state the grounds on which it is based, a measure relating to internal organization which is not of such a nature as to affect the official's position under the Staff Regulations or to infringe the principle that the post to which he is assigned should correspond to his grade.

It is part of the normal exercise of authority within an administration for a superior to assign, in conformity with the abovementioned principle, duties to officials on the basis of their particular aptitudes; measures adopted for that purpose require no special justification.

In Case 338/82

CARLO ALBERTINI, engineer, scientific officer, residing in Ispra,

and

MARIO MONTAGNANI, engineer, principal scientific officer, residing in Bologna,

both employed at the Joint Research Centre, Ispra, represented by Angelo Ulgheri, of the Milan Bar, and Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Martine Reicherts, 7 Côte d'Eich,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Guido Berardis, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of certain decisions of the Head of the Applied Mechanics Division of the Joint Research Centre, Ispra, whereby the applicants were forbidden to have contact in the course of their duties with certain external associates, to take part in a scientific conference organized by the University of Cairo and to present a scientific paper at that

conference, and also of an internal memorandum relieving the applicants of their responsibility for research into the dynamic behaviour of materials,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges.

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts

Carlo Albertini and Mario Montagnani, scientific officers at the Joint Research Centre, Ispra, have for several years been carrying out research into the dynamic behaviour of materials in the Applied Mechanics Division. Their scientific work appears to have made them international authorities in the study of reactions of materials in dynamics and the constructions of apparatus capable of measuring such reactions.

On 31 August 1982 Mr Albertini and Mr Montagnani asked the Head of the Applied Mechanics Division for permission to publish a paper which they had prepared in collaboration with two professors from the the University of Bologna under the title of "Constitutive equations of austenitic stainless steels in dynamics — Experiments and calibration procedure". That paper was intended to be presented and discussed at a scientific conference to be held on 27 December 1982 and organized by the University of Cairo; on 13 July 1982 it had been forwarded by Mr Albertini to the organizers of the conference.

By a decision of 7 October 1982 the applicants were refused permission to publish the paper; on 5 November 1982

the Head of Division also objected to their attending the Cairo conference.

In a note dated 27 September 1962 the Head of the Applied Mechanics Division rejected a request by Mr Albertini and Mr Montagnani for permission to invite an outside expert to the Centre. In a memorandum of 6 October 1982 he reminded them that in relation to contacts with outside researchers the Centre "must speak with a single voice", complained that they had been guilty of improper conduct and requested them "to follow the normal procedures in future".

In an internal memorandum of 10 November 1982 the Head of Division informed various staff at the Centre, including Mr Albertini and Mr Montagnani, that "with effect from today Mr V. will take over responsibility for research into the dynamic behaviour of materials, components and structures, using the large machine for dynamic trials".

On 9 December 1982 Mr Albertini and Mr Montagnani submitted complaints to the competent superior authority pursuant to Article 90 (2) of the Staff Regulations against all the decisions of the Head of the Applied Mechanics Divisions.

II — Written procedure

On 23 December 1982, in accordance with the provisions of Articles 90 (2) and 91 (4) of the Staff Regulations, Mr Albertini and Mr Montagnani brought an action seeking the annulment of the decisions in question on the ground that they infringed Articles 17, 21 and 24 of those regulations.

On the same day they applied, pursuant to Article 83 (2) and (3) and Article 84 of the Rules of Procedure for suspension of the operation of the contested decisions.

After hearing oral argument presented by the applicants on the same day that they lodged their application for interim measures, and even before the Commission had presented its observations, the President of the Second Chamber, acting as President of the Court, made the following order on 23 December 1982 ([1982] ECR 4667) pursuant to Article 84 (2) of the Rules of Procedure:

1. The application to suspend the operation of the decisions of the Head of the Applied Mechanics Division of the Joint Nuclear Research Centre of 7 October and 5 November 1982 is dismissed.

2. A decision on the other claims is reserved.

3. Costs are reserved.

After receiving the written observations of the Commission on the application for interim measures, the President of the Second Chamber made a second order on 1 February 1983 ([1983] ECR 145) as follows:

1. The application for the suspension of the operation of the decisions of the Head of the Applied Mechanics Division of the Joint Nuclear Research Centre of 27 September, 6 October and 10 November 1982 are dismissed.

2. Costs are reserved.

On 17 May 1983, more than four months after the applicants had lodged their complaint and therefore after the implied rejection thereof, the Commission took an express decision rejecting the complaint and stating its reasons for doing so.

The written procedure followed the normal course; the applicants were not allowed to submit a reply since they failed to do so within the prescribed period.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry.

The applicants were requested to reply in writing to a number of questions; they acceded to that request after an extension of the period laid down for that purpose. The parties were requested to concentrate their oral explanations on the problems raised in those questions.

