ORDER OF THE PRESIDENT OF THE FIRST CHAMBER 8 APRIL 1965[1]

In Case 18/65R

MAX GUTMANN, an official of the European Atomic Energy Community, represented by Ernest Arendt, avocat-avoué of the Cour d'Appel, Luxembourg, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY, represented by its Legal Adviser, Mr Prelle, acting as Agent, with an address for service in Luxembourg at the offices of the Secretary of the Legal Department of the High Authority of the European Coal and Steel Community, 2 place de Metz,

defendant,

Application to suspend the operation of the vacancy notice for the post of Principal Administrator in career bracket A5–A4 at the Ispra Centre (Press and Public Relations Department),

Facts

Whereas on 25 September 1964 the European Atomic Energy Community issued a decision concerning Mr Gutmann, Head of the Public Relations and Press Department of the Joint Nuclear Research Centre at Ispra, an EAEC establishment, suspending him from his duties as head of that department;

Whereas a second decision was taken concerning him on 9 December 1964, of which he was notified on 22 December 1964, transferring him to the post of Principal Administrator in one of the EAEC directorates at Brussels;

Whereas on 5 January 1965 the applicant submitted a complaint to the Commission of the EAEC under Article 90 of the Staff Regulations; and whereas the complaint was rejected by a decision of 5 February 1965, notified to the applicant on 18 February 1965;

Whereas on 24 March 1965 Vacancy Notice No V/IS/40/65, dated 11 March 1965, was posted in the EAEC premises in Brussels, advertising the post previously occupied by the applicant;

Whereas Mr Gutmann made an application, lodged at the Court Registry on 30 March 1965, for the annulment of the decision of 5 February 1965 and for compensation for the damage which he claims to have suffered;

Whereas in a separate application lodged at the Registry on 31 March 1965, Mr Gutmann, pleading that the Commission of the EAEC has advertised as vacant the post previously occupied by him at Ispra, has

1 — Language of the Case: French.

applied to the President of the Court for the adoption of an interim measure, seeking to have declared admissible and well-founded his request for the operation of the vacancy notice to be suspended; and whereas Mr Gutmann has asked that a declaration be given on costs in accordance with the relevant provisions;

Whereas the Commission of the EAEC submitted its observations on the application for the adoption of such interim measure on 7 April 1965, to the effect that the application should be rejected as inadmissible under the first subparagraph of Article 83(1) of the Rules of Procedure or alternatively as not well-founded, and that a decision be given on costs in accordance with the law;

Whereas at the hearing of the application for the adoption of the interim measure on 8 April 1965 the applicant, Mr Gutmann, assisted by Mr Arendt, and Mr Prelle, representing the Commission of the EAEC, appeared before the President of the First Chamber, representing the President of the Court, who was prevented from attending;

Law

Whereas in his application Mr Gutmann requests that the operation of the vacancy notice for the post which he previously occupied at Ispra be suspended;

Whereas the Commission of the EAEC contends that the request is inadmissible on the ground that Mr Gutmann is not challenging the vacancy notice in question in proceedings before the Court;

Whereas Article 83 (1) of the Rules of Procedure provides that an application to suspend the operation of any measure is admissible only if the applicant is challenging that measure in proceedings before the Court;

Whereas an application is before the Court directed formally against the decision of 5 February 1965, but in fact and in substance against the decision suspending Mr Gutmann from his duties at Ispra and against the decision transferring him to Brussels;

Whereas the application in the abovementioned main action may thus have a bearing on the decisions in question with all the consequences of law that this entails, especially with regard to the actual existence of a vacancy in the post previously occupied by the applicant;

Whereas the vacancy notice in question has the sole purpose of filling the same post as that occupied by the applicant until the date of the contested decisions and the vacancy in which is disputed in the main application before the Court;

Whereas if the applicant's main application were to be granted this might have the effect of making the vacancy notice irrelevant;

Whereas, moreover, the period in which the applicant may lodge an appeal expressly directed against the vacancy notice itself does not appear to have expired;

and whereas it would be excessively formalistic in an application for the adoption of an interim measure to compel the parties to enter multiple pleadings when the facts of the case show that the subject-matter of the main application and of the application for the adoption of the interim measure are so linked as cause and effect that the second appears as the inevitable consequence of the first;

Whereas a decision with regard to the suspension of operation applied for depends both on an assessment of the interests of the service and on the need to safeguard any rights of the applicant until judgment is given in the main application;

Whereas it appears from the facts of the case that the continued functioning of the Public Relations and Press Department of the JNRC at Ispra does not pose any particular problems in the present state of staffing;

Whereas it has not been claimed that its activities have been interrupted or have failed;

Whereas the consequences of Mr Gutmann's absence have been mitigated admittedly temporarily but none the less effectively since 25 September 1964;

Whereas this state of affairs does not urgently require to be terminated even though it cannot continue indefinitely;

Whereas, moreover, there is as yet no need to appraise the seriousness of the misconduct alleged against the applicant, examination of which is a matter for the final judgment, but it is nevertheless in the interests of the good administration of justice to allow the Court to decide on all the facts of the case at their present stage without the intrusion of new factors which could be justified only by the interests of the service;

Whereas the initiation of the procedure for filling the vacant post at this time, unless absolutely necessary, might involve consequences which would thwart the effects of the judgment in the main action;

Whereas, moreover, it appears that the main application can be dealt with speedily;

Whereas, bearing in mind the nature and present functioning of the administrative unit previously directed by the applicant, a short suspension of operation seems compatible with the interests of the service;

On those grounds,

Upon reading the pleadings;
Having regard to the Treaty establishing the European Atomic Energy Community

and the Statute of the Court of Justice of that Community;
Having regard to the Staff Regulations of Officials of the European Atomic Energy Community;
Having regard to the Rules of Procedure of the Court of Justice, especially Article 83;
Giving a provisional ruling;
Having regard to the urgency of the matter,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

hereby orders:

1. **The operation of Vacancy Notice No V/IS/40/65 dated 11 March 1965 and posted in the premises of Euratom in Brussels on 24 March 1965, advertising 'the vacant post of Principal Administrator in career bracket A 5—A4' at the Ispra establishment (Press and Public Relations Department) shall be suspended until 15 June 1965;**

2. **The costs are reserved.**

Luxembourg, 8 April 1965.

A. Van Houtte
Registrar

R. Lecourt
President of the First Chamber