46 **However, pursuant to Article 70 of the same Rules, in proceedings instituted by officials of the Communities, institutions shall bear their own costs.**

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application.**

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

Mertens de Wilmars O'Keeffe Bosco

Delivered in open court in Luxembourg on 12 October 1978.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 13 JULY 1978

My Lords,

The applicant in this case, Mr Kuno Ditterich, is an official of Grade A 5 who belongs to the scientific and technical service of Euratom. He is by profession an engineer and has at all material times been employed at the Ispra Establishment of the Joint Research Centre (the "JRC").

In the present action he makes two distinct claims against the Commission. First he claims that a list, from which his name was omitted, of officials considered to be most deserving of promotion to Grade A 4 should be declared void. I shall call that "Claim A". Second he claims that a Decision dated 20 January 1977 transferring him, against his wish, from one Department to another at Ispra should be declared void. I shall call that "Claim B".

Claim A

In the early stages of the action it was not at all clear of what list it was that the applicant challenged the validity. Partly because of the resultant confusion, the Commission, by its defence, pleaded that Claim A was inadmissible. Later it became, I think, common ground that the relevant list was one appended to a Decision dated 19 November 1976 of Mr Villani, the Director General of the JRC, who was the relevant appointing authority (Annex 5 to the Defence). On the footing that that was the list in issue, the Commission, rightly in my opinion, by its Rejoinder withdrew its plea that Claim A was inadmissible.

In order to understand how and why that list came into existence, it is necessary to have in mind the "General Provisions for implementing the Procedure for promoting Staff paid from Research Appropriations" adopted by the Commission by Decision dated 6 December 1971 and amended by Decision dated 9 October 1973 (Annex 1 to the Defence). I shall call them, for short, the "Implementing Provisions".

Paragraph 1 of the Implementing Provisions explains that:

"The purpose of these provisions is to establish an advisory procedure to be followed before promoting staff paid from research appropriations, namely officials in the scientific and technical services and establishment staff on the one hand and administrative officials on the other, taking account of the special needs of such staff and of the fact that places of employment are geographically dispersed."

Paragraph 2 excludes certain categories of promotions (not here in point) from the scope of the Implementing Provisions.

By the combined effect of paragraphs 3 and 7 (a), there are set up two "Joint Promotion Committees of first instance", one for the JRC and the other for activities not covered by the JRC, and a "Joint Committee of second instance". The Chairman of the Committee of first instance for the JRC is the Director General of the JRC. Its members comprise seven representing the official side and seven representing the staff. The Chairman of the Committee of second instance is the Director General for Personnel and Administration of the Commission. Its members too include seven representing the official side (of which one is the Director General of the JRC) and seven representing the staff. By paragraph 3 (a) the task of the Committees is stated in general terms to be "to consider the position of staff paid from research appropriations meeting the seniority requirements laid down in the Staff Regulations for promotion in the course of a given year".

Paragraph 4 is procedural.

Paragraphs 5 and 6 provide so far as here material:

"5. Each Committee shall draw up a provisional list of officials ... considered to be most deserving of promotion after comparing the merits of all officials ... eligible for promotion on 31 December of the current year and after comparing the staff reports on those persons.

Each Committee shall have before it a list of the staff having the seniority required for promotion, their personal files and reasoned proposals from their superiors. The provisional lists shall be drawn up grade by grade for each service ...

The provisional lists shall be in alphabetical order and accompanied by a reasoned report, to which shall be attached the initial proposals for promotion.

6. In order to assist them in their work the Committees shall be given such budgetary information as may be

required for drawing up the provisional lists of officials considered to be most deserving of promotion.

The number of officials ... to be entered on the provisional lists shall be higher than the number of posts likely to be available in each relevant grade by approximately:

— 50% for Committees of first instance,

— 25% for the Committee of second instance."

Paragraph 7 (b) (1), provides, so far as material, that the Chairman of each Committee of first instance shall send the provisional lists drawn up by that Committee "together with the accompanying reports and documents, including the promotion proposals, to the Director General for Personnel and Administration, who shall ensure that they are transmitted to the Committee of second instance". Paragraph 7 (b) (2) provides that the Committee of second instance shall review the recommendations of the Committees of first instance and "on the basis thereof" draw up its own provisional lists.

