

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
6 November 1991 \*

In Case T-33/90,

**Charlotte von Bonkewitz-Lindner**, an official of the European Parliament, residing in Strasbourg, represented by R. P. Schmidt, Rechtsanwalt, Trier, with an address for service in Luxembourg at the Chambers of R. Lutgen, 2A Place de Paris,

applicant,

v

**European Parliament**, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Department, acting as Agents, assisted by A. Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

defendant,

APPLICATION, first, for an order that the Parliament amend the applicant's staff report for the period from 1 January 1987 to 1 January 1989; secondly, for the annulment of the memorandum of 2 October 1989 by which the applicant's head of department relieved her of some of her duties; thirdly, for the annulment of the memorandum of 31 January 1990 by which her head of department assigned new duties to her; fourthly, for an order that the Parliament compensate the applicant for the material and non-material damage allegedly suffered by her,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: C. Yeraris, President of the Chamber, A. Saggio and K. Lenaerts,  
Judges,

Registrar: H. Jung,

\* Language of the case: German.

having regard to the written procedure and further to the hearing on 27 June 1991,

gives the following

## Judgment

### Facts

- 1 The applicant entered the service of the European Parliament ('the Parliament') on 1 September 1977 as a member of the temporary staff. On 1 October 1977, she was appointed as a probationary official in grade C3, step 3 and, on 1 April 1978, she was established as an official in that grade.
  
- 2 The applicant successfully took part in Internal Competition No B/141 and was appointed, by decision of 8 November 1983 an official in category B in grade B5 with effect from 1 October 1983. The appointment decision referred — clearly incorrectly, as the applicant admitted at the hearing — to Vacancy Notice No 4144.
  
- 3 On 9 November 1983, the applicant's head of division assigned duties to her in writing. The memorandum in question stated, *inter alia*, as follows:

#### '(1) *Organization of group visits to Strasbourg*

- (a) Mrs von Bonkewitz is to be responsible for receiving all correspondence, to which she is to reply by return of post. She is to be responsible for the long-term scheduling of visits by groups over the session weeks. She is to determine the provisional reception weeks for the various groups. Correspondence is to be presented to me for signing.

(2) *Organization of group visits to Luxembourg*

Owing to Mrs H's excessive workload, Mrs von Bonkewitz is to take over responsibility for the visits of German-speaking groups to Luxembourg.

She is to be responsible for correspondence, for preparing informative material, contacting speakers, for overall coordination in conjunction with Mrs D and for preparing the expenditure commitments.

(3) *Accounts*

After Mrs H has drawn up the expenditure commitments for visitors to Strasbourg, Mrs von Bonkewitz is to be responsible for the overall accounts for groups visiting Strasbourg and Luxembourg. She is to present a report to the head of division each month.'

- 4 By memorandum of 24 January 1984, the applicant was correctly appointed to the post of administrative inspector (Career bracket B5/4) for which she had applied (Vacancy Notice No 4143). The duties attached to that post were described as follows:

'Performance of day to day executive duties, including *inter alia*

- sending out correspondence,
  
- planning group visits (dates, times, programme, lectures, etc),

— the practical organization of the reception of groups in Strasbourg and in Luxembourg,

— calculation of allowances.'

- 5 With effect from 1 April 1984, the applicant was promoted to grade B4.
  
- 6 On 4 February 1986, the head of division drew up a written plan allocating the work within the division in connection with the planning of group visits to Luxembourg. The memorandum in question, which consisted of seven points, assigned to the applicant duties relating specifically to the organization of visits of German-speaking groups (points 1 and 3), together with other duties relating more generally to the organization of visits of groups speaking all languages.
  
- 7 On 1 April 1988, a new head of division was appointed.
  
- 8 On 8 June 1988, the applicant requested the appointing authority to upgrade her post to grade 3 of category B with retroactive effect from 1 April 1986. She justified that request by reference to her activities relating to visits by groups of German speakers; she stated that she had waited for a new head of division to arrive before submitting her request.
  
- 9 On 23 November 1988, the appointing authority rejected that request.
  
- 10 On 21 February 1989, the applicant lodged a complaint against that decision.

11 On 5 July 1989, the complaint was dismissed by the Secretary-General of the Parliament, who gave, *inter alia*, the following reason:

‘According to the information before me, your immediate superiors have never asked you to perform A grade duties. Even if some of your activities might have been commensurate with those of a higher grade, they did not constitute the major part of your work.’

12 The applicant did not bring an action for the annulment of the rejection of her request and complaint.

*A — 1987-1988 Staff Report*

13 On 7 September 1989, the applicant was called before the head of division for the interview required by the Parliament’s guide to staff reports for the purpose of drawing up her staff report. At that interview, the applicant expressed a wish that her staff report should henceforth mention under the duties assigned to her:

‘In charge, in an independent capacity, of German-speaking groups of visitors to Luxembourg under the responsibility of the head of division, that is to say:

- taking of decisions relating to the choice of groups to be received;
- taking of decisions relating to assistance with travel expenses;
- arranging for lecturers and/or addressing groups herself;

— planning and carrying out correspondence and the accounting relating thereto.’

The head of division did not grant the applicant’s request.

