

3. The obligation to provide assistance laid down by Article 24 of the Staff Regulations is concerned with the defence of officials by the institutions against the acts of third parties and not against the acts of the institution itself, the review of which is governed by other provisions of the Staff Regulations.

In Case 178/80

AMEDEO BELLARDI-RICCI, DICK KLEYMANS, JACQUES GOETSCHALKX, STEFAN BAUER, EVA RITTWEGER, translators in the Medium and Long-term Translation Division of the Commission, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of the said Victor Biel, 18a Rue des Glacis,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, Raymond Baeyens, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, 214 Avenue Montjoie, Brussels 1180 with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION challenging the present organization of the Medium and Long-term Translation Division and the implied refusal of the Commission to reorganize that division by regrading the posts so as to convert the present sections into divisions,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and A. Chloros, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

The Medium and Long-term Translation Division is mentioned in Article 8 of the Decision of the Representatives of the Governments of the Member States on the provisional location of certain Institutions and Departments of the Communities of 8 April 1965 adopted pursuant to Article 37 of the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965. That division is attached to the Publications Office located in Luxembourg. Its staff has always been included in the list of posts of the Commission. The division is at present part of Directorate-General IX (Personnel and Administration) which has five directorates in Brussels including Directorate D (Translation, Documentation, Reproduction and Library), which in turn is made up of eleven divisions, seven of which are concerned with translation.

The same Directorate-General also includes a directorate in Luxembourg made up of seven divisions, of which the seventh is the Medium and Long-term

Translation Division, subdivided into six sections, one for each language.

The organization of the division has given rise to several written questions and to claims made jointly by the heads of section that the various sections making up the division should be transformed into as many divisions, each with a head of division in Grade L/A 3 at its head.

Correspondence between those concerned and the President of the Commission during 1973 and 1974 led in 1975 to the creation of two new L/A 3 posts, to which a third was added in 1978. However, those posts were not described as posts of head of division, as those concerned wished, but as posts of "adviser".

In answer to a letter of 16 July 1975 signed jointly by all the persons concerned, the President of the Commission wrote on 19 September 1975 saying that the Commission's decision to describe the posts so created as posts of adviser was motivated by the need to maintain a homogeneous administrative structure and that it did not run counter to the Commission's aim gradually to reorganize the division. Following the adoption of Council Regulation No 912/78 of 2 May 1978 amending the Staff Regulations of Officials of the European Communities, Article 13 of which amended Annex I-A to the Staff Regulations specifying the basic posts

and the corresponding career brackets in relation to language staff, the heads of section wrote jointly to the President of the Commission on 12 July 1978 to seek their reclassification as heads of division in Grade L/A 3. That letter was treated by the Commission as a request within the meaning of Article 90 (1) of the Staff Regulations and registered as such at the Secretariat-General of the Commission on 7 September 1978, under No 1408/D/78.

On 12 March 1979 the persons concerned sent a reminder in which they requested that the three posts of adviser given to certain heads of section in Luxembourg be converted into L/A 3 posts with the title "head of division" and that five additional similar posts be created.

On 31 July 1979 Mr Tugendhat, a Member of the Commission, informed them that in the draft budget for 1980 the Commission had asked the budgetary authorities for a post of Assistant Director-General for Directorate-General IX in Luxembourg and stated that, if granted, that post would allow a revision of the structure of the Directorate-General. Mr Tugendhat added that at the same time the organization of the language staff in Luxembourg would be examined, having regard both to the operational changes which had taken place or were foreseeable (accession of Greece) and to the organization of such staff in Brussels, and that the results of that examination would make it possible to introduce staffing proposals into the 1981 budget with a view to establishing the new structure. In a letter of 21 December 1979 the persons concerned stressed that the problem of reorganization should not be approached in terms of staffing but in terms of responsibility and asked that the situation be regularized.

In the meantime, by letters dated 21 June 1979 and registered at the Secretariat-General of the Commission on 22 June 1979, the applicants lodged individual requests under Article 90 (1) of the Staff Regulations inviting the Commission to take all the administrative and budgetary steps necessary to convert the posts of head of section into L/A 3 posts of head of division.