III — Conclusions of the parties

The *applicants* claim that the Court should:

Declare that they are entitled under Article 17 of the Staff Regulations to publish and present their paper at the conference in Cairo on 27 December 1982;

Declare that the appointing authority, its agencies and officials may not deny the applicants the right to publish the paper, inasmuch as such a denial violates the fundamental principles of the Community laid down in Article 2 of the EAEC Treaty and the equally fundamental rights of research workers sanctioned by Article 17 of the Staff Regulations;

Recognize the right of the applicants, in the overriding interest of the development of the research programme of the European Communities in the field of applied mechanics:

to make contact with, in particular, institutes and the most advanced research workers in the field of applied research in the Member States and in non-member countries, while observing Community rules;

to participate in specialist conferences within the scope of the programmes laid down by the Commission in the field of applied mechanics and in the sector in which the applicants pursue their activities, the development of which has been entrusted to them, regard being had both to the positive results already obtained and to the scientific value of their work and initiatives;

Declare void the memorandum issued by the Head of the Applied Mechanics Division of 10 November 1982 whereby the applicants were unjustifiably and on a mere pretext deprived of their responsibility for research into the dynamic behaviour of materials and related studies, concerning in particular the use and improvement of equipment for heavy loading invented by the applicants;

Order the defendant to pay damages;

Make an order for costs in favour of the applicants unless the appointing authority rapidly revokes the decision and measures challenged;

Order preparatory inquiries including the hearing of witnesses, expert evidence, inspection of the premises and the production of documents.

The *Commission* contends that the Court should:

Dismiss the application in its entirety;

Order the applicants to pay the costs, including those relating to the interim proceedings.

IV — Submissions and arguments of the parties in the written procedure

A — Observations of a general nature

The *applicants* set out at very great length their work in the field of the dynamic behaviour of materials, calculations relating to the structures of nuclear reactors, studies of the resistance of materials under rapidly varying loads and the construction of instruments, installations, equipment and apparatus capable of measuring the reaction of materials.

All such research is said to have been conducted on the applicants' own initiative without advice or encouragement from their superiors; relations with foreign undertakings have always been maintained by the applicants, the Centre merely providing the administrative structure; every decision and initiative of a scientific nature has been taken by them; the laboratory for trials of materials in dynamics had a separate and original scientific function until 10 November 1982; the Centre contributed only marginally to scientific developments.

The applicant's initiatives and scientific achievements were not accepted by the new head of division who took up his duties in 1976: he appointed another head to the relevant sector of the Applied Mechanics Division, refused to assign a technician to the laboratory, deliberately impeded important scientific initiatives of the applicants and removed from their responsibility equipment which was the most important that they had patented and which represented the latest development of their research.

The motives of the head of division may be found in his training, his lack of experience in the management of a delicate experimental sector, his tendancy to prefer staff prepared to accept without criticism his bureaucratic directives, his "scientific jealousy" with regard to the applicants and his desire to favour the technical or scientific circles of a single country.

The *Commission* deplores the manner in which the applicants express themselves inasmuch as they do not hesitate to use expressions insulting to their immediate superior. Such language is unacceptable in any event and is all the more so since the applicants' accusations are wholly without foundation.

The insults to the head of division are at the same time insults to the Commission; the provocative attitude of the applicants also offends the dignity of the Court.

B — The refusal to allow publication and participation at a conference

The *applicants* complain that the head of division did not accept that they should maintain independent scientific relations at a high level in order to further their work; his violent reaction to their request for permission to publish the paper intended for the conference in

Cairo stems from his hostility to staff showing evidence of intuition and creative capacity.

The arguments used to challenge the scientific value of the publication in question are false and unfounded.

The demand that the applicants should not publish their scientific work constitutes a misuse of power, particularly since, even on the assumption that the quality of the applicants' work was not as high as the organizers of the conference considered it to be, the institution would not be responsible.

The head of division acted without any justification from the scientific or any other point of view.

The *Commission* considers that the refusal to authorize publication of the paper intended for the Cairo conference and to allow the applicants to attend the conference was fully justified for both procedural and substantive reasons.

(a) The applicants did not follow the normal procedure for submitting a request for permission to publish: their request for permission was made on 31 August 1982, one and a half months after the paper had been forwarded to the organizers of the Cairo conference.

The applicant's conduct was in flagrant breach of the second paragraph of Article 17 of the Staff Regulations.

(b) The obligations to follow the established procedure is intended to ensure observance of the fundamental requirement, especially in the scientific field, that publications should be of the level which the Commission is entitled to expect of its officials and staff and do not harm the Centre's reputation in scientific matters.

(c) Any article for which a request for permission to publish is made is subject to scrutiny by the relevant division of the Centre. In the Applied Mechanics Division there is an *ad hoc* perusal committee, the members of which are appointed on the basis of the subject involved; the committe delivers an opinion and may propose amendments to the text submitted; the head of division delivers a final opinion, which is forwarded to the Director of the Centre.

The applicants cannot claim to be ignorant of the procedure.

(d) In any event, the refusal to authorize publication of the paper in question is fully justified for scientific reasons.

The negative opinion of the head of division was shared by other members of the division; an inter-departmental seminar on the behaviour patterns of materials came to conclusions confirming, at least in part, the validity of the observations of the head of division; two outside experts subsequently consulted by the Commission delivered a negative opinion on the scientific merits of the paper.

(e) On 9 March 1983 the applicants submitted a request to publish a paper to be presented at a conference in Chicago in August 1983. The paper was an amended and improved version of the paper in question and permission to publish was granted. That fact confirms that the attitude of the head of division

with regard to the request to publish the paper in question was fully justified and that there is no animosity towards the applicants.

(f) The application to annul the refusal to authorize the applicants to take part in the Cairo conference no longer has any purpose in view of the date on which the conference was held.

Moreover, the refusal of permission to attend the conference is inseparable from the refusal to permit publication of the paper.

Even if the request to attend the conference in Cairo could be regarded as independent, it must be remembered that missions are not a right of the officials who request to be sent on them; the competent superior has a discretion to authorize them if it is appropriate to do so. The availability of budgetary funds is not a sufficient reason for a mission. In the present case the head of division considered that the mission to Cairo was inappropriate and superfluous.

The fact that the refusal to authorize the mission question was not dictated by any animosity on the part of the head of division towards the applicants is shown by the fact that in the past they have been on a large number of missions.

C — Refusal of certain outside contacts

The *applicants* refer to the very numerous contacts which they regularly maintain with research workers, undertakings, institutions and bodies outside the Community and claim that the basic reason for the memoranda of 27 September and 6 October 1982 was the fact that the head of division, through his own fault, felt excluded from the management of scientific matters in the sector for which he was responsible.

The fact that the applicants on a number of occasions had to propose cooperation with external theoretical experts was due to the shortcomings of another member of staff responsible to the same head of division.

The cooperation with the outside expert whom the applicants had invited to the Centre allowed a joint research programme of undoubted interest to be established at a very modest cost.

The head of division is aware that the applicants would never agree to enter into research contracts with undertakings not offering a sufficient scientific guarantee in the particular matter in question. In a field falling directly within the competence of the applicants, he prefers to rely on persons whom he regards as more docile to implement a policy which is not in the interests of the Community.

The *Commission* considers that the applicants' contentions concerning the right to maintain external contacts and to take part in conferences cannot be accepted.

(a) The application, as formulated, is inadmissible: the Court cannot declare *in abstracto* whether or not a person has a particular right. Interpreted as an application for the annulment of certain decisions by the head of division, it is unfounded.

(b) The documents produced by the applicants in no way permit the inference of a general ban on maintaining contacts with outside experts. It is apparent from the memorandum of 27 September 1982 that for reasons clearly stated the applicants' superior rejected a single request to invite one expert on a particular occasion.

(c) There is no rule giving an official of the Centre a "right" to have his requests to invite outside experts accepted. It is for the head of division, who is responsible for ensuring the smooth running of his department, to decide whether outside experts should be invited on the basis of various criteria, such as the need for such an invitation, the possibility of other forms of contacts, the relative importance of the specialization to the research carried out by the Centre and the funds available.

(d) In the present case the head of division considered that the two previous visits of the expert in question had been disappointing, that his ideas were well-known and could be used in conjunction with others at least as valuable, without his being present.

The refusal of the head of division to forward the request to invite the expert was fully justified and did not infringe any right of the applicants.

(e) The memorandum of 6 October 1982 from the head of division contains no general ban on the applicants' having contact with outside experts. It merely demands that the Centre's procedures in this matter be followed. Internal coordination prior to the establishment of outside contacts is essential for proper administration, especially in the field of scientific research. It is not possible for research workers in the employment of the Centre to go their own way, as though they were independent scientists solely responsible to themselves.

(f) The attitude adopted by the head of division was amply justified by the facts: the Centre had a contract with the Politecnico, Milan, and the applicants sought to by-pass the person responsible for the contract at the Centre.

D — Measures of internal reorganization

The *applicants'* complain that the internal memorandum of 10 November 1982 in practice relieved them of the responsibility for equipment which they had devised and built and entrusted it to another employee.

The applicants had worked for a large part of the last five years on the construction of that equipment, being extremly special experimental apparatus; because of the head of division's personal attitude, they were suddenly deprived without any justification of a unique instrument required for the further development of their research.

The effect of the contested decision in practice is to prevent testing and initial experiments with the apparatus in question; in view of the applicants'

unique experience with the project and the construction of the apparatus there is a risk of further delay if they are not reassigned to it.

Hierarchical relationships ought to encourage a common set of values for the purpose of achieving good results consistent with the programme; they should not constitute a means of personal revenge for a superior assigned to duties which correspond neither to his ability nor to his training.

The *Commission* is of the opinion that the contested departmental instruction lies within the exclusive competence of the head of division, whose responsibility it is to take all the decisions relating to the internal organization of his department in order to ensure that it functions as smoothly as possible. The reasons on which it is based are completely valid, since they correspond to the requirements of the department and infringe no right of the applicants.

(a) With regard to Mr Albertini, it must be observed that his complaints are quite without foundation since he has retained his previous title of "sheet holder", together with the duties which that involves.

(b) As regards Mr Montagnani, it has to be said that the decisions contained in the contested departmental memorandum were taken by the head of division after consultation with the director of the Centre; the head of division is responsible *inter alia* for organizing the work of the division in the best possible manner and in that connection must assign duties and responsibilities to the members of the division in accordance with the requirements of the department. The aspects of staff management in a scientific division which are at issue are the responsibility not of the appointing authority but of the head of division.

(c) The reasons on which the measures contained in the contested departmental memorandum were based proved to be wholly legitimate in the light of the administrative inquiry which led to the rejection of the applicants' complaint.

The applicants were not the only staff members of the Centre to have participated in the construction of the heavy-loading machine; in any event, the applicants cannot claim to have an exclusive monopoly in its use.

The transition from the stage of the construction of the machine to the stage at which it is perfected and then used for experiments requires from an organizational point of view management and coordinating abilities very different from those required in the initial stage. An alteration in the allocation of duties between the members of the division is therefore quite normal; it is for the head of division to assess the qualities of the staff in the department and to decide on their assignments on the basis of the fundamental requirement that the department should function as smoothly as possible. The applicants and in particular Mr Montagnani had given evidence in the past that they have little aptitude for work involving management and coordination, which requries frequent daily contact and cooperation with other departments of the Centre; moreover the applicants, whether deliberately or not, had retreated into "splendid isolation" which was not conducive to a climate of healthy internal cooperation.

V — Oral procedure

The applicants, represented by Mr Ulgheri and Mr Slusny, the latter authorized to use a language other than that of the case, and the Commission, represented by Mr Berardis, presented oral argument and answered questions put to them by the Court at the sitting on 15 December 1983.

The *applicants* gave particulars of their claims and stated that they withdrew the criticisms of a personal nature directed against the Head of the Applied Mechanics Division of the Ispra establishment.

As regards the refusal of permission to publish their paper intended for the Cairo conference, they stated that they had followed the normal practice of the Ispra establishment (in which there was no "perusal committee"); they challenged the authority of the head of division to apply the second paragraph of Article 17 of the Staff Regulations; they stated that the paper presented to the Chicago conference in August 1983 was different from that intended for the Cairo conference and they considered that, in any event, the administration had no discretion in this matter; in particular the scientific merits of a paper was not a criterion which could justify a refusal of permission to publish.

As regards the refusal of permission to attend the Cairo conference, the applicants stressed that scientific staff have a general interest in establishing as many contacts as possible with research workers outside the Centre.

As regards the measures which withdrew from them responsibility for the equipment which they had devised and constructed, the applicants claimed that the decision must be considered in the general context of their relations with their superior; they maintained that it was an individual decision taken in the guise of a measure of a general nature and constituted a misuse of power; they claimed that adequate reasons were not given for the contested decision and that the head of division was acting outside the scope of his authority.

The *Commission* contended essentially that, in applying the second paragaph of Article 17 of the Staff Regulations, the competent authority is perfectly entitled to take account of the scientific merits of the paper submitted for permission to publish; authority was delegated to the head of division and in any event the applicants no longer had any interest in making any complaint in that respect, since their contribution was published with a note of their name and of the fact that they belonged to the Centre in the publication devoted to the work of the Cairo conference.

Moreover, by virtue of a delegation of powers, the head of division had the authority to determine whether the applicants should attend the Cairo conference and to adopt such measures of internal re-organization as appeared necessary to him.

At the sitting both sides were authorized to produce a number of documents, on which they submitted written observations, the applicants on 9 January 1984 and the Commission on 27 January 1984.

The Advocate General delivered his opinion at the sitting on 5 April 1984.

Decision

1 By application received at the Court Registry on 23 December 1982, Carlo Albertini, an engineer and scientific officer in Grade A 6 at the Joint Research Centre at Ispra, and Mario Montagnani, an engineer and principal scientific officer in Grade A 4 at the same establishment, brought an action claiming that the Court should:

Declare that the applicants are entitled to present and publish, at a scientific conference to be held at Cairo University on 27 December 1982, a scientific paper entitled "Constitutive equations of austenitic stainless steel in dynamics — Experiments and calibration procedure" (hereinafter referred to as "the paper"), prepared in collaboration with two research workers at the University of Bologna;

Recognize their right to maintain contacts with institutions and research workers in the Community and non-member countries; and

Declare void the internal memorandum issued by the Head of the Applied Mechanics Division on 10 November 1982 relieving the applicants of their responsibility for research into the dynamic behaviour of materials and depriving them of the use of the large machine for dynamic tests.

In addition, the applicants claim that the Commission should be ordered to make good the damage caused to them by its unlawful action.

2 It has become apparent during the proceedings that the action, which was brought under Articles 90 and 91 of the Staff Regulations, seeks in substance the annulment of three sets of decisions or measures taken by the applicants' superior at the Centre, namely:

(a) two memoranda of 7 October and 5 November 1982, signed by the Head of the Applied Mechanics Division, refusing the applicants permission to publish the abovementioned paper and to participate in the Cairo conference;

(b) two memoranda from the Head of Division, one of 27 September 1982 refusing to invite a Polish expert at the expense of the Centre and another of 6 October 1982 rebuking the applicants for interfering in the performance of research contracts;

(c) a memorandum issued by the Head of Division on 10 November 1982 informing the officials concerned, including the applicants, of new arrangements concerning the responsibility for research into the dynamic behaviour of materials and the use of the research equipment (the "large machine") intended for that purpose.

3 By a separate application of 23 December 1982, the applicants applied for an interim order suspending the operation of the decisions contested in the main application.

4 On the same day the President of the Second Chamber made an order ([1982] ECR 4667) rejecting the application for suspension of the operation of the decisions relating to the publication of the paper and participation in the Cairo conference due to take place on 27 December 1982 and reserving his decision on the other claims. The other claims were dismissed by an order of 1 February 1983 ([1983] ECR 145) on the ground of lack of urgency.

5 The applicants have not formulated in legal terms the submissions in support of their application. It appears from their written and oral observations, taken as a whole, that they are putting forward in substance three series of complaints. In the first place, they allege that the measures taken with regard to them were motivated by the animosity of their Head of Division and for that reason were based on grounds unconnected with the interests of the service. In the second place, they claim that the measures taken restricted their scientific freedom; they consider that such a restriction follows from the manner in which the second paragraph of Article 17 of the Staff Regulations was applied to them with respect to the publication of the paper at issue, from the obstacles placed in the way of their contacts with institutions or research workers outside the Centre and from the withdrawal of responsibility for carrying out research into the dynamic behaviour of

materials. In the third place, they complain that adequate reasons were not given for the various measures at issue, particularly as regards the decision of 10 November 1982.

6 The first of those complaints calls for a preliminary observation. The complaint, which is set out at great length in the application, involves a number of allegations insulting to the head of division, some of which are capable of casting a slur on his personal, scientific and administrative reputation. Those allegations were not withdrawn until the hearing. In view of the fact that that withdrawal renders the first complaint virtually without substance, it may be concluded that the applicants are, in the final analysis, claiming either that there was no reason for the measures taken with regard to them or that the reasons for the measures were wholly unconnected with the interests of the service and that, in any event, the measures restrict their scientific freedom. It is in that light that the three series of complaints set out above must be considered.

The refusal of permission to publish the paper and to attend the Cairo conference

7 It appears from the documents before the Court that on 13 July 1982 Mr Albertini forwarded to the Secretary General of the Cairo conference the original version of the paper in issue for inclusion in the programme and informed him of his and Mr Montagnani's interest in the possibility of discussing it at the conference. The Secretary General acknowledged receipt by a letter dated 30 July 1982 and informed the applicants that the paper had been accepted for presentation to the conference and publication in the bound volume of the proceedings.

8 On 31 August 1982 the applicants submitted a request to their Head of Division for permission to publish the paper at the conference in question.

9 In a memorandum of 7 October 1982 the Head of Division made a number of criticisms with regard to both the form and the substance of the paper. He drew the applicant's attention to the fact that the major part of the paper was devoted to the reproduction of work already published by other research

workers and observed that "unfortunately the only two pages which could give some substance to the paper are very poor." The Head of Division invited the applicants to withdraw their paper. In addition, he emphasized that they had acted improperly in sending the paper to the conference organizer before submitting it for internal revision. In conclusion, he impressed upon them the need to follow the normal procedure in the matter.