- 14 On 18 and 21 September 1989, respectively, the competent head of division and director signed the applicant’s staff report.
- 15 On 16 October 1989, the applicant signed her staff report, appending an annex containing her observations. They related, on the one hand, to the main duties performed by the applicant (point 7(b) of the staff report) and, on the other hand, to the mark ‘satisfactory’ — which she considered inadequate — given for ‘organizational ability — attitude and method’ (point 10(1)(4) of the staff report). A minute, drafted by the applicant, of the interview of 7 September 1989 with the head of division, was enclosed with the annex.
- 16 In late October 1989, the head of division drew up the following comment on point 12 of the staff report, headed ‘Reply, if any, of the person responsible for the staff report in the event of observations made by the official or other servant’: ‘The description of duties given by Mrs von Bonkewitz is as incorrect as her “summary” of the staff report interview.’
- 17 On 8 December 1989, the applicant lodged a complaint against her staff report in which she contested the particulars and the mark given under 7(b) and 10(1)(4) respectively. With regard to the first point, she stated that: ‘During the period in question, I fulfilled with regard to German visitors and groups the duties normally assigned to an official of category A assisted by an official of category C’. With regard to the second point, she noted that: ‘In this context, I am bound to consider that the mark awarded under point 10/4 is too low in relation to the

work I actually put in. It should be noted that more than 30% of visitors are German and that the organization has not given rise to any complaint or objection.'

18 By letter of 19 April 1990, the Secretary-General of the Parliament rejected that complaint.

*B — Withdrawal of duties relating to the organization of visits of German-speaking groups to Luxembourg*

19 On 21 September 1989, the head of division sent a memorandum to the applicant in order to clear up her alleged misunderstandings as to the precise scope of her duties, such as the misunderstandings which had come to light at their interview of 7 September 1989 on the drawing up of the staff report and in the 'minute' which she had drafted following that interview and he had contested. In his memorandum, the head of division stated that the applicant's duties related exclusively to the practical aspects connected with the preparation and conduct of visits by German-speaking groups. Those duties included, *inter alia*, the drawing up of the programme for each visit in accordance with the schedule, preparation for each visit by means of appropriate correspondence, the finalization of administrative documents (list of participants, payment formalities), financial planning on the basis of decisions on the grant of financial assistance, finding speakers and receiving groups. The memorandum went on to exclude from the applicant's duties decisions as to which group to receive, decisions on the grant of financial assistance to cover travel expenses and addressing groups. The memorandum concluded that, in order to facilitate the applicant's understanding of the true scope of her duties, the head of division would make a note in writing on each group's written request to visit the Parliament of his decisions concerning the reception of the group in question, the possible grant of financial assistance to cover travel expenses and whether or not a lunch was to be arranged. The head of division stated that in future he would not call on the applicant's services for the purposes of preparing those decisions.

20 On 2 October 1989, the head of division, 'supplementing' his memorandum of 21 September 1989, informed the applicant that, as from 1 January 1990, she would be relieved from her duties relating to the organization of visits by German-

speaking groups to Luxembourg. He added that the requests for visits for 1990 were to be passed to him or, in his absence, to another official and that the description of her new duties would be communicated to her in due course.

- 21 On 19 December 1989, the applicant lodged a complaint against the memoranda of 21 September and 2 October 1989. In it she raised, first, the dispute between herself and her head of division with regard to the description, in her staff report, of the duties which she had actually performed since 9 November 1983 in connection with the organization of visits by German-speaking groups to Luxembourg. Next, she stated that the withdrawal of those duties constituted, in reality, a disciplinary measure against her, whereby the appropriate procedure had not been followed and the measure had been taken by an authority lacking the necessary powers (the head of division rather than the appointing authority), no reasons had been given whatsoever (in the applicant's view the memoranda of 21 September and 2 October 1989 lacked any statement of reasons), and the principles of sound administration and proportionality had been disregarded (given the general satisfaction with the way in which the applicant had performed her duties), with the result that those measures could be attributable only to a misuse of powers. The applicant added that, in acting in this way, the administration had infringed the principle of protection of legitimate expectations, its duty to have regard to the welfare of officials and the respect due to another human being.
- 22 That complaint was implicitly rejected by the appointing authority, since it did not expressly reply within the four-month period laid down in Article 90(2) of the Staff Regulations of Officials of the European Communities ('Staff Regulations'), which expired on 19 April 1990.

*C — Assignment of new duties*

- 23 By a handwritten memorandum of 12 January 1990, which was received by the applicant on 22 January 1990, the head of division instructed the applicant to draw up a list in alphabetical order, by place of origin, of all the German-speaking groups who had visited Luxembourg in 1989, showing those for whom a lunch had been organized.



24 By memorandum of 31 January 1990, he forwarded to the applicant the description of her new duties within the division, which included the following:

- ' — documentary research for administrators for the preparation of discussions with visitors;
  
- monitoring the stock of documentation in all languages;
  
- preparation of statistics on the number of visitors to Luxembourg;
  
- stock management and ordering of office supplies;
  
- updating the inventory of the visits division;
  
- stocking and distributing information bulletins (minutes of meetings of the College of Quaestors, INFO-MEMO, Agence Europe, Dépêches, etc);
  
- filing and assessment of correspondence relating to visits;
  
- centralization and assessment of requests for visits from school groups.'

The memorandum appointed a member of the department of the rank of administrator as the applicant's new immediate superior, to supervise the performance of her duties.