The material parts of the remaining paragraphs are these:

"8. The provisional promotion lists shall be transmitted to the appointing authorities ... together with the reasoned reports of the Promotion Committees and the promotion proposals.

9. The appointing authorities ... shall adopt the lists of officials ... considered to be most deserving of promotion.

The lists shall remain valid until 31 December of the year in question ...

10. Only such officials ... as are on these lists may be promoted in the course of that year ...

...

11. Officials ... appearing on the lists who have not been promoted by 31 December of the year in question shall not have an automatic right to be entered on the lists for the following year."

Two observations of a general nature on the Implementing Provisions are, I think, called for.

First, the Court invited submissions as to their legal status. We were told by the Commission that, although the text of them nowhere refers to Article 110 of the Staff Regulations, that text, in the form in which it was adopted by the Commission's Decision of 6 December 1971, had been adopted in the manner prescribed by that Article, i.e. after the Commission had consulted its Staff Committee and the Staff Regulations Committee. It appears, on the other hand, that the amendments made by the Commission's Decision of 9 October 1973 were made without there having been such consultation. I hardly think, however, that that omission was of any moment, because those amendments amounted only to changes in the descriptions of three of the officials representing the Commission on the Committee of first instance for activities not covered by the JRC, and of two of those representing it on the Committee of second instance; and those changes were merely consequential on a reorganization of certain departments of the Commission. Nor do I think it of any moment that the Implementing Provisions do not expressly refer to Article 110 — though no doubt it would have been better had they done so. I conclude that the Implementing Provisions may properly be regarded as having been adopted under Article 110. (It is clear from Annex 1 to the Defence itself that they were "brought to the attention of the staff" as required by that Article. Moreover it seems, at all events from the English text of that Annex, that, contrary to what was said

on behalf of the Commission, the original text of them had been published previously, viz. on 8 December 1971).

My second observation of a general nature is this. It is manifest that the authors of the Implementing Provisions were concerned to ensure that the procedure thereby prescribed should be such as to secure compliance with the requirements of Article 45 of the Staff Regulations, and in particular with the requirement that a promotion should take place only "after consideration of the comparative merits of the officials eligible for promotion and of the reports on them". I confess, however, that I entertain doubts as to whether those Provisions are in other respects compatible with the Staff Regulations. Article 45 must be read in conjunction with Articles 4, 27 and 29 of the Regulations. Together those Articles seem to me to lay down a procedure for filling each vacant post by promoting or otherwise appointing to it whoever is best qualified for it. A mass annual selection of persons to be promoted, unrelated to the demands of any specific post, seems to be at variance with that procedure. It was emphasized in argument on behalf of the Commission that an appointing authority, in drawing up its own list pursuant to paragraph 9 of the Implementing Provisions, is not confined to selecting officials whose names appear on the provisional lists drawn up by the Committees. But clearly, once it has adopted its list, that authority is precluded by paragraph 10 from promoting, during the year for which the list applies, anyone whose name is not on it. What then happens if, when a specific post needs to be filled, there is no official on the list whose qualifications match the demands of that post, but there is on the staff an official not named on the list whose qualifications are such that it would be appropriate to promote him to the post? Must the appointing authority, in disregard of the Staff Regulations, decline to promote him and resort to a competition to fill the post? The question whether the Implementing Provisions are, in substance, compatible with the Staff Regulations was not however raised in argument and it would not be right that I should express any concluded view on it. I shall accordingly assume, for the purposes of this case, that those Provisions are in all respects valid.

The way in which effect was given to them in 1976 as respects A 5 officials of the scientific and technical service of the JRC was this.

First the Commission published on 8 March 1976 lists of all officials of the JRC paid out of research appropriations eligible for promotion in that year (Annex 2 to the Defence — the date 8. 3. 1974 appearing thereon is a misprint). Among those lists was a list of the A 5 officials so eligible, on which there were 209 names, including the name of the applicant. That meant only of course that the applicant and the 208 others would, by 31 December 1976, have the minimum of two years' service in Grade A 5. In fact the Applicant had over ten years' service in that Grade.