By a letter dated 17 January 1980, registered at the Secretariat-General of the Commission on 21 January 1980, they submitted a complaint to the appointing authority under Article 90 (2) of the Staff Regulations against the implied rejection of their request and subsequently brought the present action by application dated 16 August 1980 registered at the Court on 18 August 1980 and endorsed "Received 16 August 1980".

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.

II — Conclusions of the parties

The *applicants* claim that the Court should:

- (a) Declare that the Commission has committed a breach of the Staff Regulations and of its own legal

duties by its discrimination against, and unlawful treatment of, two identical departments; alternatively, permit the applicants, by means of an inquiry if necessary, to establish infringements of the Staff Regulations, in particular Article 5 (3), and breach of the principles of proper administration;

- (b) Declare that the present situation is unlawful, and therefore:
- (c) Order the Commission to fulfil its own promise concerning the conversion of the translation sections in Luxembourg into divisions;
- (d) Allow the request for the regrading of the posts at present occupied by the applicants and accordingly appoint them as heads of division;
- (e) Order the Commission in any event to pay the entire costs.

The *defendant* contends that the Court should:

- Dismiss the action as unfounded, if not inadmissible;
- Order the applicants to pay the costs.

III — Submissions and arguments of the parties

Admissibility

The *applicants* maintain that their action is admissible because: it was brought within the period prescribed by the Staff Regulations; it was brought in accordance with the relevant rules of procedure; it is directed against the implied decision rejecting their request for regrading and against a failure to take a measure prescribed by the Staff Regulations within the meaning of

Article 90 (2) thereof, since the appointing authority ought to have remedied the discrimination and unequal treatment instead of confining itself to vague promises; and the applicants have been adversely affected within the meaning of Article 91 of the Staff Regulations.

The *defendant* argues in its defence that the action is inadmissible on two grounds.

First, it maintains that the joint letter dated 12 July 1978 which the heads of section of the Medium and Long-term Translation Division, including the applicants, sent to the President of the Commission asking for regrading in Grade L/A 3 should be regarded as a request under Article 90 (1) of the Staff Regulations and that it was properly registered as such at the Secretariat-General of the Commission on 7 September 1978.

Therefore the period of four months referred to in Article 90 (1) of the Staff Regulations must be deemed to have commenced on that date.

Since no reply was made to that request within that period it was therefore open to the applicants to lodge within the following three months a complaint under Article 90 (2) of the Staff Regulations against the implied decision rejecting their request and, in the absence of a reply from the appointing authority within the four months following the expiry of the latter period, to bring an action before the Court of Justice against the implied rejection of the complaint pursuant to Article 91 of the Staff Regulations. Since that was not done the application must be regarded as being out of time.

The *defendant* therefore maintains that, in so far as they had the same object as the earlier joint request, the requests made on an individual basis by letters

dated 21 June 1979 and registered at the Secretariat at the Commission on 22 June 1979 could not have caused the limitation period to start to run afresh.

It is therefore not right, in the applicant's view, to misrepresent a simple letter as a step prior to litigation. It might at most amount to a communication falling within the context of a discussion opened between the applicants and the Commission. Consequently, the limitation periods began to run on 22 June 1979 when the individual requests made on 21 June 1979 by each of the applicants were registered.

If that first argument is rejected, the defendant submits that, the action ought to have been brought by Thursday 17 August 1980 at the latest. Since the action was lodged at the Court Registry on Friday 18 August 1980 it must be regarded in any event as being out of time.

As regards the Commission's second submission, concerning the date of the application, which ought in the defendant's view to have been lodged by Thursday 18 August at the latest, the applicants observe that 18 August was not a Thursday but a Monday and further that the Registrar of the Court in reply to a letter from counsel for the applicants stated that the application was lodged at the Court on 16 August and registered on 18 August with the note "Received 16 August 1980". That correction ought to induce the defendant to abandon that submission of inadmissibility, which moreover in the applicants' view ought to be rejected on the basis of Article 80 (2) of the Rules of Procedure of the Court, which provides that if the period for bringing an action would otherwise end on a Sunday or on an official holiday it is to be extended until the end of the first following working day. The applicants therefore submit that their actions would be admissible even if they had been brought on Monday 18 August.

The *applicants* allege in their reply that, as regards the first argument against the admissibility of their action, their joint letter of 12 July 1978 is not really a request within the meaning of Article 90 (1) of the Staff Regulations but just one letter in the correspondence between the applicants and the Commission. The applicants stress that the internal regulations of the Commission have provided for special dispatch notes on which the writers must specify the nature of their dispatch.

The applicants state that no such note was attached to the letter in question, which does not contain the word "request" or any similar expression, and that it is only in the margin that one finds the word "request" written by hand by an official in Brussels.

The applicants further observe that when on 12 March 1979 the writers of that letter sent a reminder about it to the President of the Commission they referred to a "letter" and that word was also used by Mr Tugendhat in his reply of 31 July 1979 in which he referred to it as the "letter referred to above".

In its rejoinder the *defendant* observes that as regards the classification of the joint letter of 12 July 1978 the issue is whether, in order to constitute a request within the meaning of Article 90 (1) of the Staff Regulations, a letter must be expressly described as a request by the

writer or whether it suffices that the true object is to ask the appointing authority to take a decision with regard to him. The defendant is in favour of the latter view and in support quotes Mr Tugendhat's letter of 31 July 1979, which begins as follows: "I am at last in a position to answer your letter referred to above in which you request that certain heads of section in the translation division in Luxembourg be regraded as L/A 3."

With regard to the second submission put forward in the alternative in relation to the delay in lodging the application at the Court Registry, the defendant declares that in the light of the explanations furnished by the applicants in their reply it concedes that the action is admissible subject to the relevance of the observations which it makes on the nature of the applicants' letter of 12 July 1978.

Substance

The *applicants* charge the Commission with:

- (a) Disregard of Article 5 (3) of the Staff Regulations, which provides that identical conditions with regard to career in the service are to apply to all officials belonging to the same category or the same service;
- (b) Breach of the principle of non-discrimination;
- (c) Breach of the fundamental principle of equal treatment;
- (d) Breach of its own decision "amending job descriptions for the basic posts in the language service listed in Annex I-A to the Staff Regulations of Officials of the European Communities". That decision, which took effect on 4 May 1978, provided for "advisers" to be placed under the authority of a director-general or director. For those of the applicants who were appointed advisers there was no change either in their duties or posting and they continue to perform the duties of heads of section as in the past;
- (e) The applicants charge the Commission with failing to discharge its obligation under Article 24 of the Staff Regulations to assist its officials, inasmuch as it refuses to restore equal treatment between Brussels and Luxembourg and thus eliminate discrimination in the structure of its departments; the heads of section in Luxembourg bear the same responsibilities as their colleagues in Brussels and are in charge of an equally large or larger staff. The budgetary considerations put forward by the Commission are a fallacious pretext since three of the applicants are already in Grade L/A 3 and the other two receive salaries scarcely lower than they would obtain if they were regraded to the post of head of division.

In reply the *defendant* cites the general principle to the effect that it is for each institution to determine its own internal organization, for which purpose it has a wide discretion according to the decisions of the Court in Cases 5/70 *Prelle*, 61/70 *Vistosì*, and 14/79 *Loebisch*. It answers each of the submissions put forward by the applicants as follows:

(a) Disregard of Article 5 (3) of the Staff Regulations

The defendant observes that Article 5 (3) of the Staff Regulations provides that identical conditions of recruitment and career in the service shall apply to all officials belonging to the same category or the same service. It cannot be denied, according to the defendant, that the officials of the Medium and Long-term Translation Division are all treated equally, especially as regards career development. In so far as the applicants' submission is to the effect that the Commission subjects officials of that division to conditions of career development different from those enjoyed by their colleagues in the translation divisions of Directorate D in Brussels and translation departments in other Community institutions, it observes that the submission is the same as that based on breach of the principle of equality and non-discrimination between officials.

(b) Breach of the principle of equality of treatment and non-discrimination

The defendant is of the view that the manner in which it has organized Directorate-General IX (Personnel and Administration) and in particular the different administrative structure given to the translation units in Brussels and Luxembourg is not open to criticism because it is a manifestation of the wide discretion which it has in making use of its personnel resources and as regards its

internal organizations. In support the Commission cites the judgment of the Court in Case 14/79 *Loebisch v Council* and contends that there is no breach of the principle of fairness because an institution classifies a post in a lower grade than that in which a comparable post is classified in another institution. The defendant does not deny that it is its intention, so far as budgetary resources allow and in accordance with the needs of the service, gradually to reorganize the Medium and Long-term Translation Division in Luxembourg, but it denies that the applicants have a right to require it to proceed with such a reorganization and *a fortiori* to do so immediately. It adds that differences in organization are justified by reason of the unequal range and volume of translation work performed by the Medium and Long-term Translation Division on the one hand, and by the translation divisions in Brussels on the other.

In their reply the *applicants* challenge both the facts and the legal basis of the Commission's reasoning. They maintain that the defendant is subjecting them to discrimination and unequal treatment because when they were appointed heads of section the Commission applied much stricter criteria than those which are at present applied. They maintain that discrimination and unequal treatment are shown by a lowering in the criteria for selection which shows that the conditions of recruitment and career development vary from one place of employment to another, whereas at one time the conditions were the same. They stress that their intention is not to obtain personal promotion but the reorganization of a department which is becoming unmanageable. Further, they submit that the purpose of the cases cited by the defendant is different. The judgment in the *Vistosi* case confirms the

principle of the freedom to organize departments but subject to the protection of the rights of officials under the Staff Regulations. As regards the judgment in the *Loebisch* case, they maintain that it is irrelevant to the present action since it was concerned only with a comparison between the departments of different institutions whereas the object of the present case is to determine whether an institution may organize its translation department differently according to whether it is established in Luxembourg or Brussels.

In its rejoinder the *defendant* challenges the conclusions inferred by the applicants from the requirements for entry into its translation departments in Brussels and Luxembourg. The vacancy notices show, according to the defendant, that the requirements for the two places of employment are the same. The Commission does not think that what it says regarding the applicants' career development can be regarded as contradictory. Its intentions have not yet been fulfilled because of budgetary difficulties and it will be only when the Commission has all the necessary L/A 3 posts that it will be able to make the present sections into divisions, each under the control of a head of division. In any event, at the present stage the organization of the Medium and Long-term Translation Division is not unlawful. The creation of posts of adviser in Grade L/A 3, which are scarcely to be distinguished from posts as head of section, shows that notwithstanding its still incomplete nature the intended reorganization has already begun. Finally, the applicants' argument to the effect that the problem arises in terms of duties performed and responsibilities assumed, and not in terms of staff, is accepted by the defendant, which nevertheless stresses that the

number of staff reflects the scale of the duties to be performed and determines to a large extent the kind of administrative structure to be adopted.

Moreover, the Commission considers that in the present case its discretion in organizing its departments has been exercised with full regard to the rights of the officials under the Staff Regulations. The defendant therefore stresses that it does not challenge the legitimate nature of the applicants' aspirations, which moreover concur with its own intentions, but it does deny the right of the applicants to impose a change and, even more, to decide when it must be carried out. The Commission has at no time undertaken to carry out the reorganization contemplated within a particular time, for it is only too aware of its need, having regard to the budgetary constraints which are more and more onerous, to make a choice between all the requests submitted to it and to postpone those which cannot be granted at present.

- (c) Disregard by the Commission of its own decision, which took effect on 4 May 1978, "amending job descriptions for basic posts in the language service listed in Annex I-A to the Staff Regulations of Officials of the European Communities"

The *defendant* explains that the groups comprising the Medium and Long-term

Translation Division have always been directed by officials of Grade L/A 4 under the authority of a head of division in Grade L/A 3 who is himself responsible to the Director of Directorate-General IX in Luxembourg and that their duties correspond to the description in the decision in question, which provides that the head of a group “directs the work of a group of translators . . . and sees to it that the members of his group receive such training as may be required”. To direct a group with responsibility for planning, preparation of work, observance of time-limits and making periodic reports thus normally falls within the duties of an official in Grade L/A 4.

Having regard to the fact that the creation of three posts in career bracket L/A 3 is only a stage in the gradual reorganization of the translation departments in Luxembourg, the defendant observes that it did not intend to convert the translation groups into translation divisions and appoint heads of division over them and that, moreover, there are no corresponding posts on the detailed list of posts. It observes that the duties performed by the officials promoted to the rank of “adviser” are not those of heads of translation divisions and that even after the complete reorganization of the Medium and Long-term Translation Division as desired by the applicants it would be for the Commission as appointing authority to fill the posts of heads of division in the interests of the service without the applicants being able to claim any right as against the

Commission to be promoted to those posts.

In their reply the *applicants* insist that the Commission has disregarded the said decision inasmuch as their responsibilities and situation have in no way changed. They observe that the three officials appointed as “advisers” are responsible to a head of division, as they were in the past, and that their administrative position has in no way changed. They continue to administer a department which from the administrative point of view has the dimensions of a unit but does not have the status of one. The Commission has thus “obscured” a necessary measure by creating three posts of adviser which are still in rank subordinate to the head of division and through him responsible to a director or director-general, whereas according to the particulars of a decision amending the decision of 4 May 1978 the “adviser ought to be responsible to a director-general or director”. In the applicants’ view there is a contradiction between, on the one hand, the attitude of the defendant as expressed in Mr Ortoli’s letter of 19 September 1975 and in Mr Tugendhat’s letter of 13 July 1979 recognizing the present shortcomings and, on the other hand, the contention in the defence that the existing structure is the only one which is possible at present. Further, the applicants consider the creation of the posts of “advisers” as the worst of solutions because it in no way contributes to improving the administration of the translation groups, which are unmanageable. In creating those posts the Commission thus recognized the lack of justification for the present structure without moreover avoiding the suspicion that the new posts have been created simply to deceive the Parliament, where several questions have

been put to Members of the Commission on the organization of its departments.

- (d) Disregard by the defendant of its obligation to assist its officials (Article 24 of the Staff Regulations)

The defendant reaffirms its intention of gradually reorganizing its departments in Luxembourg in line with their future requirements. It refers in that context to the answers given to the Parliament and to the heads of section in the Medium and Long-term Translation Division and it regards the creation of the new posts of "adviser" in Grade L/A 3 as a start in achieving its intention to reorganize the department. It nevertheless insists that no undertaking was given regarding the time within which the reorganization would be completed but that it has stressed from the beginning that the reorganization would be by stages to take account of budgetary constraints. The defendant states that it is forced to lay down certain priorities within the limits of the budget and that it cannot therefore satisfy all the claims addressed to it. It points out that that state of affairs was clearly explained in its answer of 18 June 1979 to the written question

put by Mr Lagorce, a Member of the European Parliament, in which it stated that: "the Commission's intention in view of the adaptations that will be necessary following enlargement, is to put proposals to the budgetary authority for changes in the structure of the Commission's language service. The structure of the Luxembourg service will be reviewed in this general context."

The *applicants* reply that this attitude on the part of the Commission is another example of a broken promise and that budgetary difficulties should not have priority over the law. They therefore ask the Court to uphold their claim and require the defendant to proceed with the reorganization which ought no longer to be delayed.

IV — Oral procedure

At the hearing on 6 June 1981 oral argument was presented by V. Biel, of the Luxembourg Bar on behalf of the applicants, and by R. Andersen of the Brussels Bar, on behalf of the Commission.

The Advocate General delivered his opinion on 9 July 1981.

Decision

1 By application lodged at the Court Registry on 16 August 1980 A. Bellardi-Ricci, D. Kleymans, J. Goetschalkx, S. Bauer and E. Rittweger, officials in Grades L/A 3 or L/A 4 in the Commission's Medium and Long-term Translation Division in Luxembourg, brought an action against the Commission's implied refusal to reorganize the said division by converting

the present sections into divisions and regrading the posts of head of section into posts of head of division in Grade L/A 3.

- 2 It should be noted that with a view to carrying out such reorganization the Commission created three posts in Grade L/A 3, described as posts of "adviser", and allocated them to three of the applicants. The applicants did not consider that measure to be sufficient and sent the President of the Commission a joint letter dated 12 July 1978 which was registered at the Secretariat-General of the Commission as a request within the meaning of Article 90 (1) of the Staff Regulations.
- 3 By letters dated 21 June 1979, registered at the Secretariat-General of the Commission on 22 June 1979, the applicants, acting individually, submitted requests under Article 90 (1) of the Staff Regulations inviting the Commission to take all the administrative and budgetary measures necessary to convert the posts of head of section into L/A 3 posts of head of division. By letter dated 17 January 1980, registered on 21 January 1980, they lodged a complaint with the appointing authority under Article 90 (2) of the Staff Regulations against the implied rejection of their requests.

Admissibility

- 4 The Commission submits that the action is inadmissible on two grounds.
- 5 In the first place, it contends that the letter which the applicants and the other heads of section in the Medium and Long-term Translation Division sent to the President of the Commission on 12 July 1978 with a view to obtaining their regrading in L/A 3 was a request under Article 90 (1) of the Staff Regulations and its registration on 7 September 1978 set in motion the period of four months referred to in Article 90 (1) of the Staff Regulations which determines the subsequent periods laid down by Article 90 (2). The Commission submits that since those periods have expired the application is out of time as regards the applicants' individual requests, which have the same subject-matter as the joint request of 12 July 1978.

- 6 The second ground of inadmissibility pleaded by the Commission is based on the fact that the application was registered at the Court Registry on 18 August 1980, whereas it ought to have been lodged at the latest on 17 August 1980.
- 7 As regards the first ground of inadmissibility, the applicants contend that since the letter of 12 July 1978 did not use the special dispatch note provided for that purpose under the internal regulations of the Commission and since moreover it did not contain either the word "request" or any equivalent expression, it cannot be classified as a request within the meaning of Article 90 (1) of the Staff Regulations. It is simply one letter in the course of the correspondence with the Commission. Therefore, according to the applicants, the limitation period must be deemed to have started to run on 22 June 1979 when the individual requests submitted by the applicants were registered.
- 8 As regards the second ground of inadmissibility, the applicants observe that their application was in fact lodged on 16 August 1980 and registered on 18 August with the remark "Received 16 August 1980", which is, moreover, admitted by the Commission. They therefore submit that their action is admissible as being brought within the limitation period which expired on 17 August 1980. They also observe that, according to Article 80 (2) of the Rules of Procedure of the Court, where the period for bringing an action would otherwise end on a Sunday or on an official holiday, it is extended until the end of the first following working day and consequently the action would have been admissible even if brought on Monday 18 August 1980.
- 9 As regards the first submission of inadmissibility, it must be affirmed that even if a written request does not expressly refer to Article 90 of the Staff Regulations and contains no expression to that effect, it may amount to a request thereunder if it invites the appointing authority to adopt a decision.
- 10 Nevertheless, it must be observed in the circumstances of the present case that the letter of 12 July 1978 cannot be considered outside the context constituted by the exchange of correspondence over a number of years between the various persons concerned in the Medium and Long-term Translation Division and successive Presidents of the Commission. In

accordance with its content, the letter of 12 July 1978 must be regarded as belonging to the series of successive communications intended to urge the Commission to reorganize the division in the manner desired by the applicants and not as a request under Article 90 of the Staff Regulations.

- 11 It must also be observed that one of the applicants in the present action did not sign the letter of 12 July 1978, so that even if that letter were to be regarded as a request within the meaning of Article 90 of the Staff Regulations the action would still be admissible as far as he is concerned and the substance would in any event have to be considered.
- 12 It follows that the first submission of inadmissibility pleaded by the Commission must be rejected and since the second submission has no factual foundation the action must be held to be admissible.

Substance

- 13 The applicants contend that the Commission's refusal to reorganize the division infringes Article 5 (3) of the Staff Regulations which provides that identical conditions as regards career in the service are to apply to all officials belonging to the same category or the same service.
- 14 They also complain that the Commission has disregarded the principles of non-discrimination and equal treatment of officials because a lowering in the selection criteria for the department in Brussels in relation to the criteria for recruitment applicable when they were appointed as heads of section means that the conditions of recruitment vary from one place of employment to another, so that maintenance of the present structure of the department in Luxembourg has led to a degrading of their posts which the reorganization sought would counteract.
- 15 They observe that according to the case-law of the Court the discretion enjoyed by the institutions as regards their internal organization is subject to a reservation concerning the protection of officials' rights under the Staff

Regulations and that similar departments may be organized differently only if they belong to different institutions and not if they belong to the same institution.

- 16 Further, the applicants rely on the Commission's decision which took effect on 4 May 1978 "amending job descriptions for basic posts in the language service listed in Annex I-A to the Staff Regulations", according to which "advisers" are placed under the authority of a director-general or a director. It is said that the Commission has disregarded that decision because, by its refusal to reorganize their department, those of the applicants who have been appointed "advisers" have changed neither their duties nor their posting and continue to perform their duties as head of section, as in the past. Moreover, they are still responsible to their head of division, which is contrary to what is stated in the amending decision of 4 May 1978.
- 17 Finally, the applicants complain that the Commission has not fulfilled its obligation to assist its officials pursuant to Article 24 of the Staff Regulations.
- 18 With regard to these matters, it must be pointed out that, although Article 5 (3) of the Staff Regulations provides that identical conditions of recruitment and career in the service are to apply to all officials belonging to the same category or the same service, Article 4 of the Staff Regulations provides that no appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided for in the Staff Regulations.
- 19 The conditions of recruitment and career in the service referred to in Article 5 (3) cannot be considered outside the framework determined by the organization of the departments. Although that provision requires the Community administration to respect the equality of officials, in the various categories, with regard to the conditions governing recruitment and promotion, it does not restrict the freedom of the institutions to organize the various administrative units taking account of a whole range of factors, such as the nature and scope of the tasks which are assigned to them and the budgetary

possibilities. It follows that the Commission has no obligation with regard to the applicants to organize the department in which they are employed so as to guarantee them an opportunity to perform certain duties and obtain promotion as a result.

- 20 The applicants have not been able to show that the Commission has exercised its powers of organization, in relation to the administrative unit in which they are employed, for reasons extraneous to the interests of the service. In particular, they have not been able to show that the opinion arrived at by the Commission on the basis of the amount of work and staff in the translation department in Luxembourg in relation to that in Brussels exceeds the limits of the discretion which the Commission has in the present case, especially as, by the measures already taken in favour of the department in Luxembourg, the Commission has shown itself ready to proceed gradually to a reorganization in the direction desired by the applicants, taking account of the existing budgetary constraints.
- 21 In this respect, the Commission cannot be legally compelled to carry out the reorganization in question within a particular period, either on the basis of a specific right on which the applicants might rely under the Staff Regulations or on the basis of the Commission's own statements regarding its intention to proceed with that reorganization.
- 22 As regards the Commission's alleged infringement of its decision of 4 May 1978 it must be borne in mind that, because the posts in question do not appear on the detailed list of posts for that department, the defendant has not been able to convert the translation sections into divisions and to appoint heads of division at their head. It cannot therefore be maintained that those of the applicants who have been appointed advisers in Grade L/A 3 at the present stage of limited and partial reorganization, and who are still performing the same duties as their colleagues in Grade L/A 4 have suffered a diminution of their administrative position by the maintenance, with regard to them, of the hierarchy to which those colleagues necessarily remain subject.
- 23 As regards the obligation to provide assistance laid down by Article 24 of the Staff Regulations, it suffices to observe that that provision is concerned with

the defence of officials by the institution against the acts of third parties and not against the acts of the institution itself, the review of which is governed by other provisions of the Staff Regulations.

24 It follows that the applicants' action must be dismissed as unfounded.

Costs

25 Pursuant to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

26 The applicants have failed in their submissions.

27 However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**
2. **Orders the parties to bear their own costs.**

Due

Pescatore

Chloros

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

O. Due
President of the Second Chamber