JUDGMENT OF THE COURT (THIRD CHAMBER)
6 JULY 1983 [1]

Jean-Jacques Geist
v Commission of the European Communities

(Official — Application for annulment — Order to resume duty and suspension of payment of salary — Article 60 of the Staff Regulations)

Case 285/81

Officials — Unauthorized absence — Annual leave used up — Forfeiture of remuneration — Finding that the absence is unauthorized — Decision to terminate payment of salary — Competent administrative body
(Staff Regulations, Art. 60)

Although the second paragraph of Article 60 of the Staff Regulations requires permission to be obtained from the appointing authority if an official wishes to spend his sick leave elsewhere than at the place where he is employed, the first paragraph of Article 60 does not specify that it is the appointing authority which must decide that the salary of an official absent without authorization shall be forfeit if he has used up his annual leave.

Since the decision to terminate payment of salary is neither a disciplinary measure, which would require action on the part of the Commission itself, nor an equivalent measure, it may be accepted that the authority empowered to establish unauthorized absence and to order that payment of salary be terminated is the same as that referred to in the second paragraph of Article 60.

In Case 285/81

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

applicant,

1 — Language of the Case: French.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jörn Pipkorn, assisted by Daniel Jacob, of the Brussels Bar, 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, Kirchberg,

defendant,

APPLICATION for annulment of the Commission decision of 5 December 1980 ordering the applicant to resume duty at the establishment at Ispra and of the decision of 12 January 1981 to suspend payment of his salary as from 1 January 1981,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

Mr Geist, a French national, was recruited on 1 April 1962 as a scientific

officer in Grade A by the Commission of the EAEC and on 1 January 1966 was promoted to Grade A 5 after a period of secondment in the USA.

Mr Geist was assigned to the Hydraulic Studies Section of the Joint Research Centre at Petten where he carried out research in the field of liquid fuel reactors.

Following a Council decision dated 15 June 1965 amending the 1962 second research programme the Hydraulic Studies Section was disbanded.

It appears that thereafter Mr Geist, having no specific assignment in the organization of the Joint Research Centre, was provisionally attached to the Directorate of the Centre and devoted himself to research on molten-salt fuelled breeder reactors.

On 22 August 1975 the Council of Ministers confirmed that the development of reactor families was to be left to the exclusive initiative of the Member States (Official Journal, L 231 of 2. 9. 1975).

Faced with the impossibility of integrating Mr Geist into the new programme of research at Petten as defined by the Council, the Director-General of the Joint Research Centre requested him to choose between two vacant posts at the Joint Research Centre at Ispra in Italy.

Since Mr Geist did not make his choice known the Director-General of the Joint Research Centre at Petten, by a decision dated 10 December 1975 which took effect on 1 March 1976, transferred him to the Heat Transfer and Fluid Mechanics Division at the centre in Ispra.

On 30 June 1976 the applicant brought an action for the annulment of the decision but the action was dismissed by the Court by judgment dated 14 July 1977 (Case 61/76 [1977] ECR 1419).

Shortly after starting work at Ispra Mr Geist submitted medical certificates showing that his state of health made it undesirable for him to work in Italy, at least for the time being.

Apart from health problems the transfer to Ispra would have caused Mr Geist both difficulties with his career, since the post did not correspond to his interests, experience and specialist training, and domestic problems, since he had custody of three dependent children in the Netherlands. Mr Geist therefore asked the Commission several times to find him a post outside the Ispra Joint Research Centre.

In September 1977 the Joint Research Centre referred the matter to the Invalidity Committee under Article 59 (3) of the Staff Regulations and on 14 August 1978 the Committee gave an opinion to the effect that Mr Geist was capable of working. However, Doctor Semiller, the President of the Invalidity Committee, stated that the Commission should endeavour to resolve the problem of a new post for Mr Geist.

In February 1979 a committee composed of officials comprising *inter alia* directors-general, the mediator, Mr De Groote, and a representative of the medical branch, Doctor Siddons, was instructed to find Mr Geist a post at the central office of the Commission in Brussels.

In a memorandum dated 28 June 1979 Mr Baichère and Mr Villani informed Mr Geist that as an exceptional measure his salary would be continued and that the decision did not prejudge the question either of his future posting or of his ability to work.

Various possible postings were then considered but they led to nothing because in particular of the attitude of Mr Geist, who either refused the posts proposed or expressed such reservations that the offer was withdrawn.

For instance at a meeting on 17 December 1979 with Mr Schuster, Director-General for Research, Science and Education (Directorate-General XII), Mr Geist declined a post with the Community Bureau of References. At a second meeting on 18 January 1980 with Mr Schuster and then, some days later, with his colleagues, Mr Geist was offered a post with the Reactors and Technologies and Scientific and Technical Committee, under Directorate XII-D Nuclear Research and Development. That post was connected with the reprocessing of fuels from fast neutron breeder reactors.

The reservations made by Mr Geist in letters sent on 14 February 1980 to Mr Schuster and on 9 March 1980 to the mediator, Mr De Groote, concerning both the post itself and the research programme to which it related, made it impossible to take the view that the applicant was formally accepting the post offered. By letter dated 21 February 1980 Mr Schuster informed Mr Geist that he regretted that he could not offer him a post in his Directorate-General such as would have met with his approval.

Following a vacancy notice published by the Commission of the European Communities in the Staff Courier on 13 June 1980 Mr Geist made an application for the post of First Secretary responsible for Scientific and Technical Matters in the Community delegation in Washington. By letter dated 14 July 1980 Mr Geist was informed that his application had been rejected. On 14 May 1981 he brought an action for the annulment of that decision and of all the measures adopted by the Commission to fill the vacancy. The action is the subject of the judgment of the Court (Third Chamber) of 6 July 1983 in Case 117/81.