- 25 By a letter of 2 March 1990 from the applicant's lawyer, which was received at the Parliament on 5 March 1990, the applicant lodged a complaint against the memorandum of 31 January 1990. After reiterating the content of the applicant's first two complaints, the third complaint essentially claimed that the memorandum of 31 January 1990 effected a '*diminutio capitis*', in so far as it replaced the duties corresponding to category A or B posts which had hitherto been undertaken by the applicant (reference was made to the taking of decisions as to which groups should be accepted and which should be granted financial assistance, the giving of talks, responsibility for correspondence, the practical organization of visits and the calculation of allowances) by duties corresponding to category C or D posts. Such a measure — which was equivalent to a transfer — adversely affected the applicant and first, should therefore have stated the grounds on which it was based in accordance with Article 25 of the Staff Regulations and, secondly, should not have been taken until after disciplinary proceedings against the applicant (such proceedings had not been initiated, the applicant maintained, as there were no grounds on which to do so). Thirdly, a transfer could be decided upon by the appointing authority only in the interests of the service and the official should be given advance notice of this. In this case, the head of division had not acted in the interests of the service, which had therefore made it impossible for him to inform the applicant in advance of what was required in the interests of the service. In reality, he acted for personal reasons, with a view to definitively undermining the applicant's chances of promotion within her category. Finally, it was stated in the complaint that the fact that the applicant was obliged to remain in her office from 1 January 1990 to 31 January 1990 without being assigned any duties was contrary to Article 35 of the Staff Regulations. The head of division's handwritten memorandum of 12 January 1990, which was received by the applicant on 22 January 1990, had not changed the situation in that regard.
- 26 The complaint was impliedly rejected by the appointing authority, as it gave no express reply within the four-month period laid down by Article 90(2) of the Staff Regulations, which expired on 5 July 1990.
- 27 On 18 July 1990, the Secretary-General of the Parliament rejected the complaint, stating that, first, the decision of 31 January 1990 was based on circumstances of which the applicant had been fully and completely cognizant during the months preceding that decision; secondly, the decision had been taken within the framework of the broad discretion which the administration had in matters of internal organization, and had, as a result, to be regarded as being justified in the light of the interests of the service to which the applicant belonged; thirdly, the

applicant's new duties could be considered, on the whole, as corresponding to the applicant's grade and to the post she occupied in the organization plan; and, lastly, the contested decision was in no way a disciplinary measure.

### **Procedure**

- 28 Following the rejection of her three complaints, the applicant brought the present action before the Court of First Instance by an application lodged at the Court Registry on 17 July 1990. Upon hearing the Report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.
- 29 However, by letter from the Registrar of 31 May 1991, the Court asked the applicant and the Parliament to answer in writing by 14 June 1991 five questions relating to the applicant's duties.
- 30 By letters received at the Court Registry on 14 June 1991, the applicant and the Parliament replied to the Court's questions.
- 31 The hearing was held on 27 June 1991. The parties' representatives were heard in oral argument and answered the questions put by the Court.

### **Forms of order sought by the parties**

- 32 The applicant claims that the Court should:
- (i) declare the action to be admissible;

- (ii) order the defendant to draw up a staff report for her for the period 1 January 1987 to 1 January 1989 including under point 7(b) a description of the main duties which she performed during that period;
- (iii) order the defendant to give her a fair mark for point 10(1)(4) of the staff report;
- (iv) declare that the duties which she performed were unlawfully withdrawn from her by the memorandum of 2 October 1989;
- (v) declare unlawful the memorandum of 31 January 1990, in so far as it assigns to her, as her only employment, duties of a purely auxiliary nature which did not correspond to the description of her duties;
- (vi) order the defendant to compensate her for the material and non-material damage which she has suffered as a result;
- (vii) order the defendant to pay the costs.

The Parliament contends that the action should be dismissed and that the applicant should be ordered to pay the costs.

## Substance

### *The applicant's staff report for 1987/1988*

#### The description of her duties

- <sup>33</sup> The applicant claims that since the memorandum of 9 November 1983 was drawn up by the person who was head of division at that time, she has in fact performed the duties of an administrator in category A, assisted by an official in category C,

which corresponds to the structure of the other language sections within the 'visits' division. Accordingly, like her colleagues in category A in the other language sections, she herself took the decisions as to which groups were to be received and what financial assistance should be granted to them, and she gave talks to groups of German-speaking visitors, all of which she did to the general satisfaction.

- 34 As proof, she produced several documents such as the memoranda of 9 November 1983 and 4 February 1986, mentioned above, a memorandum of 8 September 1988 from the head of division to the applicant and to the various officials in category A running the other language sections and a letter of 27 January 1989 from the head of division to a group of German-speaking visitors.
- 35 The applicant concludes from the various documents that she performed the same duties as the officials running the other language sections of the division, with the result that the organization plan of the division, as it was drawn up on 6 September 1988, and is still in force, is incorrect in that it mentions the head of division himself as being 'running the German section' (duties comparable to those carried out by the administrators in the other language sections) and assigns the task of 'coordinating groups visiting Luxembourg' to the applicant, whereas in reality the applicant acted as the official running the German section. The applicant refers to Vacancy Notice No 5510, published on 14 March 1988, for the post of official running the Dutch section, and concludes, on the basis of the description of duties set out in that notice, that the duties which she carried out from 1983 to 1989 were those of an official in category A.
- 36 Attention was drawn to that abnormal situation in a letter dated 17 May 1987 from the Vice President of the Parliament to the Secretary-General (not entered in the case-file). The Secretary-General himself recognized that there was a problem in his reply dated 13 June 1988. The applicant further points to a contradiction between that letter from the Secretary-General and the letter of 5 July 1989, by which he rejected the complaint which she had lodged against the refusal to promote her to grade B3, on the ground, *inter alia*, that her superiors had never assigned her duties corresponding to a category A post.