The publication of those lists was followed by what were described to us on behalf of the Commission as preparatory selection procedures involving what are quaintly called "1 instances" and "0 instances", the former at Directorate level and the latter at, if I understood correctly, Establishment level. We were told that those procedures were extra- statutory. We were not told what relationship, if any, there was between them and the preparation of the "reasoned proposals" of the superiors of the officials concerned required by paragraph 5 of the Implementing Provisions. As, however, it was not contended on behalf of the applicant that the occurrence of those procedures was in any way unlawful, I need not pursue that question.

It seems clear that the requisite "reasoned proposals" were prepared. On 13 April 1976 the applicant was shown in the office of his Head of Division, Mr. Hannaert, a list of the names of four A 5 officials of that Division who were to be proposed for promotion. A copy of that list, in what appears to be the applicant's handwriting, is Annex 2 a to the Application. On that copy the Applicant's own name is crossed out, with a marginal note: "Decisione della D. G.".

The Committee of first instance for the JRC met on 26 October 1976 at Ispra to consider promotions to Grade A 4. Draft minutes — though not agreed minutes — of that meeting have been placed before the Court (as Annex 3 to the Defence). Those draft minutes record, among other things, that Mr Villani, as Director General of the JRC, presided; that the Committee had before it a consolidated list of the proposals for promotions put forward by the various Establishments of the JRC, with the reasons given for them; and that Mr Villani, in opening the meeting, said that its task was to consider the results of the meetings of the "0 instances" held in each Establishment. Mr Villani, went on to say, so the draft minutes record, that, according to the budget, only 25 posts were available to the JRC for promotions to Grade A 4 in the scientific and technical service and to remind the meeting that it should draw up a list of suitable candidates approximately 50% in excess of the number of posts likely to be available. Mr Villani was then asked, by representatives of the staff, about an appointment that had been made in Grade A 4 from outside, about a promotion that had been made otherwise than in accordance with the Implementing Provisions and about the intended fate of a particular official named Lubek.

After apologies had been expressed by Mr Villani, and by a representative of the Directorate General of Personnel and Administration, for the first two occurrences, and after assurances had been given by them that such things would never happen again, the rest of the meeting appears to have been devoted to a consideration of Mr Lubek's case.

The draft minutes then record that "Toutes les propositions ayant été examinées avec soin par les membres du Comité, ceux-ci décident de retenir sur la liste d'aptitude pour une promotion vers le grade A 4, le nom des fonctionnaires suivants".

There follows a list of 28 officials (including Mr Lubek) who are put in alphabetical order under the heading "1re priorité". There is then a list of eight officials, not in alphabetical order, under the heading "2e priorité". Neither of those lists includes the name of the applicant.

There is no mention, in the draft minutes, of any consideration of the comparative merits of the officials eligible for promotion or of the reports on them.

The Commission stated however, in its Rejoinder, that, although it was not mentioned in the draft minutes, there were available at the meeting of the Committee of first instance:

"— la liste de tous les promouvables

— les dossiers programmés indiquant la carrière complète *de chacun* des promouvables

— des tableaux indiquant pour *chaque promouvable* l'état actuel de sa carrière relatif à son grade et son âge

— les rapports de notation 1971/73 et 1973/75 (sous réserve de leur caractère définitif)

— des tableaux statistiques concernant les possibilités budgétaires par grade, Division, département, etc."

"En plus", the Commission added, "et sur demande d'un membre du comité, un commis a assuré la présence du dossier personnel chaque fois qu'il a paru nécessaire d'y recourir" (Rejoinder p. 13).

On 3 November 1976 the Director General of Personnel and Administration of the Commission addressed to the members of the Committee of second instance a note with which he enclosed a draft list containing the 28 names on the Committee of first instance's first list and the first 5 names on its second list. In his note the Director General of Personnel and Administration suggested that that draft list should be approved "by the written procedure" and said that, in the absence of objections, he would consider that procedure approved on the evening of 9 November 1976 (Annex 4 to the Defence). It appears that no objection was raised and that the list proposed by the Director General of Personnel and Administration was thus approved.