On 6 November 1980 Mr Geist was examined by Dr De Geyter, the medical expert who had already been consulted in 1978 at the request of the medical branch at Ispra. His opinion was that: "The absence of Mr Geist from his work is not due to medical reasons. It is therefore for the administration alone to determine the case".

In a letter dated 5 December 1980 Mr Villani, Director of the Joint Research Centre at Ispra, stated that since there seemed to be no prospect of work in Brussels Mr Geist might wish to resume duty at the Ispra establishment.

On 14 December 1980 Dr Willeboordse, Mr Geist's own doctor in the Netherlands, informed Dr Vigan, the head of the medical branch of the Ispra

establishment, that Mr Geist, was unable for medical reasons to travel to Italy.

By letter dated 15 December 1980 to Mr Mas, the Director of the Ispra establishment, and by telex message sent to Mr Hannaert, Head of the Administration and Personnel Division at Ispra, Mr Geist confirmed that he was unable to resume duty because of the state of his health.

On 22 December 1980 Mr Geist asked Dr Vigan, the head of the medical branch at Ispra, for permission to stay with his family in the Netherlands during his sick leave.

In a letter dated 12 January 1981 to Mr Geist, Mr Hannaert stated that the head of the Ispra medical branch considered that Dr Willeboordse's letter was not a medical certificate and contained no justification for stopping work. He further informed him that since according to the report made in November 1980 by Dr De Geyter he was fit to work, his absence was unjustified and that in accordance with Article 60 of the Staff Regulations the payment of his salary would be suspended as from 1 January 1981.

In a letter dated 11 February 1981, registered by the Secretariat-General of the Commission on 13 February, the applicant made a complaint against first the implied rejection of his request of 11 July 1980 for a posting in a place other than the Ispra establishment and for the setting up of an Invalidity Committee responsible for deciding the circumstances in which he might resume work, secondly the decision of 5 December 1980 ordering him to return to his post at Ispra and thirdly the decision of 12 January 1981 suspending the payment of his salary. In the same letter the applicant asked for payment of his doctor's fees and expenses and the reimbursement of his own expenses in the invalidity proceedings.

On 27 July 1981 the Commission rejected Mr Geist's complaint.

Mr Geist then brought this action which was lodged at the Court Registry on 3 November 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber) decided to make preparatory inquiries pursuant to Article 22 of the Statute of the Court of Justice of the EAEC and Article 45 of the Rules of Procedure.

By letter dated 26 January 1983 the Registrar of the Court invited the applicant and the Commission to produce certain documents and to answer various questions before 1 March 1983.

The applicant and the Commission produced the documents and answered the questions on 24 and 25 February 1983 respectively.

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

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare null and void the decision notified to the applicant on 5 December 1980 summoning him to return to the Ispra establishment;

2. Declare null and void the decision notified to the applicant on 12 January 1981 informing him that his salary would no longer be paid after 1 January 1981;

3. In the exercise of its unlimited jurisdiction, order the defendant to pay the applicant arrears of remuneration due, amounting, subject to the right to adjust the sum during the proceedings, to one million Belgian francs, with interest added at such rate as the Court regards as normal; and *pro rata* as regards the length of time for which such payments have been outstanding;

4. Declare null and void the defendant's refusal in the letter of 21 January 1981 of the applicant's request to be allowed to remain in the Netherlands for the duration of his illness;

5. Order the defendant to reimburse the applicant for each and every expense, including payments made to his own doctor, incurred as a result of the proceedings before the Invalidity Committee in 1978;

6. Order the defendant to pay the costs;

7. In so far as necessary:

   Order the defendant to produce a number of documents, the list of which was supplemented in paragraph 8 of the reply;

8. Order evidence of the facts to be given by witnesses.

The *Commission* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs;

Subject to all necessary reservations.

III — Submissions and arguments of the parties

First submission

The first submission is to the effect on the one hand that Mr Villani's decision of 5 December 1980 ordering the applicant to return to his post at Ispra is vitiated by reason of a factual error, namely that he is alleged to have refused the first post proposed and made reservations regarding the post in Directorate-General XII (first line of argument) and on the other hand that the defendant failed in its duty to have regard to the applicant's welfare and committed a breach of the principle of legitimate expectation by asking the applicant to resume duty when it had undertaken to assign him to another post outside the Joint Research Centre (second line of argument).

The first line of argument

The *applicant* alleges that he never refused the post which had been proposed in the Community Bureau of References and that as regards the post in Directorate-General XII the Commission's attitude has shown itself to be contradictory in all points.

In the contested decision of 5 December 1980 Mr Villani states that the applicant refused the offer of a post in Directorate-General XII whereas in a letter sent to the applicant on 21 February 1980 Mr Schuster stated that he regretted not being able to offer him a post in his Directorate-General such as would have met with his approval.

The contested decision moreover contains unfounded statements to the effect that the applicant lacked interest, good faith and realism whereas the

letters he sent to Mr Schuster and Mr De Groote clearly manifested his interest in the proposed post in Directorate-General XII.

In the applicant's view the defendant has distorted the meaning of his letter of 14 February 1980 sent to Mr Schuster. In that letter the applicant confined himself to giving his observations on the research programme with which the post in question was concerned as Mr Schuster at their meeting in January 1980 had asked him to do; in no event could it be claimed from what he said that he was not willing to accept the post in Directorate-General XII. Moreover he clearly expressed himself to that effect to the mediator, Mr De Groote, by indicating to him his acceptance in a letter dated 9 March 1980.