- 37 That is the reason why the applicant maintains that since 1983 ‘the description of principal duties undertaken’ (point 7(b) of the staff report) has not corresponded to the true situation. Only the description which she suggested to the head of division during the interview on 7 September 1989 was accurate. That manifest error is in breach of the rules set out in the guide to staff reports, according to which the applicant was entitled to have the main duties which she carried out set out in her staff report. The applicant also states that she has a legitimate interest in its being recorded that she has carried out duties of a higher level, that is to say, duties normally attaching to posts in category A, particularly with a view to subsequent promotions. Furthermore, she argues that her rights have been infringed because the rule that an official’s grade should correspond to her employment was not respected in her case in so far as she carried out the duties of a category A official, while being paid only the salary of an official in grade B4.
- 38 The applicant also maintains, in her reply, that the final assessor refused, contrary to the Parliament’s general decision on the staff report procedure, to discuss her staff report with her on the ground that he ‘did not consider himself responsible’.
- 39 The Parliament, for its part, disputes the veracity of the applicant’s factual allegations, namely that she carried out duties corresponding to a category A post. According to the Parliament, it is clear from the various memoranda referred to by the applicant that she carried out duties of a preparatory and clerical nature but not of a decision-making nature. In particular, the applicant did not take decisions as to which groups were to be received or what financial assistance was to be granted. As regards the talks which the applicant claims she had to give, the Parliament observes that the head of division vigorously contested that claim.
- 40 It follows, according to the Parliament, that the drafting of point 7(b) of the staff report is entirely adequate and no further details need be given.

- 41 The Parliament also states, in that connection, that the earlier staff reports described the 'main duties carried out' by the applicant in the same terms, and they may no longer be contested at this stage.
- 42 Moreover, in its rejoinder, the Parliament proposes that the Court should reject as irrelevant the request for point 7(b) to be corrected, since the description of duties is only of statistical value and hence entails neither advantages or disadvantages for the official in question, *a fortiori* since the staff report relates to a period in the past, namely 1987-88.
- 43 Finally, also in its rejoinder, the Parliament observes that the staff report refers in point 10(3)(b) to an interview with the final assessor on 4 October 1989 and that the applicant signed that report on 16 October 1989 without indicating that she had the slightest reservation in that respect.
- 44 The Court observes that the applicant is entitled to have in point 7(b) of her staff report an accurate description of the main duties she carried out during the period in question.
- 45 Accordingly, it must be considered whether the applicant's staff report accurately describes the duties which she actually performed.
- 46 In that connection, the three memoranda produced by the applicant in support of her assertion that she carried out the duties of an official in category A in so far as she herself took the decisions as to which groups should be received and what financial assistance should be granted do not bear out that assertion.

- 47 The memorandum of 9 November 1983 does not show that the applicant had the power to decide which groups to receive and what financial assistance should be granted to them.
- 48 Nor does the memorandum of 4 February 1986 grant the applicant the power to make decisions either, since she was instructed to 'receive German requests' and was appointed as the person 'responsible for the direct reception of the visitors and for the organizational and financial aspects of the visit'.
- 49 Lastly, the memorandum of 8 September 1988 sent by the new head of division to the applicant and to four officials in category A does not suggest that the applicant performed duties attaching to posts of that category in so far as the sole purpose of that memorandum was to designate, within the division, the official to whom the estimates of expenditure were to be forwarded. However, it is common ground that the applicant worked directly with the head of division, who was also, according to the organization plan in force, responsible for groups of German-speaking visitors. Accordingly, he had every reason to pass that information directly to his subordinate, whereas in the case of all the other language sections, he used official channels.
- 50 Accordingly, it should be held that the applicant has not established to the requisite legal standard that the description of her main duties set out in point 7(b) of her staff report wrongly omitted to mention the power to decide which groups were to be received and what financial assistance should be granted to them.
- 51 It should further be noted that although the applicant has established that she gave a number of talks to groups of visitors, that does not necessarily mean that she thus carried out duties attaching to posts in category A.



- 52 On the one hand, not all talks are of the same type and they do not all fall within the sphere of responsibility of category A officials. In the present case, the applicant's responsibilities relating to the reception of groups of visitors were naturally such as to involve her in welcoming them and explaining the programme and organization of the visit or in giving them information of a more general nature of potential interest to the visitors which the applicant could provide, without it being necessary to regard such talks as coming within the sphere of responsibility of category A officials. The letter of 27 January 1989, sent by the head of division to a German-speaking group of visitors, and the standard annex appended to it, do not prove the contrary, as the applicant claims. That letter merely states that the applicant will take charge of the group ('wird die Gruppe betreuen'), and the standard annex simply refers to an informative talk ('Informationsgespräch') with a Parliament official, followed by a discussion and, if possible, a film.
- 53 On the other hand, the possibility that the applicant may, on occasion, have given more substantial talks where it had not been possible to find a lecturer — which has not been substantiated — does not invalidate the conclusion that that was not one of the main duties assigned to her.
- 54 In that connection, it may be observed that it is hardly permissible for an official responsible for finding speakers of category A to rely on the claim that she gave talks of an allegedly equivalent standard when she was unable to find an available speaker, in order to prove that she carried out duties attaching to a post of a higher category than her own.
- 55 Lastly, with regard to the applicant's allegation, made in the reply, that she was denied the opportunity, in breach of the Parliament's general decision on the staff report procedure, to have an interview with the final assessor, the Court finds that to be a new plea in law within the meaning of Article 48(2) of the Rules of Procedure of the Court of First Instance, which may not be introduced in the course of the proceedings. That plea must, accordingly, be declared to be inadmissible.