On 19 November 1976 Mr Villani, as appointing authority, settled the list that is in issue in this action, i.e. the list of officials of the scientific and technical service considered to be most deserving of promotion to Grade A 4 (Annex 5 to the Defence). That list was identical to the Committee of first instance's first list. On 15 December 1976, by what seems to have been an afterthought, Mr Villani added to it the first name on the Committee of first instance's second list. So, in the end, the list bore 29 names. Mr Villani's decision settling the list contains the following recitals:

"Le directeur général du centre Commun de recherche

...

considérant qu'il a eu la possibilité de consulter les dossiers individuels et d'examiner notamment les rapports de notation de tous les fonctionnaires susceptibles d'être promus;

considérant qu'il a procédé à l'examen de la liste du Comité de première instance, de la procédure écrite du Comité de deuxième instance en date du 3 novembre 1976, des comptes rendus des réunions de ces Comités, ainsi que des propositions de promotion établies par les supérieurs hiérarchiques compétents;

considérant qu'il a procédé à l'examen comparatif des mérites des fonctionnaires C.C.R. de grade A 5 jugés les plus méritants pour obtenir une promotion vers le grade A 4 (cadre scientifique et technique)".

I confess to not being wholly satisfied that, in the processes leading to the settling of that list, all the requirements of the Staff Regulations and of the Implementing Provisions were complied with. It would not, however, be possible to make a definite finding as to that without hearing evidence, particularly that of Mr Villani. In the Application originating this action the applicant's case was put on what amounts, it seems to me, to two grounds, namely (1) the absence of up-to-date reports on him and (2) discrimination against him, due to hostility to him on the part of certain of his superiors and colleagues. The Court's task is, I apprehend, limited to considering those grounds.

As to the first of them, the applicant drew attention to two incidents that had occurred before 1976 and which evinced inefficiency on the part of those responsible for writing his reports and keeping his personal file. Of those incidents the first concerned his reports for the years 1969-71 and 1971-73, which were not drawn up until he brought an action in this Court (Case 102/74) to compel their production. Those reports were finally signed together on 22 June 1975 whereupon the applicant discontinued that action, the costs of which were paid by the Commission. The second incident consisted in the presence in his personal

file for a period ending in April 1975 of a report (and an unflattering one) on another official with a similar but not identical name. That report was removed from the applicant's file as the result of a formal complaint by the applicant.

Apart from those pre-1976 occurrences, there are, as regards the applicant's reports, two points at issue.

The first arises from an allegation made on behalf of the applicant that, when he looked at his personal file on 19 November 1976, it contained no reports on him at all. The Commission said that, in the nature of things, it would be practically impossible to prove the presence in a file at a particular past date of a particular document, but that the allegation was unlikely to be correct. I agree. The applicant's personal file contains reports on him going back to 1966 and it is difficult to believe that none of them was there in November 1976. Moreover, in his administrative complaint preceding this action, the applicant's allegation was only that his report for 1973-75 was missing when he inspected his file on 19 November 1976 (see Annex 2 to the Application). In any case, as the Commission pointed out, the important question for present purposes is what reports were available to the Committees of first and second instance and to the appointing authority, rather than what reports were in the personal files of the officials concerned.

So I turn to the second point, which relates to the applicant's report for 1973-75 or, to be precise, for the period 1 July 1973 to 30 June 1975.

A first version of this was drawn up by the Director of the Department to which the applicant belonged, Mr Bishop, in consultation with Mr Hannaert, on 10 May 1976 (Annex 1 to the Reply). The applicant commented on it on 25 May 1976 (Annex 2 to the Reply). In those comments he made, in substance, three complaints. First he pointed out that whilst his conduct in the service had been assessed "above average" there was no explanatory note to justify that assessment although such a note was required by the Commission's "Guide to Staff Reports". Secondly, he complained of the fact that his efficiency had been rated only average whereas it had been rated above average in previous reports and his output had, if anything, increased. Thirdly, he protested against Mr Bishop's "General assessment" of him, which was expressed in these terms:

"Éprouve des difficultées à s'insérer dans le groupe actuel. Il serait peut être plus utile de placer cet agent dans un entourage connaissant très bien sa specialité afin qu'il puisse s'épanouir."

It is perhaps of some relevance, in connexion with the matters I shall have to deal with later, to record that, in those comments, the applicant was (to say the least) sharply critical of Mr Bishop, describing him as of doubtful competence and objectivity, and intentionally provoking.

In the upshot Mr Bishop, in June 1976, again in consultation with Mr Hannaert, revised the report (see Annex 3 to the Reply). He added an explanatory note justifying the assessment of the applicant's conduct in the service as above average. That note read, surprisingly in the circumstances: "Très bon comportement vis-à-vis de ses collègues et de ses supérieurs". Mr Bishop also changed the wording of his "General assessment" to: "Bon ingénieur. A publié quelques rapports dans le domaine de ses recherches en collaboration avec d'autres auteurs". But he did not change his rating of the applicant's efficiency. Being dissatisfied with that, the applicant, on 24 June 1976 asked that the first version of the report should be placed before the Committee on Staff Reports. To this he received a reply from Mr Hannaert to

the effect that only the second version should be regarded as valid (Annex 4 to the Reply). On 7 July 1976 the applicant addressed a Memorandum to Mr Dinkespiler, the Director of the Ispra Establishment, who was also the appropriate "appeal assessor", disputing the view that a report could be altered otherwise than by the appeal procedure laid down in the "Guide to Staff Reports"; asserting that the lowering of the rating of his efficiency evinced discrimination against him; and saying that he would challenge such discrimination by every available means (Annex 4a to the Reply). What happened subsequently is obscure, save that we were told on behalf of the applicant that, when he enquired as to the fate of his report, he was informed that both versions had been lost. However, on 1 December 1976, Mr Bishop wrote to the applicant enclosing four copies of the second version of the report, asking the applicant to sign them, and saying that it was open to him to request that the report and any comments of his thereon be submitted to the appeal assessor (Annexes 5 and 6 to the Reply). On 20 December 1976 Mr Dinkespiler wrote to the applicant, referring to his observations of 24 June 1976, and saying that he (Mr Dinkespiler) had decided not to alter the report and mentioning the applicant's right to appeal to the Committee on Staff Reports (Annex 7 to the Reply). On 22 December 1976 the applicant lodged such an appeal. We were told at the hearing that the Committee on Staff Reports did not reach a decision until February 1978, when it merely decided to ask why the rating of the applicant's efficiency had been lowered.

It was submitted on behalf of the applicant that, even though his report for 1973-75 was under appeal at the time when the Committees of first and of second instance and Mr Villani drew up their respective lists, it should have been made available to them with a note that it was under appeal. The Commission submitted that, on the contrary, a report that is under appeal cannot be used for any purpose. In my opinion, on that point, the Commission was clearly right.

The fact remains that, as the Commission admitted, there was undue delay, first, in that the applicant's report for a period ended on 30 June 1975 was not drawn up until May 1976 and, second, in that his complaints of June 1976 were not dealt with until December of that year. In Case 29/74 *De Dapper* v *Parliament* [1975] 1 ECR 35, the Court annulled promotions to specific posts where, because of similar delays, the appointing authority had had available to it up-to-date reports on some but not all the candidates. The question is whether the same rule should be applied in relation not to an actual promotion but to a list such as that settled by Mr Villani on 19 November 1976.

I have, after some hesitation, come to the conclusion that so to extend the remedy would not be appropriate. We do not know how many promotions were made on the basis of the list here in issue, but it could be anything up to 29. Nor do we know what qualifications were required for the posts to which officials on the list were promoted, so that we do not know how many, if any, of those posts were of a kind for which the applicant's qualifications fitted him. That being so, assuming that the validity of the list was an essential ingredient of the validity of those promotions, its annulment could cause to officials whose names were on it hardship disproportionate in the aggregate to the wrong suffered by the applicant. I seems to me that, in a case such as this, the only remedy available to an official whose report has been the subject of improper delay can be damages, as in Case 61/76 *Geist* v *Commission* [1977] ECR 1419. But the applicant has not claimed damages.

I turn to the second ground relied upon on behalf of the applicant in support of Claim A, i.e. the contention that he was the victim of discrimination.

