the report is made periodically at the intervals prescribed by the Staff Regulations and that it is drawn up in a proper manner. The administration has a reasonable period at its disposal in which to do this and any failure to act within that period must be justified by the existence of special circumstances.

3. Where the administration exceeds by far the reasonable period which it has at its disposal in order to complete an official's report and is unable to prove the existence of special circumstances of such a nature as to justify the delay, that omission is of such a nature as to entail liability on the part of the administration.

In Case 207/81

KUNO DITTERICH, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Avocate, Centre Louvigny, 34B Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jörn Pipkorn and Hendrik van Lier, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Plateau du Kirchberg,

defendant,

APPLICATION for the annulment of the applicant's periodic report for the period 1 July 1975 to 30 June 1977 and for damages for the irregularities and delay in the drawing up of that report and, in the alternative, for an order requiring the defendant to produce the whole file relating to the periodic report for the period 1975 to 1977 and also for an order requiring various facts set out in the application to be established by the evidence of witnesses,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, G. Bosco and Y. Galmot, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

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 and written procedure

Kuno Ditterich, a German national, was engaged on 4 October 1954 by the Commission of the European Atomic Energy Commission as an official in the scientific service.

He works at the Joint Research Centre (JRC) at Ispra and is at present in Grade A 5, Step 8. After being assigned to the Chemistry Division of Department C until 1 January 1977 he was assigned to Department A on that date.

By virtue of the first paragraph of Article 43 of the Staff Regulations of Officials an official's ability, efficiency and conduct must be the subject of a periodic report made every two years.

The periodic report covering the period 1 July 1975 to 30 June 1977 was drawn up by the assessor, Mr Bishop, the director of Department C, after consultation with Mr Hannaert, the head of division under whom the applicant worked until 31 December 1976, and Mr Helms and Mr Slesser, respectively director and head of the division to which he has belonged since that date.

According to the Commission, it was those consultations which delayed the signing of the report by Mr Bishop until 29 December 1979.

The report contains a general assessment which reads as follows:

"Mr Ditterich certainly has the right abilities for systems analysis which, together with a greater spirit of cooperation, could be of more benefit to himself and to the JRC programme."

His conduct in the service was judged to be "average" whilst his ability and efficiency were marked as "above average".

The applicant disputed the general assessment and at their meeting on 11 January 1980 told Mr Bishop, his assessor, that he was unhappy about it.

Availing himself of the right provided for in the second paragraph of Article 43 of the Staff Regulations to make comments on the periodic report communicated to him, Mr Ditterich contended in a memorandum dated 17 January 1980 that the general assessment was irreconcilable with the fact that during the period covered by the report he had published numerous articles in collaboration with other officials at the Ispra establishment. The applicant considered that the comment in question was the result of a subjective, and not an objective, examination of the facts and consequently asked for it to be struck out.

Mr Ditterich called in the appeal assessor, Mr Mas, Deputy Director-General of the Joint Research Centre and Director of the Ispra establishment. After a discussion with the applicant on 5 March 1980 the appeal assessor

confirmed the periodic report on 26 March 1980.

On 31 March 1980 the applicant appealed to the Joint Committee on Staff Reports which gave its opinion on 15 July 1980.

After noting that the applicant's conduct in the service was marked as "average" whereas in his previous report covering the period 1973 to 1975 his conduct had been judged to be "above average" the Committee concluded its opinion by stating that it regretted that "that assessment, which is closely related to the general assessment contested in the memorandum, was not accompanied by any explanatory comments, such comments being particularly important where an assessment is less favourable than that made in the previous report".

When requested by the Joint Committee on Staff Reports to justify the mark awarded for the applicant's conduct in the service Mr Mas stated that "during this period Mr Ditterich systematically questioned all his superiors' decisions concerning him".

That further statement altering the periodic report was notified to the applicant on 22 October 1980.

By a memoramdum dated 1 December 1980 received at the Commission on 16 December Mr Ditterich lodged a complaint under Article 90 (2) of the Staff Regulations against the appointing authority's decision of 22 October 1980 adopting the definitive version of his periodic report.

After deciding that there was an implied rejection of his complaint Mr Ditterich brought the present action, his application being registered at the Court on 8 July 1981.

In his application the applicant, who states that he does not know whether his complaint of 1 December 1980 was submitted to the Joint Committee on Staff Reports, reserves the right to raise one or more fresh issues during the proceedings pursuant to Article 42 of the Rules of Procedure of the Court.

Replying to the applicant's complaint of 1 December 1980 the Vice-President of the Commission informed the applicant on 11 August 1981 that the Commission could not accept his complaint, in particular because his comments provided no evidence that the assessments made by his superiors were invalid or that the delay in adopting the periodic report had been prejudicial to him.

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.

Owing to the change in its composition the Court decided, by order of 7 October 1982, to assign the case to the Third Chamber.

II — Conclusions of the parties

In his application the applicant claims that the Court should:

1. Declare the applicant's periodic report for the period 1 July 1975 to 30 June 1977 and also the appeal assessor's decision of 22 October 1980 null and void;

2. In any event order the defendant to pay the applicant on account of the irregularities and delay which oc-

curred the sum of BFR 500 000 plus interest at the usual rate calculated from 1 December 1980, this claim being subject to alteration during the proceedings;

3. Order the defendant to pay the costs;

In the alternative

4. Order the defendant to produce the whole file concerning the periodic report for 1975 to 1977, excluding and withholding nothing;

5. Order the following facts to be established by the evidence of witnesses:

   (a) that the applicant worked with his colleagues in a climate and with a spirit of cooperation in all usual matters;

   (b) that the applicant did not systematically oppose his superiors' decisions.

In his reply the applicant claims that the Court should also:

1. Declare the Commission's decision contained in its letter of 11 August 1981 null and void;

2. In any event order the Commission to pay the applicant on account of the irregularities and the delay which occurred such sum as the Court considers fair and equitable by way of compensation for the material and non-material damage suffered;

3. Order the Commission to pay the costs.

In the alternative

4. Order the Commission to produce in particular documentary evidence of his alleged systematic questioning of his superiors' decisions concerning him;

5. Order the facts set out in the application to be established by the evidence of witnesses.

6. The applicant proposes as witnesses:

   (i) His colleagues in the Chemistry Department and in Department A;

   (ii) His superiors in both those departments.

7. In that event reserve the costs.

The Commission contends, making all such reservations as may be appropriate, that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Eight submissions are made, two of them in the reply.

The first submission

The first submission is that the general assessment in the periodic report concerning the insufficient spirit of cooperation on the part of Mr Ditterich is based on inaccurate information and is contradictory.

The *applicant,* who requests the Court to verify whether there is any contradiction between the facts and the comments in the periodic report, states that during the period covered by the report he published in collaboration with other officials a number of articles for which he provides the references.

That fact conflicts with the assessor's general assessment noting a lack of cooperation on the part of the applicant and the appeal assessor's contention that he systematically questioned decisions.

The applicant also contests the relevance of the facts to which the appeal assessor referred without specifying them. He considers that, since the appeal assessor's charge was that his questioning of decisions was systematic, he ought to have indicated the facts on which he based his assessment.

He observes that the Court has always taken the view that it may verify the accuracy of facts on which an assessor's opinion is based without substituting its own assessment for that of the assessing authority.

Accordingly, the applicant requests the Court to hear from witnesses (his superiors, colleagues and subordinates in the two departments to which he belonged) to establish whether the assessor's and appeal assessor's assertions are correct.

The Commission's view is that terms of the periodic report do not indicate any ignorance of the facts relating to the applicant's conduct, ability or efficiency. Although the existence of published works produced by the applicant in collaboration with other colleagues is evidence of his aptitude for working with others in one particular way, it does not necessarily indicate the same spirit of cooperation in his relations with his colleagues within the establishment.

The Commission stresses that it did not accuse the applicant of showing no spirit of cooperation at all. It simply believes that with a greater spirit of cooperation he could derive more benefit from his knowledge. To contend that there is a factual error or a contradiction between the facts of the case and the general assessment is not therefore correct.