- 56 It follows from the foregoing that the description of the main duties assigned to the applicant, as set out in point 7(b) of her staff report, is correct in so far as it mentions neither a power to decide which groups to receive and what financial assistance was to be granted to them, nor the responsibility for giving talks falling within the sphere of responsibility of category A officials to German-speaking groups of visitors.

The award of the mark 'satisfactory'

- 57 The applicant contests the mark 'satisfactory' under point 10(1)(4) of her staff report, and the reason for that mark, as notified to her by the head of division, which was that, before taking her annual summer holiday in 1989, she failed to provide him with a general table of all the groups of German visitors. She further considers that in any event that one incident cannot justify the assessment 'satisfactory' when, on the whole, the other assessments of her range from 'good' to 'very good'.
- 58 In her reply, the applicant argues that there is no ground for this less favourable assessment or for such a sudden reduction of the mark in question compared with her previous assessments. She adds that that mark constitutes an 'arbitrary decision' on the part of the head of division who should have known that the mark 'satisfactory' given in an analytical assessment debars the official concerned from being placed on the list of officials eligible for promotion. That was 'a sure way of preventing a promotion within the Parliament', especially since the average of the marks obtained by the officials as a whole was much higher. She cites in support of that assertion her summary of her meeting with the head of division on 7 September 1989, according to which he stated 'that as long as he remained head of division she would never be promoted'.
- 59 The Parliament replies that an action will not lie in the Community court against a mark in a staff report. Such a mark constitutes an assessment made by the immediate superior responsible for drawing up the staff report and is a matter for

his personal judgment alone. The Parliament strongly rejects the idea, which was already apparent in the applicant's complaint of 8 December 1989, that the head of division's contested assessment reflects only his wish to impede any possibility of the applicant being promoted in the future. The 'summary' drawn up by the applicant of the meeting of 7 September 1989 cannot constitute, in the Parliament's opinion, proof of the applicant's assertions, since it attributed to the head of division statements which he did not make or which did not bear the meaning claimed by the applicant. Furthermore, the Parliament contests the summary as a whole and defends the attitude of the head of division, who sent it back to the applicant on 13 September 1989, on the ground that such document does not form part of the staff reporting procedure.

- 60 The Parliament asserts, moreover, that the applicant's failure to draw up a table before she left on holiday in 1989 played no part in the awarding of the disputed mark; the applicant could, however, have raised the matter at the interview of 7 September 1989, which she did not do.
- 61 In its rejoinder, the Parliament does not reply to the complaints made by the applicant in her reply to the effect that no specific reason was given for the sudden drop in the mark awarded under point 10(1)(4) compared with her previous staff report.
- 62 The Court observes that the mark 'satisfactory' under point 10(1)(4) of the applicant's staff report constitutes an assessment made by her hierarchical superiors, in their capacity as assessors, which is a matter for their personal judgment alone, and that it is not for the Court to substitute its own assessment (judgment of the Court of Justice in Case 207/81 *Ditterich v Commission* [1983] ECR 1359, paragraph 15, and judgment of the Court of First Instance in Case T-27/90 *Latham v Commission* [1991] ECR II-35, paragraph 19).
- 63 As regards the applicant's contention in her reply that reasons should have been given for the mark 'satisfactory' in so far as it is lower than the mark previously

awarded to her, it should be observed that that constitutes a new plea in law within the meaning of Article 48(2) of the Rules of Procedure of the Court of First Instance, which may not be introduced in the course of the proceedings. That plea in law must therefore be declared to be inadmissible.

- 64 The Court observes that the same is true for the allegation that the applicant was unlawfully denied an interview with the final assessor.
- 65 As regards the applicant's allegation that the assessment 'satisfactory' is vitiated by misuse of powers, the Court observes that the only evidence adduced by the applicant in support of her allegation is the summary which she herself drafted of her interview with her head of division on 7 September 1989. The Parliament and the head of division in question categorically contest the content and the tenor of that document.
- 66 In those circumstances, the Court considers that that document alone does not establish that the assessment 'satisfactory' is vitiated by misuse of powers.
- 67 It follows from the foregoing that the applicant's pleas in law relating to her staff report for 1987-88 must be rejected.

*The new duties conferred on the applicant*

- 68 The applicant claims that the head of division, by his memorandum of 21 September 1989, indirectly acknowledged that she was performing duties attaching to a category A post. In order not to have to recognize that situation, the head of division, by his memorandum of 2 October 1989, withdrew all her duties as from 1 January 1990. The applicant was, she claims, without any duties for several weeks (she complained about this to the competent director by letter of 23 January 1990) and was assigned, by memorandum of 31 January 1990 confirmed on 6 February 1990, new duties, which corresponded, she claims, to posts in category C or D and

had all hitherto been carried out by officials in those categories. The applicant adds that the only task assigned to her by the head of division during the month of January by his memorandum of 12 January 1990 does not appear to justify the employment of an administrative assistant of grade B4 vis-à-vis the European taxpayer.

- 69 The applicant regards those facts as a lessening of her duties which constitutes a measure adversely affecting her and, as such, should have been accompanied by a statement of the grounds on which it was based pursuant to Article 25 of the Staff Regulations. However, no grounds were stated.
- 70 The applicant considers, furthermore, that the contested measures are equivalent to a transfer, which could have been decided upon only in the interests of the service. However, the fact that the head of division manifestly considers that the applicant's duties should be confined to category D with a view to her being unable subsequently to have access to a post in career bracket B3/B2 or in category A is entirely unrelated to the interests of the service. The downgrading resulting from the change in her duties could only have been justified following disciplinary proceedings.
- 71 The applicant further regards the fact that all her new duties corresponded, in her view, to category C or D posts as an infringement of her rights in so far as there was disregard of the rule that the category to which she belongs (B) and the post to which she is now assigned (in her view, category C or D) should correspond, as laid down in the judgment in Case 46/69 *Reinartz v Commission* [1970] ECR 275.
- 72 The Parliament replies to those arguments by referring first to the reasons for which the applicant's third complaint was rejected, as they were set out in the letter of 18 July 1990 from the Secretary-General of the Parliament. According to the Parliament, that complaint was dismissed on the basis of the circumstances in

which the applicant's duties were redefined and the fact that the applicant's new duties do in fact correspond to her grade and to the post she occupies in the organization plan, with the result that the contested decision cannot constitute a disciplinary measure. In that connection, the Parliament refers to a memorandum of 3 May 1990 from the acting Director-General for Information and Public Relations, to the Parliament's juriconsult which concludes, on the one hand, that the applicant's previous duties were not of a level higher than those attaching to her grade and, on the other, that the new duties assigned to the applicant do not by any means constitute a decision 'adversely affecting' her within the meaning of Article 25 of the Staff Regulations, since they correspond, as is shown by an analysis of five of the eight duties conferred on her, to the applicant's grade and not, as she claims, to posts in category C or D. Furthermore, that change in the internal organization of the division was designed to avoid a recurrence of incidents such as those which were observed on 27 September and 4 October 1989. On those dates, the applicant spoke to groups of German visitors — and therefore third parties — of her problems with the head of division in order to explain why she considered that it was impossible for her to continue to give talks to the groups in question on the ground that the head of division had on 26 September 1989 orally forbidden her to give such talks and she had taken formal note of that instruction by a memorandum of 28 September 1989 to the head of division; the applicant also informed a journalist of those problems and asked visitors to complain to a Member of the European Parliament that no talk had been given.

73 Fully endorsing the content of the memorandum of 3 May 1990, the Parliament states that the redefinition of the applicant's duties was duly carried out by her immediate superior pursuant to the proper conduct of the department. It was neither a downgrading nor a transfer, still less a disciplinary measure.

74 The contested decision therefore could not objectively be regarded as an act adversely affecting her, but since the applicant considers it to be such, the Parliament accepts that there could be a problem in the light of Article 25 of the Staff Regulations regarding the grounds on which its decision was based (judgments of the Court of Justice in Case 61/70 *Vistosi v Commission* [1971] ECR 535 and in Joined Cases 269/84 and 292/84 *Fabbro v Commission* [1986] ECR 2983).

75 The Parliament acknowledges that the contested decision did not contain any statement of grounds enabling its significance and scope to be assessed. However, it points out that, according to the case-law (judgment of the Court of Justice in Case 69/83 *Lux v Court of Auditors* [1984] ECR 2447), in order to decide whether the requirements of Article 25 of the Staff Regulations have been satisfied, not only must the contested decision itself be considered but also the circumstances in which it was taken.

Those 'circumstances' are the communications, interviews and exchanges of written memoranda which occurred prior to the contested decision (judgment of the Court of Justice in Case 19/87 *Hecq v Commission* [1988] ECR 1681). In that connection, the Parliament refers to various interviews which the applicant had with the head of division, the aforementioned memoranda of 21 September and 2 October 1989 and the incidents of 27 September and 4 October 1989 to which reference is made above. Regard being had to those circumstances, which antedated the definitive redefinition of her duties, the applicant was sufficiently well informed to understand the meaning of the disputed measure (judgment of the Court of Justice in Joined Cases C-116/88 and C-149/88 *Hecq v Commission* [1990] ECR I-599).

76 With regard to the substance, the Parliament reiterates that the contested decision is within the margin of discretion left to the administration in the interests of the service (judgment in *Lux*, cited above). That decision had to be taken by the administration in order to ensure the proper conduct and orderly operation of the 'visitors' groups' department. Furthermore, the applicant's duties were redefined without infringing her legitimate interests or her rights under the Staff Regulations.

77 In her reply, the applicant states that, even if the Parliament's arguments designed to show that at no time did she carry out duties attaching to posts in category A are accepted, the withdrawal of all the duties for which she had previously been responsible and the subsequent assignment to her of new duties of a lower level nevertheless constitute disciplinary measures, in so far as those new duties do not correspond to the duties described in Vacancy Notice No 4143, on the basis of which she was appointed to her present post. The Director-General's memorandum of 3 May 1990 is in this respect nothing more than a retroactive upgrading of the duties assigned to the applicant by the memorandum of 31 January 1990 from the head of division.

- 78 In reply to a question from the Court, the applicant observed that that memorandum of 3 May 1990 deals with only five of the eight new duties assigned to her. As far as the three duties which are not mentioned are concerned, she considers that the competent Director-General was simply unable to present them as duties corresponding to a category B post. As for the five duties analysed in the memorandum, the applicant contests the competent Director-General's interpretation of their content and, in the case of two of them, the identity of the person previously responsible for carrying them out.
- 79 What the applicant infers from the memorandum of 3 May 1990 is that she was suspended from her duties as a result of incidents which occurred on 27 September and 4 October 1989. She states that that suspension, which constitutes a measure adversely affecting her, should have been accompanied by a statement of the grounds on which it was based in accordance with Article 25 of the Staff Regulations. She contests the Parliament's interpretation of the case-law with regard to the content of that requirement to state the grounds, and observes that either the contested decision is not a disciplinary measure, in which case there is no question of 'circumstances' known to the applicant which preceded its adoption, or it constitutes a disciplinary measure, in which case the grounds on which it was based should have been indicated.
- 80 The applicant also points out that what the Parliament describes as the incident of 4 October 1989 occurred after the drafting of the memorandum of 2 October 1989 which brought about what the applicant describes as the withdrawal of all her duties, with the result that, contrary to the assertion in the memorandum of 3 May 1990, that circumstance cannot have been taken into account when the contested decision was adopted. Furthermore, the applicant contests the Parliament's version of the events of 27 September 1989 and 4 October 1989. She produces a memorandum of 9 March 1990 from the head of division addressed to her and describing the incidents complained of, in order to show that the contested decision was indeed of a disciplinary nature. She asserts that in reality she told the group of visitors that no lecturer was available and that, after the leader of the group had asked her to give a talk herself as she had done in previous years, she had to refuse as she was no longer empowered to do so. Furthermore, on 4 October 1989, several participants then said, rather jokingly, that if that was so they should probably complain. The applicant replied, also jokingly, that naturally she could not prevent the group from complaining. The applicant also denies having taken the initiative of contacting a journalist or a Member of the European



Parliament and offers to prove this through the testimony of a Member of the European Parliament and a former Member of the European Parliament. She further states that at no time did she write or say outside the Parliament that her immediate superior regularly played chess instead of doing his work (last complaint formulated in the memorandum of 9 March 1990), but she adds that it is indeed true that the head of division does regularly play chess instead of working, and that she may have once mentioned this to someone.

- 81 According to the applicant, the only 'circumstance' which preceded the adoption of the contested decision was her request, made at the interview on 7 September 1989, to have the tasks and duties which she had performed mentioned in her staff report. In her opinion, it is clear that her immediate superiors must have prevented this since, otherwise, they would have had to acknowledge that she had been unlawfully underpaid for many years. Furthermore, in the applicant's view it is quite grotesque for the Parliament to attempt to justify the contested decision on the grounds of the interests of the service, since the department had no longer functioned properly after the memoranda of 21 September and 2 October 1989 had taken effect.
- 82 In that context, the applicant maintains that the memorandum of 9 March 1990, which was sent to her four days after the Parliament received her third complaint, suddenly accuses her of dereliction of duty in order to provide *ex post facto* the 'circumstances' needed as grounds for the contested decision and to enable the reply which was belatedly given on 18 July 1990 to that complaint to refer to them. The applicant claims that a justification of that sort cannot cure the arbitrary nature of the contested decision.
- 83 In its rejoinder, the Parliament confirms in full the substance of the arguments it had previously put forward and takes note of the fact that the applicant, in giving her own version of the incidents of which she is accused, does in fact recognize the main thrust of the Parliament's complaints against her. The Parliament adds that the applicant is in reality putting her head of division on trial, as is apparent both from the form and the substance of her reply.

- 84 The Parliament reiterates that the contested decision is a purely administrative measure, which the head of division was obliged to take in order to secure the proper operation of the department, and that it was not a disciplinary measure. The incidents of 27 September and 4 October 1989 constitute circumstances, (but not the only ones) which prompted the head of division to reallocate, in the interests of the service, duties within the department. The Parliament adds, in that context, that the applicant was wrong to state on her own initiative in front of visitors that she could no longer give talks, 'which was substantively incorrect'.
- 85 The Court observes first that the memorandum of 2 October 1989 did not withdraw all the applicant's duties as from 1 January 1990. That memorandum did not withdraw all the duties which had been assigned to her by the memoranda of 9 November 1983 and of 4 February 1986, but only the duties specifically relating to visits of German-speaking groups. Thus, in accordance with the memorandum of 2 October 1989, the applicant retained all the duties common to all of the various language sections, such as keeping a register of groups of visitors to the Parliament in Luxembourg, the general weekly planning of those visits and the booking of rooms, the provision of drinks and the ordering of meals and cocktails offered to groups of visitors, as decided by the head of division.
- 86 In that connection, the duties retained by the applicant corresponded absolutely to the post she occupied in the organization plan of the 'visits and seminars' division, according to which she was responsible for the 'coordination of groups received in Luxembourg'.
- 87 Accordingly, the applicant is wrong to claim that, as from 1 January 1990, no duty was assigned to her.
- 88 It should further be observed that, as has consistently been held, (see, most recently, the judgment of the Court of Justice in Joined Cases C-116/88 and

C-149/88 *Hecq v Commission*, cited above, paragraph 11) the institutions have a wide discretion to organize their departments to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks, on the condition, however, that the staff are assigned in the interests of the service and in conformity with the principle of the equivalence of posts.

89 The applicant's arguments must therefore be examined in the light of those principles.

90 It should be observed in that connection that the new duties assigned to the applicant by the memorandum of 31 January, confirmed on 6 February 1990, do not correspond, as she asserts, to posts of category C or D. As is shown by the memorandum of 3 May 1990 from the acting Director-General for Information and Public Relations, the applicant was entrusted, for example, with 'finding documents likely to meet the needs of administrators called on to give a talk on a specific subject', a duty which indeed falls within the sphere of responsibility of a category B official whose duties are described in the third paragraph of Article 5(1) of the Staff Regulations as 'executive duties which require an advanced level of secondary education or equivalent professional experience'.

91 That finding is not invalidated by the fact that the applicant stated, in her answer to a written question from the Court, that she was not capable of carrying out documentary research in all the official languages of the Community for the various administrators of the various language sections in order to comply with the instruction received from her new immediate superior, which was to draw up 'files ready for use' having a 'certain added value' in relation to the work already carried out by the documentalists in the library. That statement tends to indicate that that duty was perhaps of too high a level for the applicant which signifies that it cannot correspond to a post of category C or even D, as the applicant claims.

- 92 More generally, as regards the seven other duties assigned to the applicant by the memorandum of 31 January 1990, the Court finds that those duties are of a level equivalent to the duties concerning all of the division language sections, which had been assigned to the applicant by the previous head of division by his memorandum of 4 February 1986, mentioned above, and which she never claimed did not correspond to her grade. The differing interpretations put forward by the applicant and the Parliament as to the precise content of each of those duties is not such as to effect that finding of fact, since even the applicant's minimalist interpretation of the content of those duties is not enough to call that equivalence into question. Thus, the duties of keeping a register of groups of visitors to the Parliament in Luxembourg, general weekly planning, booking rooms and refreshments and ordering the lunches and cocktails offered to the groups of visitors following a decision by the head of division (memorandum of 4 February 1986) are certainly not of a higher level than the duties — irrespective of the limited scope of their true content — of preparing statistics on the number of visitors to Luxembourg, monitoring the stock of documentation in all languages, filing and dealing with correspondence relating to groups of visitors, coordinating and processing requests for visits from school groups, managing and ordering office supplies, updating the inventory of the 'group visits' division and stocking and distributing periodic information bulletins (minutes of the meetings of the College of Quaestors, INFO-MEMO, Agence Europe, Dépêches, etc). The competent head of division could therefore legitimately take the view that those duties, like those mentioned in his predecessor's memorandum of 4 February 1986, did indeed correspond to the applicant's grade (career bracket B5/4).
- 93 It should be noted that, since the new duties assigned to the applicant correspond to her grade, there can be no question of disciplinary measures or of downgrading which, as such, should be accompanied by a statement of reasons, but only of a reorganization of the department. The file shows that the applicant's relations with her successive immediate superiors have been strained to say the least, in particular in connection with the definition of her duties. As the Court has consistently held, the transfer of an official in order to put an end to an administrative situation which has become intolerable must be regarded as having been taken in the interest of the service (see, most recently, the judgment in Joined Cases C-116/88 and C-149/88 *Hecq*, cited above, paragraph 22). In the circumstances of this case,

the administration was therefore entitled to consider that it was in the interest of the service to carry out the reassignment of duties contested in this case.

94 The Court, having decided on the basis of the facts that the assignment of new duties to the applicant did not constitute a diminution of the applicant's duties and, accordingly, did not adversely affect her position under the Staff Regulations or infringe the principle of correspondence between her grade and her post concludes that the contested decision is merely a measure of internal organization taken in the interest of the service. As the Court has consistently held, the administration is not obliged to state the grounds on which such a decision is based or to give the official concerned a prior hearing (see, most recently, the judgment in Joined Cases C-116/88 and C-149/88, *Hecq*, cited above, paragraph 14).

95 It therefore follows that the plea must be rejected.

*The claim for compensation*

96 The applicant argues that, for many years, she carried out, in accordance with instructions received, the work of a category A official, while being merely classified in a grade of category B. Furthermore, the fact that all her duties were withdrawn and that she was assigned work of an ancillary nature for a category B official caused her to lose her rank in the hierarchy of posts and infringed her non-material interests and her future prospects. The applicant claims that if the work she performed for years had been recognized for what it was, she ought to have been promoted to grade B3 and to have received, in the interim, at least a differential allowance.

97 The applicant therefore estimates her material loss at LFR 206 160, namely the difference between the salary of an official of grade A7, step 1, and that of an official of grade B4, step 5, that is to say  $\text{LFR } 17\,180 \times 12 \text{ months} = \text{LFR } 206\,160$ .

- 98 The applicant defers the assessment of the non-material damage to the judgment of the Court, but states that that damage stems from the fact that she was obliged to remain in her office for days without anything to do and to carry out menial tasks; that downgrading was extremely irksome and humiliating to her, in view of the high esteem in which she had hitherto been held by visitors, colleagues and especially by the departments within the Parliament which worked in liaison with the visits department.
- 99 The Parliament merely asks that the application for damages be rejected as the logical consequence of its line of argument designed to show that all of the applicant's claims are unfounded.
- 100 The Court holds, in that connection, that the applicant did not perform duties corresponding to those of an official in category A, did not have all her duties withdrawn and did not have duties beneath her grade assigned to her, and that, therefore, the application for damages should be dismissed both in respect of the alleged material damage and the alleged non-material damage.

### Costs

- 101 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

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

Yeraris

Saggio

Lenaerts

Delivered in open court in Luxembourg on 6 November 1991.

H. Jung

Registrar

C. Yeraris

President