10 On 5 November 1982 the Head of Division sent the applicants an internal memorandum concerning their attendance at the Cairo conference, which read as follows:

"I have examined the programme and take the view that it would not be profitable to send anyone to the conference. The programme is greatly lacking in homogeneity and for the most part is of no interest to us (production, design, industrial sessions, etc.). Some distinguished names appear in the programme but we can obtain the information contained in their papers by other means. The materials and reports of the session have little interest for us. I have invited you to withdraw your paper. Naturally my authority does not extend to your external co-authors. If they wish to present the paper in the name of their university they will have to reach agreement with their superiors."

11 It appears from the documents before the Court that on 30 November 1982 the applicants wrote to the conference organizer to inform him that permission to publish had not yet been given and that the paper must be regarded as withdrawn unless permission was forthcoming within the required period.

12 It appears from unchallenged information provided by the Commission that ultimately the paper was in fact published in the proceedings of the conference, which the applicants did not attend.

13 In order to demonstrate the unlawfulness of the refusal of their two requests the applicants refer to an internal memorandum dated 15 May 1979 (No 13/79) from the Director of the Ispra establishment relating to the procedure

for nominating those who should take part in scientific and technical conferences and the presentation of papers. They refer in particular to two points in that memorandum, from which it appears that the application to take part in a conference that is to be submitted to the hierarchical superior should contain *inter alia* "if possible confirmation that the paper has been accepted by the organizer" (point 2.7) and that officials are authorized to forward to the organizers their proposed papers "in the form of a title or summary" (point 4.1.b). The applicants maintain that they cannot therefore be criticized for sending in advance to the conference organizers what they described in their oral argument as a "draft" or "sketch".

14 In addition, the applicants emphasized the limits which in their view were inherent in the right of control exercised by the institution, under the second paragraph of Article 17 of the Staff Regulations, over the publications of its officials on subjects connected which the work of the Communities. In that respect they point out that, according to the second sentence of that paragraph, permission to publish may be refused only where the proposed publication "is liable to prejudice the interests of the Communities." In their opinion, consideration of those interests may involve questions such as secrecy or security, may not extend to control of the quality of a document; in particular the alleged mediocrity of a document cannot adversely affect the interests of the Communities. It was all the more unjustified to refuse publication of a paper of high scientific quality such as that of the applicants.

15 The Commission observes that the applicants did not follow the normal procedure for submitting a request for permission to publish and did not observe the precise and express provisions of Internal Memorandum No 13/79. The request for permission, on the appropriate form, was not submitted until a month and a half after the paper at issue had been forwarded to the conference organizers in Cairo. That attempt to confront the applicant's superiors with a *fait accompli* is in flagrant breach of Article 17 of the Staff Regulations and is sufficient in itself to justify dismissal of the action.

16 With regard to scope of the right of control exercised by the Community institutions over the publications of their officials under the second paragraph of Article 17, the Commission emphasizes that that right is intended, in the scientific field, to ensure observance of a fundamental requirement, namely that publications made in the name of the Centre should not adversely affect the scientific reputation of the Community.

17 In the present case, the competent Head of Division expressly informed the applicants of his criticisms regarding the inadequate scientific quality of their paper and in that connection the Commission consulted two outside experts, one belonging to the French Atomic Energy Commission and the other to the Nuclear Research Centre in Karlsruhe; both confirmed the Head of Division's opinion.

18 The Commission adds that in August 1983 the applicants made a request for publication of an amended and improved version of their paper for a conference in Chicago (SMIRT VII). The perusal committee at the Centre found that certains passages in the previous version, considered to be scientifically incorrect, had been deleted and that others had been improved or supplemented. Moreover, according to the Commission, completely new passages had been added, which provided the new text with a substantiality which it previously lacked. Finally, the perusal committee proposed amendments which the authors immediately accepted. Consequently, permission to publish was granted, which, according to the Commission, demonstrates that the Head of Division's attitude on the occasion of the request for publication of the version intended for the Cairo conference was fully justified and that there was no animosity towards the applicants.

19 Finally, as regards the applicants' attendance at the Cairo conference, the Commission states that an official requesting to go on a mission does not have the right to do so; rather the competent superior has a discretion to authorize him to do so in so far as the mission appears appropriate and compatible with the funds available. In the present case the Head of Division considered the Cairo mission to be inappropriate and superfluous. The Commission considers that in any event that question is no longer of any consequence since the Cairo conference is now in the past.

20 The applicants put forward two contentions in reply to the Commission's arguments.

21 On the one hand, they consider that the Commission may not put forward opinions obtained after the action was brought and which have not been examined by both sides. Secondly, they allege that the paper presented for the Chicago conference is not in any way an amended version of the paper in question but a completely separate paper.

22 In order to resolve these issues, it is necessary first of all to recall the provisions of the second paragraph of Article 17 of the Staff Regulations:

"An official shall not, whether alone or together with others, publish or cause to be published without the permission of the appointing authority, any matter dealing with the work of the Communities. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Communities."

23 That provision is supplemented in relation to officials of the scientific and technical staff of the European Atomic Energy Community by Article 94 of the Staff Regulations, which provides *inter alia* that the obligation to obtain permission extends to "the publication .. of any matter" dealing with the work of the Community.

24 The obligations arising from those provisions for the officials concerned are amply set out, as far as the requirements of the Ispra establishment are concerned, in Internal Memorandum No 13/79, the relevance of which has been recognized by the parties.

25 It follows both from the aforesaid provisions of the Staff Regulations and from the internal memorandum that the officials concerned may not enter into any commitment regarding official participation in scientific meetings and the presentation of papers before submitting to the superior authority the draft of the documents which they wish to present or publish on the occasion of such meetings.

26 It is true that Internal Memorandum No 13/79 allows officials to announce the title of their contributions and to forward a summary thereof in advance, but it is expressly stated at point 4.1.b. that "full texts may in no event be forwarded to the conference if their publication has not been duly authorized."

27 It is apparent from the documents before the Court that it was the full text of their paper which the applicants, long before they submitted their request for permission, forwarded to the conference organizers in Cairo, informing them of their wish to participate. The Head of Division was therefore fully justified in reminding them, in his memorandum of 7 October 1982, of their obligation to observe the rules applicable in the matter.

28 In so far as the content of the paper still needs to be considered in spite of the clear breach by the applicants of their duties under the Staff Regulations and Internal Memorandum No 13/79, the following should be added.

29 As the Commission rightly observed, the competent authority is entitled to take into account all aspects of a communication or a document concerned with the work of a Community institution in order to determine whether its publication is compatible with the interests of the Community. In particular, in the case of a research establishment such as the Centre, the competent authority is entitled to assess the scientific value of a work in order to determine the effect of its publication on the scientific reputation of that establishment.

30 It is apparent from the documents before the Court that the Head of Division, who, by virtue of the internal organization of the Centre, was entrusted with controlling the scientific work of the departments placed under his authority, did not exceed his lawful discretion in assessing the draft paper from the viewpoint of the scientific qualities desirable in the case of work presented in the name of the Centre. The applicants have been unable to demonstrate any circumstances which could lead to the view that there was a manifest error in that assessment.

31 In those circumstances it does not appear necessary to consider the opinions which the Commission has obtained or to resolve the question whether the document subsequently presented at the Chicago conference is an improved version of the paper in issue or an entirely new document.

32 As regards the question of participation in the Cairo conference, which the applicants still consider important as a matter of principle, it must be observed that it is for the superior authority alone to decide, in complete freedom, whether it is appropriate to allow staff to participate in their official capacity in scientific meetings of that kind. The applicants cannot therefore complain that their Head of Division considered that the Cairo conference, whatever the value of its work, was not of sufficient interest from the viewpoint of the work performed by the Centre.

33 Finally, in so far as the complaint based on the failure to give adequate reasons applies to the two decisions in questions, it must be observed that both decisions contain an express statement of reasons, which was moreover fully understood by those concerned.

34 It follows from the foregoing that the complaints made against the Internal Memoranda of 7 October and 5 November 1982, signed by the Head of the Applied Mechanics Division, must be rejected.

The refusal to establish certain outside contacts

35 In their application and their oral observations the applicants complained that obstacles were systematically placed in the way of their efforts to establish scientific contacts with institutions or research workers in the Community or in non-member countries. However, only two of the incidents referred to are the subject of claims for annulment, namely the refusal to receive a Polish expert at the establishment and the rebukes delivered to the applicants because of their intervention in the performance of certain research contracts. The Court must therefore confine its consideration to those two incidents.

36 In answer to the applicants' complaints, the Commission contended that there har never been any general ban on the applicants maintaining contacts with experts outside the Centre. The two incidents referred to by the applicants must each be considered according to their particular merits; the Commission considers that the refusal in the first case and the rebukes in the second were fully justified.

37 With regard to the refusal of the proposal to invite a Polish expert, it appears from the contested decision itself that the invitation to make a scientific visit to the Centre was to be at the expense of the Community. The authorization of such a visit falls within the powers of the head of the department concerned; the applicants cannot therefore complain that the Head of Division took the view that, in view of the fact the services provided by the experts on the occasion of previous visits had been considered disappointing, a further invitation did not appear appropriate.

38 As regards the internal memorandum of 6 October 1982, it appears from that memorandum that the Head of Division rebuked the applicants for interfering with the performance of a research contract without the knowledge of the person primarily responsible for the contract, for forwarding to a third party a letter sent to the Centre by a French organization and for intervening improperly in another contract. Those incidents led the Head of Division merely to remind the applicants of the rule that "in its outside contacts the Centre must speak with a single voice" and to describe their conduct as unacceptable because it caused "confusion to outside associates and chaos within the Centre".

39 Since the purpose of that internal memorandum was merely to remined the applicants of certain elementary principles valid for any administration in its relations with third parties, it cannot be regarded as an act capable of adversely affecting the applicants within the meaning of Articles 90 and 91 of the Staff Regulations.

40 It appears therefore that the complaints made under this head must be dismissed on the ground that they do not disclose any legitimate interest.

Withdrawal from the applicants of their responsibility for research into the dynamic behaviour of materials

41 The subject-matter of this complaint is an Internal Memorandum dated 10 November 1982 from the Head of Division addressed *inter alia* to the applicants, the terms of which were as follows:

"With effect from today Mr Verzeletti will take over responsibility for research into the dynamic behaviour of materials, components and structures, using the large machine for dynamic tests.

His first task will be to draw up an instrumentation plan, a plan for carrying out tests to perfect the machine and a plan of experiments in the medium term (two to three years). He will coordinate the numerical support activities necessary for the project."

42 The applicants allege that the effect of that memorandum was wrongly to deprive them of their responsibility, in the field of activity assigned to them, for an instrument of research which they had devised and constructed in the course of many years of work.

43 In their opinion, the contested decision could be taken only by the appointing authority and not by the Head of Division. In addition it contained no statement of reasons as required by Article 25 of the Staff Regulations.

44 On that issue the Commission contends first of all that Mr Albertini's complains are without foundation since he has retained all his previous duties; consequently, only Mr Montagnani is in fact concerned.

45 As regards the nature of the contested decision, the Commission states that it is a measure of internal organization taken within the Applied Mechanics Division and cannot therefore be regarded as a decision capable of adversely affecting the applicants within the meaning of Article 25 of the Staff Regulations. The reorganization was necessary because Mr Montagnani, whose merits with respect to the construction of the machine are not disputed, had not shown in the past sufficient aptitude for work involving management and coordination, which became necessary once the construction stage was

complete. In no event can the fact that the applicants contributed to the construction of the equipment in question, which is the property of the Centre, confer on them a right of exclusive use. In that regard the Commission emphasizes that the applicants, like other research workers at the Centre, continue to have access to this research instrument.

46 With regard to this head of claim, it must be remembered that it is not possible to regard as a measure adversely affecting an official, within the meaning of Article 25 of the Staff Regulations, and as such subject to the requirement that the administrative authority should state the grounds on which it is based, a measure of internal organization which is not of such a nature as to affect the official's position under the Staff Regulations or to infringe the principle that the post to which he is assigned should correspond to his grade (see on this point the judgment of 1 June 1983 in Joined Cases 36, 37 and 218/81, *Seton* v *Commission,* [1983] ECR 1789). It appears from the particulars supplied during the proceedings that the internal memorandum in question did not alter the scientific nature of the duties performed by the applicants within their division. It is part of the normal exercise of authority within an administration for a superior to assign, in conformity with the abovementioned principle, duties to officials on the basis of their particular aptitudes; measures adopted for that purpose require no special justification.

47 It is apparent from an examination of the documents before the Court that the position of the two applicants under the Staff Regulations was not adversely affected by the measures taken by the Head of Division in his Internal Memorandum of 10 November 1982, whereby he altered the responsibilities within his division with respect to the management of the research instrument to the construction of which the applicants contributed.

48 This complaint must therefore also be rejected.

49 It follows from the foregoing that the claim for annulment must be dismissed.

50 The claim for damages made in the alternative is therefore rendered purposeless.

Costs

51 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, Article 70 provides that, without prejudice to the second subparagraph of Article 69 (3) concerning costs which the Court considers to have been unreasonably or vexaciously caused, in staff cases institutions are to bear their own costs.

52 The Court considers that the applicants cannot benefit from the provisions of Article 70 because of the, in many respects, abnormal and abusive manner in which they have conducted the proceedings. Such conduct, which is unacceptable in the relationship of trust which should exist within the Community administration, means that the applicants must be ordered to pay the whole of the costs, including those of the interim proceedings.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicants to pay the whole of the costs, including those of the interim proceedings.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg, 17 May 1984.

For the Registrar

D. Louterman

Administrator

K. Bahlmann

President of the Second Chamber