In the applicant's view Mr Schuster had failed in his duty to have regard to the welfare of his staff in confining himself to interpreting his observations without seeking to discover the genuine interest which the applicant had in the proposed post. In the event of doubt on that subject it was for Mr Schuster, before taking a decision definitively affecting the applicant's career, to ask him whether he undertook to carry out the duties suggested to him.

The applicant states that in any event it was not for Mr Schuster to withdraw the offer of the post in Directorate-General XII. It is apparent from the Commission decision determining the appointing authority (special inter-institutional Staff Courier of 17 November 1977) that the assignment of an official in Grade A 5 is the responsibility of the Member of the Commission responsible for questions of personnel.

The *Commission* confirms that the first proposal for a post was declined by the applicant and that the fundamental objections which he raised to the research programme with which the post in Directorate-General XII was concerned did not allow it to be thought that Mr Geist was ready to accept the post.

According to the Commission the letters to which the applicant refers contain no contradiction in its attitude but are a result of the applicant's own observations. Thus Mr Schuster's letter of 21 February 1980 is based on the fact that the applicant had shown that he intended to devote himself solely to the field of molten-salt reactors whereas that field, contrary to what the applicant states, was no longer part of the Commission's research programmes.

In the Commission's opinion it would have been contrary to the interests of both the service and the applicant to assign him to a post to which he would have been unable to make any useful contribution.

The Commission considers that in so far as no reassignment was decided upon, the question which was the appointing authority with power to reassign the applicant is a matter of purely theoretical interest in this case.

Second line of argument

The *applicant* considers that in so far as the Commission had undertaken to free a post outside the Joint Research Centre and that undertaking had not been kept the defendant cannot complain that he failed to go to Ispra.

In the applicant's view, on the supposition that the post offered in

Directorate-General XII was withdrawn as a result of a misunderstanding, it was the Commission's duty to endeavour to find another solution either in Brussels or in external delegations or with international organizations such as the International Atomic Energy Agency.

The *Commission* considers that it has in no way failed to have regard to legitimate expectation or failed in its duty to have regard to the welfare of its staff.

The Commission refers to the letters from Mr Villani sent on 10 September 1979 to the applicant's Counsel and on 5 December 1980 to the applicant himself and emphasizes that the administration endeavoured to consider the possibilities of a temporary posting to a place outside Ispra. In doing so it in no way entered into any undertaking the disregard of which might incur the censure of the Court especially as the Commission endeavoured to find a solution among the various possibilities contemplated and the applicant by his negative attitude nullified the efforts undertaken.

The Commission states that it has fully discharged its duty to have regard to the welfare of its staff; the posts available in the Commission were considered; the secondment of Mr Geist to international institutions could not have been contemplated in the absence of a request from them.

The second submission

The second submission is to the effect that the head of the Personnel and Administration Division, Mr Hannaert, who decided to suspend payment of the applicant's salary under the first paragraph of Article 60 of the Staff Regulations, had no power to do so.

The *applicant* refers to the decision of the Director-General of the Joint Research Centre at Ispra dated 10 December 1979 on the exercise of the powers devolving under the Staff Regulations upon the appointing authority and by the Conditions of Employment of Other Servants upon the authority authorized to conclude contracts of employment (Annex 10 to the Commission's defence); he observes that of the provisions in the Staff Regulations relevant to the present case only the measures of a purely administrative nature such as the permission to spend sick leave elsewhere than in the place of employment as provided in the second paragraph of Article 60 of the Staff Regulations are matters which may be delegated.

The fact that there is no mention of the first paragraph of Article 60 of the Staff Regulations among the matters which may be delegated is due to the nature of the decision contemplated thereby, which, in the applicant's view, amounts to a penalty. Thus a suspension of salary may be decided upon only by the Director-General of the Joint Research Centre or by the Commission itself.

The applicant considers that had there been no such irregularity the decision would have been different in so far as the Commission would no doubt have taken account of the medical certificates sent by his doctor in the Netherlands.

The *Commission* acknowledges that the decision of the Director-General of the Joint Research Centre of 20 November 1979 refers expressly only to the second paragraph of Article 60. The Commission nevertheless considers that Article 60 of the Staff Regulations must be considered as a whole inasmuch as

the authority empowered to authorize an official to spend his sick leave in a place other than that in which he is employed is necessarily also the authority to determine whether the official's absence is unauthorized and to draw the consequences as regards payment of the salary.

The suspension of salary in the case of unauthorized absence is not a penalty but an application of the rule of "service rendered". The Commission emphasizes that the measure prescribed in the first paragraph of Article 60 is "without prejudice to any disciplinary measures that may apply".

In the defendant's view the Commission had no power in the matter. According to Article 1 of the aforesaid decision, the Director-General of the Joint Research Centre exercises "all the powers devolving upon the appointing authority ... except the powers exercised by the Commission ...". As regards officials assigned to the Joint Research Centre the Commission retains only the powers provided *inter alia* in Articles 90 (2) and 91 of the Staff Regulations.

The Commission states that if the decision in question had been taken by the Director-General of the Joint Research Centre it would no doubt have been the same since he had approved the decision taken by Mr Hannaert.

Third submission

The third submission is to the effect that the decision to suspend payment of the applicant's salary was taken in breach of Article 59 (1) and (3) of the Staff Regulations in so far as on the one hand no account was taken of the medical certificates provided by Dr Willeboordse, the applicant's doctor in the Netherlands, whereas according to the second subparagraph of Article 59 (1) of the Staff Regulations, any certificate from a medical practitioner — and it is not denied that Dr Willeboordse was such — constitutes a medical certificate within the meaning of the second subparagraph of Article 59 (1) of the Staff Regulations (first line of argument) and further the medical branch and the administration were bound, in the event of doubt as to the accuracy of the diagnosis by the applicant's doctor, to have recourse to one of the possibilities provided in the second subparagraph of Article 51 (1) and Article 59 (3) of the Staff Regulations (second line of argument).