In their analytical assessment, the assessors described the applicant's conduct as "average" — whilst in the previous report it was described as "above average" — because of repeated incidents evidencing a rather contentious attitude on the part of the applicant. On this point the Commission stresses that on several occasions the applicant prepared or undertook to prepare papers on certain research programmes at the Centre in spite of the disapproval of the director of Department C, Mr Bishop, and of Mr Bresesti, the head of programmes at the Ispra establishment. For example, the applicant continued to prepare a paper on radioactive waste more than a year after the Council's decision to stop research work in that field and despite Mr Bresesti's request that he should not do so. Mr Bresesti was forced to forbid him to proceed with the paper. In spite of that incident the applicant prepared a further paper without asking for authority from his superiors.

The Commission points out that in a consistent line of decisions, in particular the judgments of 12 May 1977 in Case 31/76 *Macevicius* v *Parliament* [1977] ECR 883, especially paragraph 8, of 25 November 1976 in Case 122/75 *Küster* v

Parliament [1976] ECR 1685, especially paragraph 9, of 17 March 1971 in Case 29/70 *Marcato* v *Commission* [1971] ECR 243, especially paragraph 7, and of 5 November 1963 in Joined Cases 35/62 and 16/63 *Leroy* v *High Authority of the ECSC* [1963] ECR 197, especially at pages 206 and 207, the Court has refused to substitute its assessment for that of the assessor, especially where complex value judgments are involved. The Court only sanctions lack of authority, irregularity of form or procedure, misuse of power, error or manifest contradiction.

The second submission

The second submission is that the assessor's general assessment and the reason given by the appeal assessor for that assessment are contradicted by the description of the applicant's conduct as "average".

The *applicant* observes that, if the criticism about his alleged lack of spirit of cooperation or questioning attitude had been justified, his mark for conduct in the report would inevitably have been affected.

He points out that, since the mark awarded for conduct in the present report was different from that awarded in the previous report for 1973 to 1975, the Joint Committee on Staff Reports in its opinion of 15 July 1980 asked the appeal assessor, Mr Mas, to explain, so far as necessary, why this was so.

In the applicant's view, in stating that he had systematically questioned his superiors' decisions, the appeal assessor did not give the explanation asked for but made a fresh assessment which logically ought to have precluded his conduct from being marked as "average".

The *Commission* states that the appeal assessor wished to emphasize that the applicant's systematic questioning prevented him from obtaining the "above average" mark which he had previously earned. Only if his questioning had made any form of cooperation impossible, not only with his superiors but also with his colleagues in the division, or if he had refused to obey instructions, would his conduct have had to be classified as "below average" or, depending on the circumstances, given rise to other proceedings against him.

According to the Commission, the applicant had not adduced any evidence indicating that it exceeded its power of appraisal.

The third submission

The third submission is that the reason given by the appeal assessor is ambiguous as it is not clear whether it refers to the applicant's conduct or to his work.

According to the *applicant,* there is every reason to believe that the statements made in his periodic report were a result of his administrative situation or, to put it more precisely, of friction between him and the Administration after the refusal

of his request for promotion, leading to proceedings in which the Court gave a judgment on 12 October 1978 ([1978] ECR 1855). He believes that an official is entitled to question his superiors' decisions and that disputes of that kind are not of such a nature as to affect the service. Therefore they should not enter into the assessment of an official's conduct in the service.

The *Commission* observes that the applicant has not offered to prove which of the circumstances of his administrative situation caused the assessors to make the assessments in question.

According to the Commission, it is clear that the explanation given by the appeal assessor relates to the applicant's conduct and not to his efficiency, ability or administrative situation.

The fourth submission

The fourth submission is that the rules in the Guide to Staff Reports were not observed.

According to the *applicant,* it is clear from the Guide to Staff Reports that only above-average and below-average assessments should be justified. The applicant therefore considers that the appeal assessor was not entitled to justify the assessment of the applicant's conduct as average.

Although the explanation was given by the appeal assessor in response to a wish expressed by the Joint Committee on Staff Reports, the date on which that wish was made known to the appeal assessor should, in the applicant's view, be established in order to determine whether the Guide to Staff Reports as then in force was followed.

According to the *Commission,* the provision in the Guide to Staff Reports (1973, p. 39, Annex VII to the defence) requiring below-average and above-average assessments to be commented upon by no means prohibits the giving of reasons for average assessments as this can only help to make periodic reports clearer and thus give the officials assessed greater reassurance.

The Commission points out that the comment in question was added in response to the wish of the Joint Committee to which the applicant had himself referred the matter.

The Commission observes that it is the generally accepted practice for reasons to be given, at the Joint Committee's suggestion, for average assessments if the assessment in the previous report was above average. In this case, the Joint Committee expressed such a wish in its opinion of 15 July 1980.

The fifth submission

The fifth submission is that, contrary to the requirements of the Guide to Staff Reports, the periodic report and the appeal assessor's assessment were not written in the applicant's native or main language.

In the applicant's view it would have been preferable for the report to be written either in German, his native language, or in English, the language which he and the assessor use. The report was, however, written in French.

The *Commission* points out that, on page 41, the Guide to Staff Reports provides that "The form used must be in the mother tongue or main language of the person assessed. However, assessors may

use the official language of their choice. Where the language chosen by the assessor is different from the mother tongue or main language of the person assessed, a translation of the assessment must be given to him if he so requests".

In the Commission's view this submission is groundless as the applicant did not exercise his right under the Guide to Staff Reports to ask for a translation of the comments entered by the assessors in the report in question, which was written on a German-language form.

The Commission also observes that the application made to the Court is in French.

The sixth submission

The sixth submission concerns the delay in the drawing up of the report in its definitive version and the harm which this caused to the applicant.

The *applicant* observes that the report for the period 1975 to 1977, which ought to have been made by the end of 1977 at the latest, was not signed by the assessor until 29 December 1979. That delay was made still worse by the fact that the opinion of the Joint Committee on Staff Reports dated 15 July 1980 was not followed by a decision within eight days, as required by the Guide to Staff Reports — the decision was not taken until 22 October 1980.

According to the applicant, the slowness of the administration at Ispra in drawing up periodic reports is well known. That fact is clearly apparent from the decisions of the Court. In his case the report for the period 1969 to 1971 was not notified to him until 7 January 1975.

Referring to the judgment of 5 June 1980 in Case 24/79 *Oberthür* v *Commission* [1980] ECR 1743, the applicant considers that the delay in drawing up the report in issue caused him material and non-material damage as the incomplete and thus irregular state of his personal file reduced his chances of promotion.

The merits of officials eligible for promotion are examined in the light of their periodic reports. It is plain from the judgment of 14 July 1977 in Case 61/76 *Geist* v *Commission* [1977] ECR 1419 that the prompt drawing up of an official's report is a guarantee for the regular progress of his career.

The applicant seeks compensation for the material and non-material damage which he suffered and which in his application he estimates at BFR 500 000. After explaining in his reply that in assessing the damage he took account of the fact that the authorities at Ispra were persistently slow in drawing up periodic reports despite the judgments given on this matter, the applicant states the he leaves the assessment of damages to the Court.

The *Commission*, whilst regretting the length of time taken to draw up the report in question, points out that the applicable version of the Guide to Staff Reports does not lay down any strict time-limit for the drawing up of periodic reports. In the present case the delay was due to changes in the unit in which the

applicant worked and to his own change of posting which made it necessary to consult several of his superiors or former superiors.

In the Commission's view the allegation that material damage was suffered is without foundation. As the applicant did not promptly challenge any promotion decision taken during the period in which the periodic report ought to have been drawn up, he cannot now claim that his chances of promotion have been affected.

In any event it is not possible for delay in the drawing up of a periodic report to affect decisions to promote officials.

The marks obtained in the same periods by the officials promoted were on the whole no lower than those awarded in the applicant's report.

The Commission notes that although the claim for damages is associated with the application for annulment, in actual fact it is a claim for compensation.

In any event the Commission considers that the applicant's claims for damages are excessive and hence inadmissible.

The Commission points out that in a somewhat similar case, at least as far as the sixth submission is concerned, the Court awarded the applicant BFR 10 000 as compensation for non-material damage caused by delay in the drawing up of a periodic report (Case 61/76 *Geist* v *Commission* [1977] ECR 1419).

The seventh submission, made in the reply

The seventh submission is that the Commission's answer given on 11 August 1981 — that is to say after this action was brought — to the complaint which the applicant had submitted to it on 1 December 1980 was not made in reasonable time and was not preceded by consultation of the Joint Committee on Staff Reports, contrary to the requirements of the Guide to Staff Reports.

The *applicant* observes that on page 187 of the 1971 version the Guide to Staff Reports provides that: "When the Joint Committee on Staff Reports had given a negative opinion (see heading C.3.a) or when the appeal assessor has taken a final decision (see heading C.3.b), officials are entitled to lodge a complaint under Article 90 of the Staff Regulations. The Joint Committee must be consulted regarding such a complaint. It will then be for the Commission, as appointing authority, to give a final decision on it."

According to the applicant, it is clear from that passage that the Commission must take a decision within a reasonable time after consulting the Joint Committee on Staff Reports.

The applicant observes from the document appended as Annex VI to the defence that the Commission did not comply with those requirements.

The Commission explains that the Joint Committee on Staff Reports was not consulted again since its opinion of 15 July 1980 had been complied with by virtue of the assessment made by the appeal assessor on 12 October 1980.

As regards consultation with the Joint Committee on Staff Reports, it should be observed that the Guide to Staff Reports (attached to the rejoinder) lays down at page 142 the principle of the automatic right of appeal which reduces the binding effect of the provisions of the Guide cited by the applicant.

The eight submission, made in the reply

The eight submission is that the Commission's reply to the applicant's complaint is null and void.

The *applicant* claims that the Commission's reply is void by virtue of the considerations put forward in the five submissions made in the application.

The *Commission* states that, whilst it does not agree with the theoretical considerations which seem to underly that submission, it refers, as far as necessary, to the arguments which it submitted to the Court in reply to the applicant's first five submissions.

The alternative claim

In the alternative the *applicant* asks the Court to establish by the evidence of witnesses first that he worked in a climate and with a spirit of cooperation in all usual matters and, secondly, that he did not systematically challenge his superiors.

The defendant considers that, as the purpose of that request is to establish the facts on which the main action is based, it is not alternative to but is connected with the main claims in the application.

The defendant also emphasizes that the very purpose of the applicant's request conflicts with the power of appraisal of the assessor who draws up the periodic report on the basis of a value judgment which is by its nature subjective.

The applicant has nothing to gain from making such a request. If judgment is given in his favour, it will have no purpose. Conversely, dismissal of the main action will entail dismissal of the alternative claim.

IV — Oral procedure

At the hearing on 3 February 1983 oral argument was presented by Marcel Slusny, Advocate, for Kuno Ditterich and by Hendrik van Lier, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 17 March 1983.

Decision

1 By application lodged at the Court Registry on 8 July 1981 Kuno Ditterich, an official in the scientific service in Grade A 5, Step 8, at the Joint Research Centre at Ispra, brought an action seeking:

1. The annulment of the applicant's periodic report drawn up on 20 December 1979 for the period 1 July 1975 to 30 June 1977 and of the

appeal assessor's decision dated 22 October 1980 adopting the definitive version of that report. In his reply the applicant amends his claims, as he reserved the right to do in his application, to include a claim for the annulment of the decision of 11 August 1981 by which the Commission expressly rejected his complaint of 1 December 1980 after this action had been brought.

2. An order requiring the Commission to pay him BFR 500 000 as compensation for the material and non-material damage which that periodic report caused him. In his reply, however, the applicant states that he leaves it to the Court to assess the amount of damages which he may claim.

3. In the alternative, an order that the Commission must produce the whole file concerning the report in question and that the accuracy of the comments made in that report must be verified by the evidence of witnesses.

2 The file on the case shows that the applicant was assigned to the Chemistry Division of Department C of the Joint Research Centre at Ispra until 1 January 1977 at which time he was assigned to Department A.

3 On 20 December 1979 a periodic report on Mr Ditterich for the period 1 July 1975 to 30 June 1977 was drawn up by Mr Bishop, the head of Department C at the Joint Research Centre, after consultation with the heads of department to which Mr Ditterich had been assigned.

4 The report contains a general assessment which refers to a certain lack of spirit of cooperation on the part of Mr Ditterich, whereas his ability and efficiency are marked as "above average" and his conduct in the service as "average".

5 Exercising his right to make comments on the periodic report provided for in the second paragraph of Article 43 of the Staff Regulations, Mr Ditterich requested that the assessor's statement noting a lack of spirit of cooperation on his part should be struck out and that the appeal assessor, Mr Mas, Deputy Director-General of the Joint Research Centre and Director of the Ispra establishment, should take up the matter. However, Mr Mas confirmed the periodic report on 26 March 1980.

6 On 31 March 1980 Mr Ditterich then appealed to the Joint Committee on Staff Reports which gave its opinion on 15 July 1980. After noting that the

applicant's conduct in the service was marked as "average" whereas in his previous report covering the period 1973 to 1975 it had been judged to be "above average", the Joint Committee on Staff Reports asked the appeal assessor, Mr Mas, to justify the assessment relating to the applicant's conduct.

7 In compliance with that request the appeal assessor, Mr Mas, qualified the periodic report on 22 October 1980 by explaining that the assessment in question was due to the fact that during the period covered by the report Mr Ditterich had "systematically questioned all his superiors' decisions concerning him".

8 By memorandum dated 1 December 1980 Mr Ditterich lodged a complaint pursuant to Article 90 (2) of the Staff Regulations against the appointing authority's decision of 22 October 1980 adopting the definitive version of the periodic report. Since after more than four months no reply to that complaint had been received from the Administration Mr Ditterich brought this action.

The claims for annulment of the periodic report

9 In his written submissions the applicant claimed that the appeal assessor was not entitled to give an explanation for the assessment of his conduct in the service because it had been judged to be "average", and also that the periodic report was not written in his native language. Those two claims were abandoned at the hearing and need not therefore be considered.

10 In the applicant's view the general assessment noting a lack of spirit of cooperation on his part is based on incorrect information and is contradictory. The fact that during the period covered by the report he published a number of studies in collaboration with colleagues contradicts the general assessment and also the appeal assessor's assertion regarding his attitude of systematic questioning.

11 The applicant also maintains that if the assessor's and appeal assessor's assessment had been justified his mark for conduct in the service would have

had to be below average, which was not the case. The periodic report thus contains contradictory assessments and marks.

12 Finally the applicant claims that the real basis of those assessments is not his ability, efficiency or conduct in the service but the friction which arose between him and the Administration after his request for promotion was refused, that dispute having been dealt with by the Court in its judgment of 12 October 1978 in Case 86/77 [1978] ECR 1855.

13 The Court has consistently held that periodic reports contain assessments which cannot be reviewed by the Court save in order to identify irregularities of form, manifest factual error or misuse by the persons involved in the drawing up of the reports of their power of appraisal.

14 As regards the contradictions alleged by the applicant, it must first be observed that, although the publication of studies in collaboration with some of his colleagues is evidence of his aptitude for working with others in certain ways, it does not necessarily mean that he shows the same spirit of cooperation in all his relations at work. The assessment made by the first assessor is not therefore contradictory. Secondly, it should be noted that the applicant does not deny that, in spite of instructions which he received, he pursued research work under programmes which the Council had discontinued. That attitude justified the award by the appeal assessor of a mark for conduct in the service which was lower than that awarded to him in the previous periodic report. There is therefore no contradiction, either, between the appeal assessor's assessment and the mark awarded for conduct in the service.

15 It must be observed that the rest of the applicant's criticisms do not relate to manifest errors of fact susceptible of objective verification or to evaluations or assessments capable of objective review but rather to value judgments which by their very nature and purpose cannot be reviewed by the Court.

16 The applicant's complaints must therefore be rejected, there being no need to verify the accuracy of the criticisms contained in the periodic report in question or to require the Commission to produce the whole of the file concerning the contested report or to verify, by the evidence of witnesses, the accuracy of the comments made in the report, as the applicant asks the Court to do by way of alternative claim.

The claim for annulment of the express decision rejecting the complaint

17 The applicant also asks the Court to annul the express decision rejecting the complaint which he lodged on 1 December 1980 under Article 90 (2) of the Staff Regulations. He maintains that the decision was irregular on the ground that the provisions of the 1971 version of the Guide to Staff Reports, which applied to reports covering the period from 1969 to 1977, were not observed.

18 In the terms of the general remark on page 187 of the 1971 version of the Guide to Staff Reports: "When the Joint Committee on Staff Reports has given a negative opinion (see heading C.3. a) or when the appeal assessor has taken a final decision (see heading C.3.b), officials are entitled to lodge a complaint under Article 90 of the Staff Regulations. The Joint Committee must be consulted regarding such a complaint. It will then be for the Commission, as appointing authority, to give a final decision on it."

19 Although it does in fact appear that, contrary to the provisions cited above, Mr Ditterich's complaint against the decision adopting the definitive version of his report was not submitted to the Joint Committee on Staff Reports, that fact cannot be regarded in this instance as an infringement of an essential procedural requirement. The Joint Committee on Staff Reports had in fact already been asked to consider Mr Ditterich's case and the appeal assessor had supplemented the periodic report in order to comply with the opinion issued by that committee.

20 The claims contained in the reply must therefore be rejected.

The claim for damages

21 The applicant points out that the periodic report in question covering the period 1975 to 1977, which should have been drawn up by the end of 1977, was not signed by the assessor until 29 December 1979. That delay was, he claims, made still worse by the fact that, contrary to the requirements of the Guide to Staff Reports, the opinion of the Joint Committee on Staff Reports of 15 July 1980 was not acted upon until 22 October 1980.

22 That instance of maladministration is of such a nature as to justify the payment of compensation for the material and non-material damage caused.

23 Article 43 of the Staff Regulations requires a periodic report to be made at least every two years on each official's ability, efficiency and conduct in the service.

24 That document must be drawn up in order to ensure the proper administration and rationalization of the services of the Community and in order to safeguard the interests of officials. It constitutes an indispensable basis of assessment each time an official's career is taken into consideration by the administration.

25 One of the duties of the administration is therefore to ensure that the report is made periodically at the intervals prescribed by the Staff Regulations and that is is drawn up in a proper manner. The administration has a reasonable period at its disposal in which to do this and any failure to act within that period must be justified by the existance of special circumstances.

26 In this case it is clear both from the documents in the file and from the oral submissions made to the Court that the appointing authority of the Joint Research Centre at Ispra exceeded by far the reasonable period which it has its disposal in order to adopt Mr Ditterich's report and that it had been unable to prove the existence of special circumstances of such a nature as to justify that delay.

27 Under those circumstances Mr Ditterich is justified in maintaining that in view of the nature of the omission on its part, the administration has incurred liability.

28 Although the applicant has not established that the omission prevented or delayed any promotion which he might otherwise have obtained and thus caused him material damage, he has however established that he suffered non-material damage on account of the fact that his personal file is neither in good order nor complete. He is therefore entitled to seek compensation for that irregularity.

29 A fair assessment of the amount of compensation which the Commission must pay to the applicant for the damage suffered on that account is BFR 20 000.

Costs

30 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, institutions must bear their own costs. In view of the delay on the part of the administration at Ispra in drawing up the periodic report and its repeated failure in that regard, the Commission must bear the whole of the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application for the annulment of the periodic report;**

2. **Dismisses the application for the annulment of the express decision of 11 August 1981;**

3. **Orders the Commission to pay BFR 20 000 by way of damages for the delay in the drawing up of the periodic report;**

4. **Orders the Commission to bear the whole of the costs.**

Everling Bosco Galmot

Delivered in open court in Luxembourg on 5 May 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber