 13 October 1981 in the course of an interview with the applicant the Director-General for Agriculture offered him a reassignment to Division VI/G/4, Clearance of Accounts, Irregularities and Frauds. The applicant declined the offer and gave the reasons for his refusal in a memorandum to the Director-General. Nevertheless the latter, in a memorandum of 29 October 1981 addressed to the applicant, confirmed his intention to assign him to the aforementioned division with effect from 1 December 1981 and emphasized the urgent need to assign to Division VI/G/4 an expert with the qualifications possessed by the applicant.
- 7 On 4 November 1981 the Director-General for Agriculture sent to the Director-General for Personnel and Administration a memorandum concerning "mobility within DG VI". Annexed to that memorandum was a list of transfers upon which a decision was to be adopted. One of the names on the list was that of the applicant.
- 8 On 24 November 1981 the Director-General for Personnel and Administration adopted the contested decision which assigned the applicant together with his post to Division VI/G/4 with effect from 1 December 1981. The decision refers to Article 7 (1) of the Staff Regulations and states that it has been adopted "in the interests of the service".
- 9 On 18 December 1981 the applicant lodged a complaint against the decision "reassigning him in the context of the mobility procedure". As there was no response to his complaint he brought the present action.
- 10 In its decision of 1 October 1982 rejecting the applicant's complaint the Commission stated, *inter alia*, that "you may have been led to consider the decision adopted in relation to you as a measure adopted in the context of a mobility arrangement because it was adopted concurrently with a reorganization of the departments of DG VI pursuant to the general guidelines issued by the Commission on 29 October 1980 which does not affect, at the initial stage, officials in Grades A 5 and A 4. The decision to assign you with your post . . . was taken in the interest of the service . . .".

- 11 The applicant relies on four submissions in support of his application:

Infringement of the Commission's decision of 29 October 1980 on staff mobility;

Infringement of Article 7 (1) of the Staff Regulations;

Inadequate statement of the grounds on which the decision was based;

Misuse of powers.

The alleged infringement of the Commission's decision of 29 October 1980

- 12 The applicant maintains that the Commission's decision of 24 November 1981 was adopted pursuant to the mobility policy. If the decision refers to Article 7 (1) of the Staff Regulations that is because, technically, the mobility policy did not replace the transfer procedure. The applicant states that, until the rejection of his complaint in October 1982, there was nothing to suggest that it was a question of an internal reorganization of the departments. Consequently, since the contested decision does not comply with all the requirements laid down in the decision concerning the mobility rules, that is to say first and foremost the requirement that the move be voluntary, the contested decision should be annulled. In any case the applicant is one of those officials whose requests that their names should be removed from the list ought to be accepted according to the terms of the said general decision.
- 13 The Commission states that the applicant's reassignment was not a direct consequence of the implementation of the mobility rules laid down by the Commission's decision of 29 October 1980. It was a compulsory reassignment in the interests of the service, the most important reasons for which were the urgent need to improve the quality of Division VI/G/4 in order to reduce the major delays occurring in the clearance of accounts and the need, for that purpose, to have an official with the applicant's qualifications and experience.

- 14 It is necessary, first, to emphasize that in adopting its decisions with regard to staff mobility the Commission has not amended, and could not amend, the rules in the Staff Regulations relating to the transfer of officials. Moreover, those decisions clearly indicate that by introducing a new mobility policy the Commission was certainly not intending to abandon the option of transferring officials, even against their will. Consequently, if, in the opinion of the Commission, the measures adopted on a voluntary basis with regard to mobility are not sufficient to meet the requirements of the interests of the service, it remains free to make compulsory transfers while, however, observing all the guarantees given to the officials in question by the Staff Regulations.
- 15 Secondly, it should be noted that if the conduct of the Commission prior to the adoption of the contested decision was indeed of such a kind as to mislead the applicant with regard to the legal basis of the decision, not merely the terms thereof but also the reply to his complaint and the information produced by the Commission during the proceedings before the Court establish that the applicant's reassignment was a compulsory measure adopted solely on the basis of the Staff Regulations. Consequently, the contested decision must be considered exclusively in the light of the provisions of the Staff Regulations relating to transfers inasmuch as those provisions also apply to the case where an official is reassigned with his post; therefore the applicant's first submission must be rejected.

The alleged infringement of Article 7 (1) of the Staff Regulations

- 16 The applicant emphasizes that he was recruited originally under Article 29 (2) of the Staff Regulations on account of his specialized qualifications. Consequently, the interests of the service and respect for the legality of that exceptional procedure require that he should remain assigned to the special duties which formed the justification and basis for his recruitment and a particularly detailed statement of reasons must, in view of that requirement, be given for any decision to reassign or transfer him. Moreover, the fact that the applicant's transfer disrupted the Milk Products Division without benefiting the division to which he was reassigned is contrary to the interests of the service. In addition the interests of the service should be assessed not only by reference to internal administrative management but also with regard

to the functioning of the departments in their external relations, where the applicant's move gave rise to astonishment. Finally, in forcing the applicant to perform duties which did not correspond to his specialist expertise the appointing authority failed to take into account his personal interest and thereby infringed the duty to have regard for his welfare. The applicant concludes that the contested decision was not adopted solely in the interests of the service as is required by Article 7 of the Staff Regulations and that it should therefore be annulled.

- 17 It is clearly established in the Court's case-law that decisions reassigning officials are subject in the same way as transfers to the provisions of Article 7 (1) of the Staff Regulations with regard to the protection of the rights and legitimate interests of the officials concerned inasmuch as the officials may, in particular, be reassigned only in the interests of the service and in conformity with the principle that the post must correspond to the official's grade.
- 18 It is agreed that there has been complete compliance with that principle in the present case. As regards the interests of the service it is necessary to recall that the Court's case-law has recognized that the Community institutions have a wide discretion in the organization of their departments in accordance with the tasks entrusted to them and in the assignment, with those tasks in view, of the staff placed at their disposal. That discretion cannot be restricted by the fact that the official in question was recruited pursuant to the procedure referred to in Article 29 (2) of the Staff Regulations. Any problems which might be caused to his former department by the departure of an official, the benefit to his new department which might be obtained from his reassignment and the effects which the change might have on the relationship between the two departments and outside persons are considerations which are governed by that same discretionary power.
- 19 Furthermore, it is necessary to point out that an official may not object, by reference to his personal interest, to measures adopted by the authorities in respect of the organization or reorganization of departments and recognized as being in the interests of the service. In that respect it must be emphasized that in the present case the department to which the official was reassigned was obviously experiencing difficulties owing to a shortage of staff and a

lack of sufficiently qualified and experienced officials. It follows that the applicant's second submission must be rejected in its entirety.

The statement of the grounds on which the decision was based

- 20 The applicant maintains that the contested decision, like any measure adversely affecting an official, must state the grounds on which it is based in accordance with Article 25 of the Staff Regulations. In the present case the decision contains no reasons except the very general reference to the interest of the service. The record of events prior to the decision is inconsistent, inadequate or incomplete and shows clearly that the decision was adopted by reference to the mobility policy despite the fact that the essential requirements for the implementation of that policy were not complied with.
- 21 As the Court has already emphasized on many occasions, since the purpose of the duty to state the grounds on which a decision is based is both to permit the person concerned to determine whether the decision is defective, making it possible for its legality to be challenged, and to enable it to be reviewed by the Court, it follows that the extent of that obligation must be determined on the basis of the particular facts of each case. As the Court has also confirmed in its case-law, the duty to state the grounds on which a decision is based, within the meaning of the second paragraph of Article 25 of the Staff Regulations, is satisfied if the circumstances in which the contested measure was adopted and notified to those concerned make it possible for those persons to recognize the essential factors which guided the administration in its decision.
- 22 In the present case the applicant does not dispute the fact that he had an interview with the Director-General for Agriculture, followed by an exchange of memoranda, before the contested decision was adopted. The information produced by the parties shows that the applicant was amply informed during that exchange of views of the reasons for the proposed reassignment and that he was given the opportunity to state his objections. It is not possible to describe the reasons thus given as an inconsistent, inadequate or incomplete statement of the grounds on which the decision was based merely by virtue of the fact that the Director-General first endeavoured to obtain the applicant's agreement but that after the latter had submitted his objections the reassignment had to be made compulsory.

- 23 When he was notified of the contested decision, therefore, the applicant was already aware of the essential factors which justified it with regard to the interests of the service. In the circumstances a simple reference to that concept in the decision itself may be regarded as a sufficient statement of the grounds on which it was based. The applicant's third submission must therefore also be rejected.

The alleged misuse of powers

- 24 The applicant contends that his compulsory reassignment to Division VI/G/4 by the appointing authority was for purposes other than the objective application of the Staff Regulations and the mobility policy.
- 25 It is sufficient to note in that context that the Commission's decision to reassign the applicant has been shown to be in conformity with the interests of the service. It cannot therefore be alleged that it is vitiated by misuse of powers.

Costs

- 26 Although the applicant has failed in all his submissions it is nevertheless necessary to take into account, for the purpose of making an order as to costs, the aforementioned considerations regarding the ambiguity of the Commission's position in relation to the legal basis of the contested decision. The Commission only indicated clearly that its decision was not adopted in the context of the mobility policy at a late stage, that is to say in its reply to the applicant's complaints and in its rejoinder. The applicant should not be penalized for having brought the matter before the Court in order to obtain a review of the legality of a decision which he had reason to consider to be entirely unlawful in that context.
- 27 It is therefore fitting to apply the second subparagraph of Article 69 (3) of the Rules of Procedure, which provides that the Court may order even a successful party to pay costs in proceedings which have arisen as a result of its own conduct.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application.**
2. **Orders the Commission to pay the costs, including those of the applicant.**

Pescatore

Due

Bahlmann

Delivered in open court in Luxembourg on 14 July 1983.

J. A. Pompe
Deputy Registrar

P. Pescatore
President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS
DELIVERED ON 19 MAY 1983¹

*Mr President,
Members of the Court,*

Théo Nebe, an official in Grade A 4, has brought an action before the Court against the Commission of the European Communities concerning its decision of 24 November 1981 to reassign him from Division VI/D/1 (Milk Products) to Division VI/G/4 (Clearance of

Accounts, Irregularities and Frauds) within the Directorate-General of Agriculture.

I — The facts are as follows:

Théo Nebe was engaged by the Commission as a probationary official by

¹ — Translated from the French.