The argument put forward on his behalf on this part of the case was, as I understood it, that, having regard to his seniority and to his age, the ommission of his name from any list of officials considered deserving of promotion was explicable only on the footing that he had been discriminated against. It was suggested that evidence of such discrimination would be found in a certain note written by Mr Bishop, and the Court was asked to order the Commission to produce that note. It was also suggested that the cause of the discrimination was resentment due partly to the litigation that the applicant had initiated and to the complaints that he had made about his reports, and partly to clashes he had had with a Mr Bresesti, who was the coordinator of the group of researchers of which he was a member.

The note in question was, so the Commission explained, written by Mr Bishop to the Administration and Personnel Division at Ispra, after the applicant had (on 8 December 1976) lodged his administrative complaint preceding this action, in order to assist in the preparation of the Commission's reply to that complaint. The Commission objected to produce the note on the ground, inter alia, that it was confidential. The Court did not order its production, and I need say no more about that.

The other points made on behalf of the applicant seem to me to fall far short of establishing a case of improper discrimination. I do not think that any useful purpose would be served by my reviewing the evidence about the applicant's unhappy relations with his colleagues and superiors. Nor is it for the Court to attempt to assess his merits in comparison with those of the other officials in his grade and service who were eligible for promotion in 1976.

In the result I am of the opinion that Claim A should be held to fail.

Claim B

The facts material to this claim are in outline these.

Since 1974 the applicant had been in the Chemistry Division of the Natural and Physical Sciences Department at Ispra, where he was engaged in a programme of research concerning radioactive waste management.

On 13 September 1976 Mr Bresesti circulated a memorandum in which he reviewed the work that was being done and was to be done at Ispra on radioactive waste management (Annex 8 to the Application). That memorandum was couched in highly technical terms, so much so that no-one attempted to explain its import to us. It contained a paragraph in these terms:

"In order to have a more efficient use of the very limited personnel available it has been decided by the Directors of the three Departments and of the Projects Directorate to have the transfer of Mr Schneider in the group of Mr Volta and of Mr Ditterich in the group of Mr Larisse. The group of Mr Larisse will give a specific mathematical support to the group of Mr Volta."

In his administrative complaint of 8 December 1976 preceding the present action the applicant referred to that memorandum, suggesting that it manifestly foreshadowed an attempt to solve "his case" by transferring him to another division. He added that, as he could see no good reason for such a transfer, and as he had, at that date, received no formal decision effecting it, he had sought information from the Personnel Division, without success (Annex 2 to the Application).

On 20 January 1977, Mr Niemeyer, the Site Director at Ispra, issued a formal Decision transferring the applicant to the Computers, Mathematics and Systems Analysis Department (Annex 4a

to the Application). That Decision was communicated to the applicant on 11 February 1977.

On 1 March 1977 the applicant addressed a memorandum to Mr Niemeyer complaining about the Decision and saying that, owing to the close link between it and the subject-matter of his previous complaint, he would, unless a solution acceptable to him were found, seek to have the whole thing cleared up under Article 90 of the Staff Regulations (Annex 4b to the Application). On 23 March 1977 the applicant sent a copy of that memorandum to the Secretary General of the Commission, stating it to be by way of supplement ("Ergänzung") to his complaint (Annex 4c to the Application).

On 27 June 1977 Mr Niemeyer wrote to the applicant a memorandum in the following terms:

"You requested explanation of the reasons for your recent transfer.

In this context I think it is important to recall the following three facts:

1. In preparation of the execution of the 1977-80 programme the Directorate last year made a considerable effort in defining the competence areas of the three scientific departments, and their subdivision into divisions and sectors.
2. In order to locate people with identical scientific competences in the same units quite a number of transfers of scientific staff during the last 12 months has been performed.
3. You have by your publications and otherwise clearly demonstrated your interest and ability in the area of systems analysis and mathematical methods. It is therefore quite normal that you belong to the Department which is assigned reponsibility for these subject areas."

(Annex 10 to the Reply).

On 5 July 1977 the applicant commenced this action. Claim B is, as I indicated at the outset, a claim that the Decision of 20 January 1977 be declared void. It is put on what appear to be three grounds:

(1) That the Decision was not notified to the applicant in the correct manner (because it was handed to him by Mr Hannaert's secretary);

(2) That no adequate reasons were given for it;

(3) That it was contrary to the interests of the service and was really taken because of his disagreements with Mr Bresesti.

The Commission contends that Claim B is inadmissible because the applicant's formal complaint against the Decision was not lodged until 23 March 1977 so that the 4-month period prescribed by Article 90 (2) had not expired when the action was brought.

The point was not taken on behalf of the applicant that Mr Niemeyer's memorandum of 27 June 1977 might be regarded as a reply on behalf of the appointing authority to the applicant's complaint. What was argued on his behalf was that the form and the subject-matter of his complaint linked it so closely to his earlier complaint that it should be regarded as a mere addendum thereto.

I do not, for my part, think it necessary to express a decided view on the question whether Claim B is admissible because I have come to the conclusion that it too must fail as a matter of substance.

The first ground on which it is put is manifestly misconceived. Article 25 of the Staff Regulations, which was referred to on behalf of the applicant, requires a decision relating to a specific individual to be communicated to him "in writing". But it does not require the document containing it to be accompanied by some sort of covering letter.

As to the second ground, the law as to when and how reasons should be given for a decision to transfer an official may be deduced from the Judgments of the Court in Cases 18 and 35/65 *Gutman* v *Commission* [1966] ECR at p. 117 (Rec. 1966 at p. 169), Case 35/72 *Kley* v *Commission* [1973] 1 ECR at pp. 688 - 689 and *Geist* v *Commission* (already cited). It is, in my opinion, also valuable to bear in mind Principle IV of the Principles annexed to the "Resolution on the Protection of the Individual in relation to the Acts of Administrative Authorities" adopted by the Committee of Ministers of the Council of Europe on 28 September 1977 and the commentary on that Principle contained in the Explanatory Memorandum appended to the Resolution.

The relevant law may, I think, be summarized as follows. There is no general rule that reasons must be given for a decision to transfer an official. They need only be given where the decision is contrary to his wishes, for only then is the decision one "adversely affecting" him within the meaning of Article 25 of the Staff Regulations. Even where reasons must be given, they need not necessarily be stated in the decision itself. Normally the decision will have been preceded by communications to and discussions with the official concerned, from which he will already know the reasons. Where appropriate, and in particular with a view to enabling the official to exercise his rights to challenge the decision, the reasons for it should, if he so requests, be given to him in writing within a reasonable time.

In the present case the Applicant had received Mr Bresesti's memorandum of 13 September 1976. It was clearly open to him, if he disagreed with what was there proposed to discuss it with his superiors. He seems however to have confined himself to making enquiries of the Personnel Division. (In paragraph 41 of the Application it seemed to be said that he had had discussions with his superiors, but in paragraph 119 of the Reply the statement in the Application was qualified in such a way as to make it appear to relate only to the interview when he first learnt of Mr Bishop's note. That interview took place on 15 February 1977 — see the applicant's memorandum of 1 March 1977). At all events, in response to a request made by the applicant after the Decision had been communicated to him, that he be told the reasons for it, he received Mr Niemeyer's memorandum of 27 June 1977.

The real burden of the applicant's case was, I think, that the reasons given by Mr Niemeyer were not the true ones. The question whether or not they were ties up with the questions arising in connexion with the third ground relied upon by the applicant in support of Claim B.

As to that, we know of course, from what Mr Bishop had said in the first version of his report for 1973-75 on the applicant, that Mr Bishop had thought it desirable that the applicant should be transferred to another working group owing to the "difficulties" he had had in getting on in his present one. But beyond that there is not a shred of evidence that the true reason for the applicant's transfer lay in his disagreements with Mr Bresesti. There is indeed some evidence to the contrary. After the Reply had been lodged there was put in, on behalf of the applicant, a memorandum dated 13 January 1978 from Mr Slesser, the applicant's new Head of Division, to Mr Bresesti, about the applicant's programme of work. This suggests that even after the transfer Mr Bresesti was still concerned with the applicant's work.

From the pleadings it seemed that the applicant's fundamental complaint was that his transfer would bring to a stop a valuable programme of research on which he had been engaged. At the hearing, however, we were candidly

told on his behalf that that had not in fact been the result. In any case, as the Commission pointed out, it is not for individual scientific and technical officers or for this Court to decide what programmes of research should or should not be carried out by the JRC.

Conclusion

In the result I am of the opinion that this action should be dismissed, each side bearing its own costs.