The *applicant* observes that the decision in question is based in part on Dr De Geyter's opinion and emphasizes that on the occasion of the medical check-up on 6 November 1980 Dr De Geyter contented himself with declaring him fit for work without questioning him or examining him whereas in 1978 after a long and careful examination Dr De Geyter had taken the view that his fitness for work depended on an alteration of his conditions of work.

The applicant states that the last report from Dr De Geyter was made prior to the certificates given by Dr Willeboordse on 14 December 1980 and 27 February 1981 and there is nothing to show that the applicant's health did not deteriorate between 6 November 1980 when the examination was made by Dr Geyter and 5 December 1980 when Mr Villani asked the applicant to resume duty at Ispra.

The applicant observes that Dr De Geyter made his report without taking account of the letter from Dr Willeboordse dated 13 November 1980 which the applicant had mentioned to him whereas in 1978 Dr De Geyter had been anxious to take into account the opinion of the applicant's own doctor.

The applicant recognizes that the letters from Dr Willeboordse contain no precise diagnosis but observes that under the rules laid down by the Royal Netherlands Medical Society a patient's own doctor is bound to exercise a certain discretion with regard to employers and cannot give precise indications to a "Keurdoktor", a kind of expert acting as an agreed third party.

The applicant considers that to the extent to which, as Mr Hannaert states in the letter in question of 12 January 1981, the letter from Dr Willeboordse could not be regarded by the Head of the Ispra medical branch as a medical certificate or justification for stopping work, it was for the latter to point out to Mr Geist's own doctor the need for a precise diagnosis.

In the applicant's view once the medical branch is in possession of a medical certificate stating that the official is unable to work, Article 60 (1) of the Staff Regulations no longer applies. The position is then governed by the provisions of Article 59 of the Staff Regulations and in view of the contradiction between the opinions of Dr De Geyter and Dr Willeboordse it was for the administration at Ispra to bring the matter before the Invalidity Committee pursuant to Article 59 (3).

The *Commission* considers that there is no contradiction between the report made in 1978 and that made in 1980 by Dr De Geyter. The report of 1978 had concluded that Mr Geist was fit to work and that conclusion was reached also in 1980 in the following words:

"The information obtained during the course of this meeting of more than an hour shows clearly that the reasons for Mr Geist's absence at the present time are not medical ones but rather the fact that it has not been possible, it seems, to find a solution to the conflict of some years' duration between him and the administration ... *he says himself that he is in good health and anxious to resume work*".

The Commission states that according to Article 59 (1) and (3) of the Staff Regulations an official unable to work by reason of sickness or accident must produce a medical certificate and may be required to undergo a medical examination arranged by the institution; cases of dispute as to the existence or gravity of the illness are to be referred to the Invalidity Committee for an opinion.

It was not possible to apply those provisions in this case since the applicant did not produce a medical certificate.

The Commission considers that not every certificate from a doctor is necessarily a medical certificate within the meaning of Article 59 of the Staff Regulations and refers to the opinion of Mr Advocate General Mayras in Joined Cases 42 and 62/74 *Vellozzi* v *Commission* [1975] at p. 887 to the effect that for the absence to be considered authorized and so avoid the application of Article 60 the official must justify a claim to be suffering from a complaint which is such as to make him incapable of performing his duties and his claim

must be verified by the medical branch of the administration. "This requirement of justifying absences is not satisfied merely by producing certificates from the official's own doctor stating that the official is unfit to work."

The defendant observes that if the professional rules applying in the Netherlands prevent a medical practitioner from giving precise information to an employer the position would be the same if there were a request for "additional information" with a view to a precise diagnosis.

The Commission stresses in that respect that on 15 October 1981 Dr Van Woerden, the neuro-phychiatrist consulted by the applicant at the suggestion of his advocate, sent a letter to Dr Vigan containing a rough outline of a diagnosis.

The Commission emphasizes also that Dr Vigan was anxious to obtain more precise information and to allow the applicant to receive his salary once again in the event of his incapacity for work being established and requested further explanations from Dr Woerden by letters dated 27 October and 9 December 1981. Those letters had no result.

By letter dated 19 April 1982 the Director-General of Ispra, Mr J. A. Dinkespiler, informed the applicant that as appointing authority he had decided to refer his case to the Invalidity Committee for an opinion pursuant to Article 59 (3) of the Staff Regulations.

The Commission stresses however that there was no need for a request for further information or a fresh medical examination in December 1980 or January 1981 since Dr De Geyter had examined the applicant a month earlier. Only a precise diagnosis from the applicant's own doctor was capable of resulting in an application to the Invalidity Committee pursuant to Article 59 (3) of the Staff Regulations. In the absence of such diagnosis the Commission considers that there has been no breach of the provisions cited.

Fourth submission

The fourth submission is to the effect that there has been a breach of the second paragraph of Article 60 of the Staff Regulations in so far as the applicant was refused permission to stay in the Netherlands during his illness.

The *applicant* states that he has been away from Ispra since 1976 and from then he was authorized to stay in the Netherlands pursuant to the second paragraph of Article 60 of the Staff Regulations.

The applicant considers that in so far as his state of health has not improved it would be absurd to force him now to move with his children to Italy when there is no post available to him at Ispra and the problem of his new assignment has not been settled.

The *Commission* observes that the permission given to the applicant under the second paragraph of Article 60 of the Staff Regulations before the decision in issue was taken was provisional. Since the applicant was no longer on sick leave but absent without authorization the provision referred to no longer applied.

Fifth submission

The fifth submission is to the effect that there has been disregard of the general principle laid down in the second paragraph of Article 59 (4) of the Staff Regulations according to which the

applicant is entitled to reimbursement of fees incurred in remuneration of the doctor chosen in connection with the work of the Invalidity Committee in 1978 and the expenses which he himself incurred.

The *applicant* stresses that in spite of the claim made to that effect in his complaint of 11 February 1980 no reimbursement has been made.

The Commission observes that it now has an account of the expenses incurred by the applicant in the invalidity proceedings and that it has given the necessary instructions for the sums due to be paid. It states that fees and disbursements of the doctor nominated by the applicant will be reimbursed pursuant to Article 8 of Annex II to the Staff Regulations and the expenses incurred by the official himself will be reimbursed pursuant to Article 11 of Annex VII to the regulations.

With regard to the calling of witnesses the *Commission* considers that the applicant's claims in his reply for the production by the defendant of additional documents and for the giving of evidence by witnesses must be rejected.

In the defendant's view it is at the very least surprising that the applicant is claiming the production of all the documents annexed to his own requests and complaints.

The Commission states that it is not in a position to produce the documents of a medical nature in so far as certain of the documents mentioned seem not to exist and the identification of other documents where the precise date is not specified has proved difficult.

In any event the defendant considers that it is not incumbent upon it to produce correspondence internal to the administration which is not addressed to the applicant and whose direct connection with this action has not been shown.

Finally the defendant considers that it is not appropriate to call the 24 witnesses sought by the applicant. The documents submitted to the Court enable it to give judgment with full knowledge of the facts in issue without its being necessary to call for the hearing of witnesses certain of whom would certainly claim to be privileged on professional grounds not to give evidence whilst others would be questioned on facts which have only an indirect connection with the case.

IV — Documents and observations lodged at the request of the Court

1. Documents lodged at the Court

The applicant submitted the letter from the Commission dated 21 January 1981 refusing to allow him to stay in the Netherlands and a memorandum of 14 December 1981 from him intended as an answer to the questions put by the Court in the interlocutory proceedings and as a statement of his financial position. Since, however, counsel for the applicant had not been able to obtain additional technical particulars from his ailing client he had chosen not to submit that document to the Court. The applicant, who would like to be heard by the Court, is prepared, if so desired, to give any additional particulars on that subject.

The Commission produced the letter of 13 November 1980 sent by Dr Willeboordse to Dr De Geyter and referred to in Annex 11 to the application. As regards the second letter requested by the Court the Commission

states that the wrong date seems to have been referred to, by a slip of the pen, in the letter from Mr Hannaert of 12 January 1981 in relation to the existence of a letter from Dr Willeboordse dated 18 December 1980 (Annex 7 to the application); in fact what was meant was the letter of 14 December 1980 reproduced in Annex 4 to the defence.

As regards the documents and information submitted by the Invalidity Committee following its report on 14 August 1978 the Commission produces:

The decision of the Invalidity Committee of 26 July 1978 (Annex 4);

According to the Commission it has no other document on that subject since the actual proceedings of the Invalidity Committee are confidential.

The Commission also produces:

The opinion of the Invalidity Committee of 25 October 1982 (Annex 15);

The Committee states that that is the opinion given by the Invalidity Committee instructed by the appointing authority in April 1982 (Annex 7 to the rejoinder);

Mr Dinkespiler's letter of 4 January 1983 to Dr Vigan (Annex 16);

In that letter Mr Dinkespiler, acting as appointing authority, informed the Invalidity Committee of the consequences which the administration was about to draw from the opinion of 25 October 1982 failing a contrary opinion from the Invalidity Committee;

The opinion of the Invalidity Committee which met on 31 January 1983 (Annex 18).

The opinion at which the Committee arrived after taking note of Dr Dinkespiler's letter of 4 January 1983 was accompanied by observations from Dr Warter which Dr Vigan nevertheless considered to be secret as part of the proceedings of the Committee (Article 9 of Annex II to the Staff Regulations) and to be entitled to privilege on medical grounds.

Those observations were therefore not forwarded to the administration so that they are not contained in the document produced as Annex 12.

2. Answers to questions put by the Court

(a) The applicant

In answer to the question contained in the letter dated 24 November 1981 from the Registrar of the Court in the interlocutory proceedings for interim measures whereby it was sought to establish Mr Geist's financial position, his counsel produced a memorandum dated 14 December 1981 from which it appears essentially that the applicant has nothing for living with his family other than his salary as an official of the Commission in Grade A 5, Step 8.

The applicant states that since April 1975 and apart from the period from April to October 1976 following a decision of 12 April 1976 by the Head of the Salaries Division of the Commission, IX/A/6, his salary has been paid in Italian lire although he has always been resident in the Netherlands.

The applicant states further that payment of his salary was suspended on 24 January 1978 and 7 November 1978 and ceased definitively on 12 January 1981. The resulting financial difficulties were aggravated by the fact that the salary expressed in Belgian francs was paid in Italy in Italian lire at a rate of exchange which had been out of touch with reality since 1976.

Hence Mr Geist, who says that he has lived mainly on his savings since 1975 would like to obtain arrears of salary in guilders or at least 60% thereof as from July 1976 when he was officially on sick leave at his home in the Netherlands or from October 1976 when the transfer of salary to the Netherlands ceased.

(b) The Commission

In answer to the question regarding the precise periods during which Mr Geist on the one hand worked in the establishment at Ispra and on the other was absent without producing a medical certificate the Commission states as follows:

Applicant's periods of work: the applicant worked in the establishment at Ispra from 8 March 1976 to the morning of 22 June 1976; from 1 to 7 March 1976 he was on annual leave; from the afternoon of 22 June 1976 he was away sick.

Applicant's periods of absence unsupported by the production of a medical certificate: the applicant's absence was covered by a medical certificate until 12 October 1977; in respect of the period from 12 October 1977 to 1 April 1978 the applicant did not produce a medical certificate until 16 February 1978; the administration therefore asked him to provide a certificate from his doctor certifying that he had visited him and stating that he was unfit for work. That certificate from Dr Risselada dated 24 April 1978 is included as Annex 5 to the Commission's observations.

The applicant's absence between 1 April and 31 August 1978 was covered by a medical certificate.

From September 1978 the applicant no longer produced any documents regarded by the institution's medical officer, Dr Vigan, as a medical certificate.

On 4 September 1978 the applicant sent a telex message worded as follows: "My doctor requires me to stay at the address known to you."

By memorandum dated 8 December 1978 Dr Holst, in answer to a question from the administration at Ispra as to whether it appeared from the medical certificate given on 1 December 1978 by Dr Risselada that Mr Geist was unfit for work, stated as follows:

"This note (the medical certificate from Dr Risselada) says literally 'My advice to the patient: in the present circumstances: not to resume work at Ispra'; regard being had to the expert inquiry conducted by the Invalidity Committee and the reports of Dr Ge Geyter and the family doctor, Dr Risselada, Mr Geist is not unfit to work but there is a fear of his relapsing into his depressive condition if he resumes work at Ispra. He is not therefore, in my opinion, properly

speaking unfit to work, but there is rather an incompatibility between Mr Geist and a particular place of work."

The Commission adds that on 7 February 1979 Dr Risselada wrote a letter to Dr Vigan saying that he had advised Mr Geist against returning to Ispra because of the "frustrating circumstances" of his work at the Joint Research Centre.

By letter dated 19 February 1979 Dr Vigan informed Dr Risselada and by memoranda of 14 and 21 February 1979 he informed the administration that the letter of 7 February 1979 could not be regarded as sufficient to justify Mr Geist's stopping work.

On 15 November 1980 the applicant was examined by the medical branch which found him fit for work (defence page 7 and Annex 2 thereto; rejoinder p. 11 et seq. and Annex 6 thereto).

On 27 February 1981 Mr Geist's doctor, Dr Willeboordse, wrote to Dr Vigan a letter included in Annex 6 to the defence and not regarded by Dr Vigan as a certificate justifying a cessation of work.

On 15 October 1981 Dr Van Woerden sent to Dr Vigan the letter included in Annex 3 to the rejoinder and Dr Vigan wrote for further clarification in a letter of 27 October 1981 (Annex 4 to the rejoinder). There was no reply to the last letter.

In a memorandum of 10 December 1981 (included in Annex 12 to the Commission's observations) Dr Vigan explained to Mr Villani, the Director-General of the Joint Research Centre, why Dr Van Woerden's letter of 15 October 1981 could not be regarded as a certificate justifying cessation of work.

On 23 May 1982 Dr Willeboordse sent Dr Vigan a personal and confidential letter which was not recognized as a certificate justifying cessation of work for the reasons set out in a memorandum from Dr Vigan to the administration dated 11 June 1982 and in a letter to Dr Willeboordse of 14 July 1982 both included in Annex 13 to the Commission's observations.

Dr Willeboordse did not take up the invitation from Dr Vigan to return to him duly completed and signed a medical certificate in the stereotyped form enclosed with the letter of 14 June 1982. On the other hand, on 9 August he sent a fresh letter to Dr Vigan confirming what he had already stated (Annex 14 to the Commission's observations).

On 25 October 1982 the Invalidity Committee, to which the matter had been referred in April 1982, composed of Dr C. Vigan, appointed by the Commission, Professor J. Warter, appointed by Mr Geist, and Professor L. Cassiers, appointed by agreement between Dr Vigan and Professor Warter, gave the following opinion:

"After considering the file the Committee finds that Mr Jean-Jacques Geist, born 11 July 1930, an official with the Commission of the European Communities, is fit to perform his duties.

"Nevertheless having regard to the long history of conflict and the entirely demoralizing significance that any appointment to Ispra would have for Mr J. J. Geist, the Committee feels that it may reasonably be expected that any such appointment would involve a deterioration in his health.

"Such has moreover been the view previously taken by the various doctors called to give an opinion in his case (Dr De Geyter, Mr Geist's own doctor and Dr Van Woerden)."

On 4 January 1983 Mr Dinkespiler informed the Invalidity Committee that following its opinion given on 25 October 1982 he considered that the medical certificates submitted by Mr Geist were not such as to justify his absence since 5 December 1980 when Mr Geist was formally invited to resume his work at Ispra (Annex 16 to the same observations).

On 31 January 1983 the Invalidity Committee confirmed that the medical certificates produced by Mr Geist were not such as to justify his absence during the period from 5 December 1980 to 31 January 1983 but emphasized its desire that another possible posting might be offered him. (The letter of 31 January 1983 is included in Annex 17 to the Commission's observations.)

To summarize its views, the defendant considers that Mr Geist has in any event been absent without justification since 5 December 1980.

V — Oral procedure

The applicant and the Commission of the European Communities presented oral argument at the sitting on 28 April 1983.

The Advocate General delivered his opinion at the sitting on 2 June 1983.

Decision

1 By application lodged at the Court Registry on 3 November 1981 Mr Geist, a scientific officer assigned to the Joint Research Centre at Ispra, brought an action claiming:

1. The annulment of:

   The decision notified to the applicant on 5 December 1980 summoning him to return to the Ispra establishment;

   The decision notified to the applicant on 12 January 1981 informing him that his salary would be suspended after 1 January 1981;

The refusal in the letter to the applicant of 21 January 1981;

The refusal contained in the letter to the applicant of 21 January 1981 concerning his request to be allowed to remain in the Netherlands for the duration of his illness.

2. An order that the Commission:

Pay the applicant the arrears of remuneration due, amounting, subject to the right to adjust the sum during the proceedings, to BFR 1 000 000, to be increased by interest at such rate as the Court regards as normal; and *pro rata* as regards the length of time for which such payments have been outstanding;

Reimburse the applicant for each and every expense, including payments made to the doctor selected by him to take part in the proceedings before the Invalidity Committee in 1978 and his own costs in appearing before the Committee.

2 Mr Geist took up duty on 1 April 1962 at the Joint Research Centre at Petten (the Netherlands) as the Head of Hydraulic Studies and in 1963 was appointed head of the Hydrodynamics and Measurements Division. On 1 January 1966, after a period of secondment in the USA, he was promoted to Grade A 5. Following a change decided upon by the Council on 15 June 1965 in the 1962 research programme for which Mr Geist carried out the work in his special field, he was forced to devote himself to new duties defined by the institution. After the new change in the research programmes decided upon by the Council on 22 August 1975 it became impossible to use Mr Geist's abilities in the establishment at Petten and the Director-General of the Centre decided on 10 December 1975 to transfer him as from 1 March 1976 to the Heat Transfer and Fluid Mechanics Division at the Joint Research Centre at Ispra.

3 Mr Geist brought an action for the annulment of the decision to transfer him but the action was dismissed by judgment of the Court of 14 July 1977 (Case 61/76 [1977] ECR 1419).

4 The applicant in fact worked at the establishment at Ispra only for the period from 8 March to 22 June 1976, since his new posting represented in his eyes a progressive reduction in his responsibilities and occurred at a difficult

period in his personal life. He fell ill and produced medical certificates to the effect that his state of health did not allow him to work in Italy.

5 In September 1977, however, after Mr Geist had been absent for more than a year, the Joint Research Centre at Ispra referred the matter to the Invalidity Committee pursuant to Article 59 (3) of the Staff Regulations. According to the opinion given by that Committee on 26 July 1978 Mr Geist was fit to perform his duties. The Chairman of the Invalidity Committee stated, however, that the Commission should endeavour to find a solution to the problem of a fresh posting for the applicant.

6 Various possibilities of assignment, *inter alia* to the central office of the Commission in Brussels, were then considered but came to nothing.

7 Failing an opportunity for reassignment to the central office and in view of the applicant's prolonged absence, the Director-General of the Joint Research Centre asked in June 1980 for a fresh medical examination to be arranged for Mr Geist. Following that examination and in spite of the opinion of the applicant's personal doctors, Dr De Geyter, who had already been consulted in 1978, stated in a letter dated 15 November 1980 to the head of the Commission's medical branch that "Mr Geist's absence from work is not due to medical reasons" and confirmed that the opinion given by the Invalidity Committee in 1978 was still valid.

8 In a letter dated 5 December 1980 the Director-General of the Joint Research Centre, noting that Mr Geist was fit for work and that there seemed to be no prospect of work for him in Brussels, invited him to resume his duties at Ispra. Mr Geist, in reliance upon a certificate from his own doctor, did not accept that suggestion and by letter dated 22 December 1980 asked the head of the medical branch at Ispra for permission to stay with his family in the Netherlands during his sick leave.

9 By letter dated 12 January 1981 Mr Hannaert, the Head of the Administration and Personnel Division of Ispra, referred to the applicant's fitness for work according to the report made in November 1980 by Dr De Geyter and informed Mr Geist that he was absent without authorization and that pursuant to Article 60 of the Staff Regulations the payment of his salary would be suspended as from 1 January 1981. By letter dated 21 January 1981 Mr Geist was informed that permission to stay in the Netherlands was refused.

10 By letter dated 11 February 1981 Mr Geist made a complaint, *inter alia* against the decision of 5 December 1980 requesting him to return to his post at Ispra and the decision of 12 January 1981 suspending payment of his salary. In the same letter the applicant asked for payment of his doctor's fees and expenses and reimbursement of his own expenses in the invalidity proceedings. That complaint was rejected by the Commission on 27 July 1981.

Conclusions directed against the decision of 5 December 1980

11 In the applicant's view that decision, which states in the recitals in the preamble thereto that he had refused posts offered to him outside Ispra, is based on substantially incorrect facts. In disregarding the alleged undertaking to find him a post outside the Joint Research Centre at Ispra that decision moreover disregards the principle of care for the welfare of staff contained in Article 24 of the Staff Regulations and frustrates the legitimate expectation which must characterize relations between the administration and its officials.

12 It must be observed in the first place that, contrary to the applicant's statements, the grounds on which the contested decision is based do not include the fact that Mr Geist refused all posts offered to him. Although the Director-General of the Joint Research Centre pointed out that the applicant had refused a first post, he subsequently confined himself to observing that the applicant's reservations and his reticent attitude had led the director responsible to withdraw the offer of a second post made to him. Neither the documents in the file nor the arguments before the Court have shown those

observations to be wrong. The contested decision cannot therefore be regarded as based on substantially incorrect facts and the first submission must therefore be dismissed.

13 In the second place it should be recalled that in the judgment of 14 July 1977 ([1977] ECR 1419) the Court held that Mr Geist's posting to the Joint Research Centre at Ispra had been decided for reasons which were not alien to the interests of the service and that the new post to which he was appointed was better suited to the exercise of his skills than the previous one and did not involve any down-grading. In the same judgment the Court also held that officials of the Community must be expected to bear the domestic inconveniences and financial difficulties caused them by a transfer.

14 It is apparent moreover from the documents in the file that although the Commission made efforts to take Mr Geist's personal preferences into account and to find him another post, it never withdrew the decision to transfer him to Ispra and never undertook to dispense him from the duty to take up his post until a new transfer might become possible. It is also established that from July 1978 Mr Geist could not validly put forward any medical reasons to justify his absence and that the Commission nevertheless waited until December 1980 before giving him formal notice to return to his post.

15 In those circumstances it cannot be accepted that in requesting Mr Geist to return to duty without delay the Director-General of the Joint Research Centre disregarded the principle of concern for the welfare of officials or his legitimate expectation and the second part of the first submission must therefore be dismissed.

16 The conclusions directed against the decision of 5 December 1980 must therefore be dismissed.

17 In consequence it is necessary also to dismiss the conclusions directed against the rejection of the request of 22 December 1980 for permission to stay away from Ispra whilst he was sick.

Conclusions directed against the decision of 12 January 1981

18 In support of his claim the applicant maintains in the first place that the contested decision, which amounts to a penalty, could be taken only by the Commission or the Director-General of the Joint Research Centre and not by the Head of the Administration and Personnel Division of the Ispra establishment.

19 Article 60 of the Staff Regulations provides as follows:

"Except in case of sickness or accident, an official may not be absent without prior permission from his immediate superior. Without prejudice to any disciplinary measures that may apply, any unauthorized absence which is duly established shall be deducted from the annual leave of the official concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period.

If an official wishes to spend leave elsewhere than at the place where he is employed he shall obtain prior permission from the appointing authority."

20 It is to be observed that the effect of those provisions is that although the second paragraph of Article 60 requires permission to be obtained from the appointing authority if an official wishes to spend his sick leave elsewhere than at the place where he is employed, the first paragraph thereof does not specify that it is the appointing authority which must decide that the salary of an official absent without authorization shall be forfeit if he has used up his annual leave.

21 Contrary to the applicant's contention, the decision to terminate payment of salary is neither a disciplinary measure, which would require action on the part of the Commission itself, nor an equivalent measure. The effect of the provisions set out above is that any unauthorized absence which is duly established on the part of an official who has used up his annual leave results in his automatically forfeiting his remuneration. In those circumstances it may be accepted that the authority empowered to establish unauthorized

absence and to order that payment of salary be terminated is the same as that referred to in the second paragraph of Article 60, that is to say the appointing authority.

22 It appears from the file that by decision of 20 November 1979 the Director-General of the Joint Research Centre decided that the powers devolving upon the appointing authority by the second paragraph of Article 60 of the Staff Regulations should be exercised in respect of officials in Mr Geist's category assigned to the Ispra establishment by the director of the establishment and empowered him to sub-delegate his powers to the Head of the Personnel and Administration Division. It follows that the contested decision by which the Head of the Personnel and Administration Division at Ispra, acting by delegation from the director, found that the applicant's absence was unauthorized and decided that payment of his salary should be terminated was taken by a competent authority. The first submission must therefore be dismissed.

23 In the second place the applicant maintains that the administration could not lawfully find that his absence was unauthorized so that payment of his salary might be terminated. He alleges that he had produced medical certificates to the effect that his state of health did not allow him to return to work and that if the administration doubted their validity it should, before taking any unilateral decision, either have required him to undergo a medical examination pursuant to Article 59 (1) of the Staff Regulations or have referred the matter to the Invalidity Committee pursuant to Article 59 (3).

24 In that respect it should be borne in mind that after taking note of the opinion of Mr Geist's own doctor given on 13 November 1980 and after examining him personally, Dr De Geyter concluded on 15 November 1980 that Mr Geist's absence from work was not due to medical reasons but to the fact that it had not been possible to resolve the conflict which had existed for years between him and his administration. There is nothing in the file to indicate that that medical examination was not properly conducted. It was therefore for the Director-General of the Joint Research Centre to invite Mr

Geist, as he did by his letter of 5 December 1980, to resume his duties at Ispra without delay.

25 It is true that following that warning the applicant's own doctor wrote on 14 December 1980 to the head of the medical branch at the Ispra Centre a letter informing him that upon his advice Mr Geist would not be going to Ispra because he was not fit to work there. That letter was thus confined to giving an opinion of which Dr De Geyter was already aware; it contained no precise medical diagnosis and did not mention any new factor affecting the applicant's health subsequent to the medical examination of the previous 15 November. The Head of the Administration and Personnel Division at Ispra therefore rightly took the view that the letter could not justify Mr Geist's absence nor could it necessitate a fresh medical examination or a reference to the Invalidity Committee. Although the applicant relies on the production of various additional medical certificates dating from October 1981, they are subsequent to the contested decision and in any event do not affect its validity.

26 In those circumstances the submissions and conclusions directed against the decision of 12 January 1981 terminating the payment of Mr Geist's salary must be dismissed.

27 In consequence the claim that the Commission be ordered to pay Mr Geist the remuneration which he has not received since 1 January 1981 must also be dismissed.

The conclusions to the effect that the Commission be ordered to reimburse to the applicant all the costs incurred in connection with the proceedings of the Invalidity Committee in 1978

28 During the oral procedure the applicant stated that after bringing his action he received from the Commission the reimbursement requested. The conclusions mentioned above have therefore lost their purpose and there is no need for the Court to arrive at a decision thereon.

Costs

29 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

30 The applicant has failed in his submissions.

31 However, under Article 70 of the Rules of Procedure, costs incurred by the institutions in proceedings brought by officials of the Communities are to be borne by the institutions themselves.

On those grounds,

THE COURT (Third Chamber)

hereby

1. **Dismisses the application;**

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

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 6 July 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber