In Case 791/79

RENÉ DEMONT, an official of the Commission of the European Communities, residing at 113, Rue des Palmiers, Brussels, represented by Jacques Putzeys and Xavier Leurquin, both of the Brussels Bar, with an address for service in Luxembourg at the office of Mr Nickts, Huissier de Justice, 17, Boulevard Royal,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Denise Sorasio, a Member of its Legal Department, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg.

defendant,

APPLICATION for the annulment of the decision of 10 November 1978 by which the Commission transferred the applicant from Santiago, Chile, to Brussels by assigning him with effect from 1 January 1979 to the specialized department for generalized tariff preferences in Directorate E-2 of Directorate-General I, and of the express decision rejecting the complaint through official channels lodged by the applicant against that decision,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

René Demont, an official of the European Communities, was assigned, with effect from 1 August 1973, within the Directorate-General for External Relations, to the Delegation of the Commission to Latin America which at that time was located in Santiago, Chile.

Officials assigned to non-member countries are subject to a rotation scheme instituted by Commission Decisions dated 23 July 1975 and 24 November 1976. Within that scheme Mr Demont's transfer was envisaged for 1979 as is evident from the minutes of the meeting of 5 December 1977 of the Rotation Committee, which is the body competent for drawing up the list of officials who are to be transferred.

By decision of 26 May 1977, the Commission adopted in principle the decision to transfer the headquarters of the delegation for Latin America from Santiago to Caracas, it being understood that a smaller branch office of the delegation would continue in Santiago. With effect from 15 April 1978 responsibility for the branch office was assigned to Mr Demont, the only Category A official who remained in Santiago after the headquarters of the delegation had been transferred.

On 19 June 1978, the Commission received a report from Mr Demont's former immediate superior, criticizing various aspects of Mr Demont's official activities. As a result of that report the Commission initiated an inquiry which led to the opening on 25 September 1978 of disciplinary proceedings against the applicant. The proceedings terminated on 15 June 1979 when Mr Commissioner Tugendhat reprimanded Mr Demont. That decision has been challenged by the applicant and is at present the subject of proceedings before the Court in Case 115/80.

By telex message of 29 June 1978, Mr Burghardt, Assistant to the Director-General of the Directorate-General for External Relations (DG I) informed Mr Demont "personally and unofficially" that the Directorate-General was about to suggest to the Rotation Committee, due to meet at the beginning of July, that his name should be added to the staff rotation list envisaged for 1978.

On 6 July 1978, Mr Demont lodged a protest against that "decision" considering that it did not comply with "the provisions laying down the detailed rules governing rotation which state that an official included in the staff rotation list shall be assigned with effect from July of the following year".

On 20 July 1978 Mr Burghardt sent to Mr Demont a telex message with the following wording:

"1. The Rotation committee, at its meeting on 11 July 1978, took note of the decision of the Commission of

26 April 1978 determining the staff rotation lists envisaged for 1978 and 1979. In this connection, your rotation will form part of the transfers envisaged for 1979. The Committee has decided not to propose to the Commission that the time-table should be amended in your case.

2. So as to facilitate staff transfers, both for officials and their families, changes in assignment are normally arranged in such a way as to coincide with the summer holidays (end of the current school year). In view of the differences in that respect in Chile the relevant time in your case will be December 1978. Therefore you will be recalled to headquarters with effect from 1 January 1979 ...".

On 4 December 1978, Mr Demont received notification of a decision of the Commission of 10 November 1978 changing his assignment from Santiago to Brussels with effect from 1 January 1979.

Mr Demont lodged a complaint through official channels against the decision to transfer him which was expressly rejected by Mr Commissioner Tugendhat on 24 July 1979. Mr Demont therefore brought an action for annulment before the Court of Justice on 5 November 1979.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry. The Court however requested the Commission to produce, before 14 May 1981, copies of its decision of 24 November 1976 and 26 May 1977.

II — Conclusions of the parties

Mr Demont claims that the Court should:

— Annul the defendant's decision of 10 November 1978 to transfer the applicant from Santiago to Brussels;

— Annul the decision of 24 July 1979 expressly rejecting the applicant's complaint through official channels;

— Order the defendant to pay the costs.

The Commission of the European Communities contends that the Court should:

— Dismiss the application as unfounded;

— Order the applicant to pay the costs.

III — Submissions and arguments of the parties

In support of his application, Mr Demont makes four submissions.

A — The *first submission* alleges an infringement of Article 7 (1) of the Staff Regulations of Officials of the European Communities and of the rules which the appointing authority has laid down for the operation of a rotation system for officials assigned to delegations or information offices in non-member countries.

The *applicant* maintains that the rules adopted by the Commission governing the rotation of officials assigned to non-member countries constitute general implementing provisions adopted under Article 110 of the Staff Regulations for giving effect thereto, and in particular to Article 7 (1) relating to the transfer of officials in the interests of the service,

and are therefore mandatory rules which the Commision must adhere to.

The applicant states that under point 3.5 of the rotation system agreed at the meeting of the Commission of 23 July 1975, decisions relating to staff rotations must be adopted each year before 31 January whilst the resulting transfers must be carried out during the course of the third quarter.

The applicant states that in the present case the decision to transfer him was not taken before 31 January 1978 and he deduces from that fact that, whilst it was taken before 31 January 1979, the decision could not have been implemented until, at the earliest, the third quarter of 1979.

The *defendant* states in reply that the guidelines laid down by it governing rotation are not mandatory legal rules nor are they general implementing provisions for giving effect to the Staff Regulations either as to formal requirements, since they were adopted outside the procedure laid down by Article 110 of the Staff Regulations, or in substance since they were laid down by the Commission within the scope of its power to organize its own departments.

According to the Commission, a perusal of those provisions will show that they constitute only a general framework which is flexible and capable of being adapted according to the circumstances.

As the main aspects of the rotation policy are laid down flexibly the same must apply *a fortiori* to the provisions relating to the periods within which decisions concerning staff transfers are adopted and implemented.

That implementation is moreover confirmed by the minutes of the meeting of the Commission on 23 July 1975 where it is stated that the "transfers *should* be carried out during the third quarter".

It follows therefore that it was possible for the decision to transfer the applicant, taken on 10 November 1978, to have effect from 1 January 1979.

The Commission acknowledges that the lists of officials subject to rotation must be drawn up in such a way as to allow officials sufficient time to make all necessary arrangements in preparation for their new assignment. It considers moreover that that principle has been fully observed in the present case.

B — In his *second submission,* the applicant maintains that the contested decision does not contain a statement of the grounds upon which it is based or contains at best an inadequate statement.

The *applicant* observes that the decision to transfer him, which was taken against his wishes is, by that very fact, an act adversely affecting him and must therefore state the grounds on which it is based in accordance with the second paragraph of Article 25 of the Staff Regulations.

He states that that decision does not however give any ground, apart from a reference to the interests of the service which is not further elaborated, and does not make any reference to one or more preliminary measures such as any opinion by the Rotation Committee.

The reference to the interests of the service does not constitute a statement of the grounds but is rather the allegedly legal basis for the decision. As regards preparatory measures, whilst it is true, according to the case-law of the Court, that an adequate statement of the grounds for a decision may be given by referring to such measures, it is at the very least necessary that the decision itself should contain a reference thereto. If this were not so, the official concerned could never know upon which of those measures the appointing authority had based its decision and would thus never be in a position to assess the accuracy

and validity of the grounds invoked whereas the duty to give a statement of the grounds is precisely intended to give the official that opportunity. The necessary conclusion is therefore that the contested decision does not satisfy the requirement contained in the Staff Regulations that it should state the grounds upon which it is based.

Alternatively, the applicant contends that even if it were in any case necessary to have regard to preparatory measures the fact remains that in the present case those measures are contradictory and therefore do not make it possible to detect the grounds upon which the decision is based. Furthermore, the applicant states that those measures show clearly that the underlying reasons for the decision to transfer him are illegal and vitiated as being *ultra vires.*

The *defendant* contends that the decision to transfer the applicant could not have been accompanied by a statement of grounds related to the individual case, since the decision was in fact based on grounds of general application justifying the initiation of a rotation policy in particular as regards the need to prevent symptoms of ossification from arising and to ensure that officials assigned to non-member countries had the opportunity of re-training as well as a career development akin to that of officials at headquarters.

In the alternative the defendant states that the case-law of the Court offers no authority for the proposition that the statement of the grounds upon which a measure is based must be contained in the measure itself. In fact it is clear from several decisions of the Court that, in order to decide whether the requirement of a statement of the grounds upon which a decision is based has been met, it is necessary to consider not merely the decision itself but also the circumstances in which it was taken and brought to the notice of the parties affected, as well as internal memoranda and other communications upon which it is based.

In the present case it is plainly evident that the requirement to give a statement of grounds has been observed since the measure adopted was based upon principles laid down by the Commission as regards rotation and applied by the Rotation Committee and since the applicant was aware of the purport of those principles and was informed on several occasions that they would apply in his case.

C — The *third submission* alleges an infringement of Article 24 of the Staff Regulations and a breach of the general principles of good administration and of the trust which an official is legitimately entitled to place in his institution.

The *applicant* maintains that the Commission has completely disregarded its duty of assistance under Article 24 of the Staff Regulations, as well as the principle of good administration not merely by failing to take all necessary steps to check whether the accusations against the applicant were well-founded which would have limited the prejudicial effects of those accusations, but also by going so far as to take steps in the opposite direction by implying even before the inquiry, by its actions leading to the transfer, that the accusations were well-founded.

He adds that the Commission has also committed a breach of the principle of good administration since it gave wider currency than was strictly necessary to a memorandum from Mr Burghardt dated 23 June 1978 in which it was proposed to recall Mr Demont to Brussels immediately, following accusations from his former immediate superior, Mr L.

The applicant considers moreover that the Commission has failed to fulfil its duty of assistance:

— By refusing to investigate the relationship existing between the applicant and his former immediate superior as well as the motives which might have led the latter to wish to remove his former subordinate from the Santiago office;

— By not taking account of the fact that the applicant's son was undergoing education in Chile in a local school from which he could not be taken away suddenly without an adequate period of notice.

The applicant states that as a result of the performance of the duties of the head of the branch office since 15 April 1978 the trust which he was legitimately entitled to place in the Commission had increased particularly since the latter had on several occasions acknowledged his merits. Those facts should have led the Commission to take the utmost care in checking the facts and to avoid any decision which might appear to be in the nature of a disciplinary measure.

The *defendant* submits first that the argument alleging a breach of the principle of legitimate trust must be rejected. It points out that this principle has been recognized by the Court only in connection with applications brought under Article 215 of the EEC Treaty and if it were intended to extend that principle to litigation involving the European public service, its exact scope in such a context would still remain to be determined.

The defendant next denies that by its conduct it has failed in its duty of assistance towards its officials or has infringed the principle of good administration.

It points out that the contested decision, taken on 10 November 1978, merely constituted the last step in the rotation procedure commenced in December 1977 and emphasizes that that decision is connected neither with the report drawn up by Mr L. dated 19 June 1978 nor with the disciplinary proceedings initiated on 25 September 1978 so that even if there were found to be a breach of the duty of assistance as regards the allegations made against Mr Demont that would have no effect on the validity of the decision. The Commission points out however, as an entirely subsidiary point, that having received the report from Mr L., it promptly sent a commission of inquiry to Santiago, Chile, and that the report of that body gave rise to the initiation of disciplinary proceedings in the course of which the applicant was heard and was allowed to examine witnesses and was able to demonstrate that some of the allegations made against him were ill-founded.

The Commission considers therefore that it has adequately fulfilled its duty of assistance by conducting an inquiry at which both sides were heard face to face and which was designed to investigate in the light of all the facts the allegations made against the applicant.

As regards the memorandum from Mr Burghardt of 23 June 1978 the Commission considers that it cannot be criticized for giving it wider currency than necessary since it was merely communicated to a restricted number of senior officials as well as the Chefs de Cabinet of the two Members of the Commission responsible.

As to the allegation that it did not take the necessary steps to clarify the circumstances in which Mr L. had made his allegations, the Commission states that whilst the administration has a duty to

protect any official against serious accusations made against him, the official must for his part place at the administration's disposal all evidence by which the facts may be verified. In this case Mr Demont, although he has referred to a "violent exchange of correspondence" which he claims to have had with Mr L. during May and June 1978, never produced those letters and the Commission was therefore unable to take them into consideration.

Finally, as regards Mr Demont's statement that the decision to transfer him prejudiced his son's education, the Commission points out once again that the decision in principle concerning Mr Demont's transfer was taken as early as 5 December 1977 and confirmed during June and July 1978, thus allowing him to take all necessary steps to safeguard his son's education. Moreover in his telex message of 20 July 1980, Mr Burghardt expressly informed Mr Demont that the decision to transfer him would take effect as from 1 January 1979 and since the school year in Chile ended in December that would allow him to overcome the difficulties arising from the change of school.

D — The *fourth submission* alleges a misuse of powers.

The *applicant* maintains that the decision to transfer him was taken solely as a result of the allegations made against him by Mr L. before the disciplinary proceedings initiated simultaneously against him had been closed, so as to inflict upon the applicant a disguised disciplinary measure for his alleged but otherwise unsubstantiated misconduct.

In support of that statement he observes that:

— By entrusting the applicant, by decision of 12 April 1978, with responsibility for the branch office in Santiago, the Commission had demonstrated that it no longer intended to give effect to the aplicant's transfer in 1979;

— On 19 June 1978 allegations relating to the applicant's conduct in the service were made against him by his former immediate superior, Mr L.;

— On 23 June, namely four days after the allegations had been made, Mr Burghardt informed Sir Roy Denman, Director-General of Directorate-General I, that in his opinion Mr L.'s report made it imperative that the applicant be recalled to Brussels forthwith;

— A short time later, as is evident from the two telex messages from Mr Burghardt dated 29 June and 20 July 1978, a proposal to add the applicant's name, with effect from 1 September 1978, to the list of transfers envisaged for 1978 was made to the Rotation Committee which, however, decided to adhere to the list envisaged for 1979;

— Finally, on 10 November 1978 a decision was taken to transfer him with effect from 1 January 1979.

Mr Demont states that those measures provide objective and pertinent evidence in a number of respects of the Commission's desire to censure and penalize the applicant's attitude, which it considered blameworthy. He emphasizes also that the word "recall", used several times by the administration, speaks volumes in this respect.

He considers that, in all the circumstances of the case, the only decision

compatible with the Staff Regulations and the interests of the service, as well as with the rights of the defence in relation to officials, would have been a temporary suspension during the period of the inquiry and until a decision had been reached as a result of the disciplinary proceedings.

The *defendant* states for its part that the fact that the change of assignment was made "before the disciplinary proceedings, initiated simultaneously, ... had been closed" shows, contrary to the applicant's assertion, that from the point of view of the administration no link existed between those proceedings and the change in assignment decided upon pursuant to the policy of rotation.

It states that the contested decision had already been envisaged for 1979, as early as 5 December 1977, in the context of the periodical rotation system for officials assigned to non-member countries. Since it was decided in principle before the allegations against Mr Demont were known, the contested decision to transfer him cannot be considered in any way as a disguised disciplinary measure; on the contrary it was taken in the interest of the service and was even of such a nature as to further the applicant's career.

Moreover, there is no objective, pertinent and consistent evidence demonstrating that the decision was taken for purposes other than those indicated.

The facts which, according to Mr Demont, constitute evidence of the existence of a disguised disciplinary measure are either incorrectly construed or incorrect or bear no relation to the contested decision.

Thus the decision entrusting Mr Demont with responsibility for the branch office in Santiago was never anything other than provisional. That is confirmed both by the wording of the decision and by the fact that it had already previously been decided that those duties should be performed by an official in Career Bracket A 5/A 4, whereas Mr Demont was an official in Grade A 6.

Secondly, at its meeting on 11 July 1978, the Rotation Committee did not propose that Mr Demont be "recalled" to Brussels but confined itself to deciding that "applications would be invited for candidates to replace Mr Demont".

Finally, since the decision to transfer the applicant was by no means a disciplinary measure the administration had no reason to defer it whilst awaiting the outcome of the disciplinary proceedings against Mr Demont. The argument to the effect that the only measure which the administration could have taken as regards the applicant was to suspend him from his duties is therefore not well-founded.

IV — Oral procedure

Mr Demont, represented by Xavier Leurquin of the Brussels Bar, and the Commission of the European Communities, represented by Denise Sorasio, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, presented oral argument at the sitting on 21 May 1981.

The Advocate General delivered her opinion at the hearing on 15 October 1981.

Decision

1 By an application lodged at the Court Registry on 5 November 1979, René Demont, an official of the Commission of the European Communities, brought an action for the annulment of the decision of the Commission, dated 10 November 1978, changing the assignment and the place of work of the applicant, and of the rejection by the Commission of the complaint lodged against that decision.

2 It is clear from the documents in the case that the applicant, who was assigned as from 1 August 1973 to the office of the Delegation of the Commission for Latin America in Santiago, Chile, within the Directorate-General for External Relations, was reassigned to Brussels, by decision of the Commission dated 10 November 1978, to the specialized department Directorate E-2 of that Directorate-General, dealing with generalized tariff preferences.

3 The decision to reassign the applicant to headquarters in Brussels was taken in the context of Community rules relating to the rotation system in respect of officials assigned to non-member countries. Pursuant to those rules, laid down in particular by Decisions of the Commission dated 23 July 1975 and 24 November 1976, the normal duration of the assignment of such officials is fixed, in principle, at three years, which may be extended in the interest of the service from year to year to a maximum duration of six years. The list of officials to be included in the rotation system is drawn up by an *ad hoc* committee and the definitive list of assignments is then determined by the Commission.

4 Within the framework of that system, the Rotation Committee, at its meeting on 5 December 1977, entered the applicant's name on the "suggested list" of officials who might be included in the second rotation in respect of 1978/79 and envisaged that the applicant's reassignment would "only be possible in 1979". On 12 April 1978, the Commission formally assigned to the applicant as from 15 April 1978 responsibility for the branch office in Santiago and then, on 26. April 1978, it determined "the definitive list" of staff transfers for 1979. The applicant's name appeared on that list.

5 By telex message dated 20 July 1978, the Director-General of the Directorate-General for External Relations brought that decision to Mr Demont's notice, explaining to him that, in view especially of the peculiarities of the school year in Chile, the change in assignment would take effect, in his case, on 1 January 1979.

6 The applicant has challenged the legality of that decision and essentially makes three submissions.

7 (a) He maintains first that, as regards the date on which it was to take effect, the decision contravenes the general provisions governing the rotation system which were adopted-pursuant to Articles 7 (1) and 110 of the Staff Regulations of Officials so that the Commission is bound to observe them. He claims in that respect that under point 3.5 of those rules, as laid down by the Commission at its meeting on 23 July 1975, decisions on staff transfers must be adopted each year before 31 January, and take effect as regards the implementation of those transfers, during the third quarter, whereas in the present case the Commission, although it adopted the contested decision to reassign the applicant before 31 January 1979 sought to give effect to that decision as from 1 January 1979.

8 That submission cannot be upheld. It is based on an erroneous analysis of the nature and mandatory character of the general provisions relating to the rotation system in question. Those provisions, which were adopted moreover outside the procedure laid down in Article 110 of the Staff Regulations, derive from the general power vested in every institution to provide for its own internal organization in the interests of proper efficiency. As the Court confirmed in its judgment of 24 February 1981 in Case 161/80 *Carbognani and Coda Zabetta* v *Commission* [1981] ECR 543, the institutions are at liberty to organize their offices with due respect to the tasks entrusted to them and to allocate the staff available to them in the light of such tasks. From that point of view, the general provisions laid down by the Commission in its decisions of 23 July 1975 and 24 November 1976 relating to the rotation system in respect of officials assigned to non-member countries did not establish an inflexible system of rules but rather a system which, as regards the rules governing its operation, may be adapted where necessary, in the interests of the proper efficiency of the service and in the interest of the official, to the needs of a given individual situation.

9 In particular that may be the case where, as here, considerations of a family nature, owing to the peculiarities of the school year in the country of assignment, make it inadvisable to give effect to a decision to reassign an official to Brussels on the date normally envisaged by the general rules but make it appear more appropriate, in the interests of the official concerned, that the decision should take effect on a different date which may, if necessary, be an earlier one.

10 The minutes of the meeting of the Commission on 23 July 1975 mentioned by the applicant show in fact that, by stating that transfers of staff "should" be carried out in the third quarter of the year the relevant general provisions do not however exclude the possibility that decisions relating to such transfers may in special individual cases take effect on a date different from that normally set.

11 (b) The applicant also claims that the contested decision, in so far as it reassigns him to headquarters in Brussels is irregular inasmuch as it did not state the grounds upon which it was based or, at least, gave an insufficient statement of those grounds.

12 As the Court has acknowledged, in particular, in its judgments of 14 July 1977 in Case 61/76 *Geist* (1977) ECR 1419 and 12 October 1978 in Case 86/77 *Ditterich* [1978] ECR 1855, 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 disputed measure was adopted and notified to those concerned and the staff memoranda and other communications accompanying it make it possible to recognize the essential factors which guided the administration in its decision.

13 In this case it follows from the foregoing considerations that the decision to transfer the applicant in the context of the rotation scheme has its legal basis in the general provisions governing that scheme, and in particular in the decisions of 23 July 1975 and 24 November 1976. The grounds on which the decision is based are thus essentially to be found in those provisions themselves, to which the decision refers, and which, by limiting in principle the period of assignment of each official to non-member countries to three years, envisages a rotation and a reassignment to Brussels in normal cases every three years.

14 Moreover it may be seen from the documents in the file, as the applicant himself has admitted, that he could not have been unaware that the adoption of the contested decision had already been envisaged by the Rotation Committee on 5 December 1977 within the context of a periodic rotation of staff assigned to non-member countries.

15 In the light of those factors the second submission does not appear to be well founded.

16 (a) The applicant finally maintains that the contested decision constitutes a disguised disciplinary measure inflicted on him as a result of unsupported allegations made by his former immediate superior in Santiago. He infers from those facts that, by taking such a decision, the Commission has not merely infringed Article 24 of the Staff Regulations, by failing to fulfil its duty of assistance to its officials, but has also misused its powers as regards the applicant.

17 As has already been stated the rotation scheme applicable to the present case is based on the principle that the normal period of assignment in non-member countries is to be three years and that on the expiry of that period the assignment "may" possibly be renewed from year to year for a maximum duration of six years.

18 It is not disputed that in the present case the applicant was assigned to Santiago as from 1 August 1973 and that it was only on 5 December 1977 that the Rotation Committee decided to enter his name on the list of those to be considered for rotation in respect of 1978 and 1979. It is also common ground that the assignment terminated on 1 January 1979. It follows that at the time of his reassignment to Brussels the applicant had long since completed the period of three years envisaged as being the normal duration of an assignment in non-member countries and had all but reached the maximum duration of his assignment. In accordance with the general provisions governing the rotation scheme at issue his reassignment to Brussels was thus a measure which the Commission was entitled to adopt in respect of staff assigned to non-member countries.

19 Moreover, the facts alleged by the applicant do not prove that the contested decision was influenced by the disciplinary proceedings initiated against him.

Indeed it is clear that the termination of the applicant's assignment to Santiago and his reassignment to Brussels had already been envisaged as early as 5 December 1977 when the Rotation Committee entered his name on the draft list of officials who might be considered for reassignment in respect of 1978 and 1979, in other words well before 19 June 1978, the date on which the applicant's immediate superior in Santiago sent to the Assistant to the Director-General of the Directorate-General for External Relations the memorandum which gave rise to the sending to Santiago of a commission of inquiry and as a result to the opening of the disciplinary proceedings.

20 Furthermore, the fact that the reassignment of the applicant to Brussels was contemplated and proposed by an *ad hoc* body, the Rotation Committee, whose duty it was to draw up periodically the staff rotation list in respect of assignments to non-member countries, and not by the appointing authority which initiated the disciplinary proceedings likewise makes it evident that the contested reassignment was not linked to the opening of those proceedings.

21 The third submission must therefore be rejected.

22 On all those grounds the application must therefore be dismissed as unfounded.

Costs

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

24 The applicant has failed in his submissions.

25 However, pursuant to Article 70 of the Rules of Procedure, in proceedings instituted by officials of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application as unfounded;**

2. **Orders the parties to pay their own costs.**

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 15 OCTOBER 1981 [1]

Mr President,
Members of the Court,

René Demont, an official, has brought two actions against the Commission of the European Communities.

Although the two cases were not ordered to be joined for the purposes of the oral procedure, I take the liberty of delivering a single opinion on both these two closely-connected applications by reason of the underlying facts.

The application in Case 791/79 seeks the annulment of the decision of 10 November 1978, notified to the applicant on 4 December 1978, changing the assignment of René Demont and his post within the Directorate-General; it

1 — Translated from the French.