In Case 61/76

JEAN-JACQUES GEIST, an official in the scientific service of the European Atomic Energy Community, represented and assisted by Marcel Slusny, Advocate at the Cour d'Appel, Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Avocat-Avoué, Centre Louvigny, rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Sergio Fabro, Member of the Legal Service, acting as Agent, with an address for service in Luxembourg at the offices of Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

Application for the annulment of administrative measures concerning the applicant's position in the service and the duties entrusted to that official and for a declaration that the administration is liable to him for material and non-material damages;

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, Lord Mackenzie Stuart and A. Touffait, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

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

I — Summary of the facts and procedure

After scientific study in France and the United States Mr Geist was recruited, in his capacity as an engineer, as a Scientific Officer by the Commission of the European Atomic Energy Community on 1 April 1962 and was established in Grade A 6/1 on 1 October 1962. On 1 January 1966 he was promoted to Grade A 5 after a period of secondment to the United States. Until 24 July 1967 he was employed, either in Brussels, in Petten, or on secondment, in a special field

which seemed to suit him and which earned him satisfactory periodic reports. On that date the group of which he was head (the Hydraulic Studies Section) was disbanded as the result of a decision of the Council of Ministers of 15 June 1965 amending the 1962 Five-Year-Plan. Mr Geist, who has since then had no specific posting in the structure of the Joint Research Centre and is directly attached to the Directorate and to Technical Services, 'is engaged unrestrictedly', according to the Commission, 'with considerable autonomy' (according to the applicant) in studies, research and contracts in the field of molten salt breeder reactors.

The file shows that the Directorate of the Joint Research Centre therefore wished to transfer Mr Geist to a new post, while the latter, 'having regard only to the interests of the institution ... and concern for a task which he considers as of primary importance for the solution of energy problems' found himself increasingly isolated, as reflected by the periodic reports of 1967 and 1969 which contain the following passage respectively:

'Mr Geist has inevitably been very concerned by the restriction of certain activities of the Joint Research Centre at Petten. I consider that he would be more efficient, and indeed happier, if he could join a dynamic group in his special field and that in the present circumstances he will more easily find such a group outside Euratom. We must help him in this search but we cannot do it for him.'

'In view of the change which has been made in the programme it is impossible to judge Mr Geist in relation to his present permanent duties.

The duties which he performs are partial and temporary but he makes little contribution to the improvement of his situation. He does not accept that the work on hydraulics with which he was entrusted has been withdrawn from the programmes and therefore does not make sufficient efforts towards re-adaption by himself suggesting possibilities for transfer'.

The latter report was the subject-matter of a complaint by the applicant which led the Joint Reports Committee to issue a report on 21 May 1970 which contained the following observation:

'Apart from the regularity of the periodic report, the solution of the basic problem which arises in the present case consists, in the context of a fresh position for the person concerned, in making better use of the scientific qualifications of the latter as established by the personal file. Direct contact between the appointing authority and the official would enable better appraisal of all the particulars of this problem which, considered as a whole, is outside the jurisdiction of the committee.'

and ended with the conclusion that:

'Mr Geist's periodic report is irregular in so far as it gives an appraisal, without details, of the ability, efficiency and conduct in the service of this official without describing the duties with which he was entrusted and which he performed in the post which is the subject-matter of the periodic report'.

Subsequently, periodic reports were no longer drawn up. On the other hand, the difficulties concerning Mr Geist's position, the allocation of credits for his remuneration and the premises and staff originally put at his disposal continued. In view of the need to post the staff of the Joint Research Centre, Mr Geist was finally invited to submit his application for a post with the Commission's delegation in Washington, which he did on 23 July 1975. Another candidate was chosen in preference to him and, by memorandum of 17 November 1975, Mr Geist was informed that he might be

posted to the establishment at Ispra. However, towards the end of the same month, Mr. Geist asked to be able to accept an invitation from the International Atomic Energy Agency to attend a conference of experts in Vienna in December. He was given permission to do so, with some reserve, according to the Commission, in view of the nature of the questions dealt with in Vienna and the current programme of the Community.

On 10 December 1975 the Director General of the Joint Research Centre decided, in the interests of the service, to transfer Mr Geist, who had not replied to an offer to choose between two posts at Ispra, from the establishment at Petten to that at Ispra, Department B, Heat Transfer and Fluid Mechanics Division. This decision was to take effect on 1 March 1976. On 27 February 1976, Mr Geist submitted a complaint to the appointing authority under Article 90 of the Staff Regulations. Since the administration did not reply, Mr Geist then lodged an application against the implied rejection of his complaint. This application was entered on the Court Register on 30 June 1976.

His application was accompanied by related requests, one of which was directed at the refusal to permit the applicant to spend more than 10 % of his working time on the work of the experts at the International Atomic Energy Agency.

The procedure in the main action followed the normal course. On the other hand the President of the Second Chamber dismissed by orders of 15 July 1976 and 21 December 1976 respectively two applications for interim measures of the applicant for the suspension of the operation of the decision of assignment of 10 December 1975 and of the decision of 9 April 1976 whereby the applicant could only take part in external work for 10 % of his working time.

The Second Chamber of the Court, having heard the views of the Advocate General, decided to open the oral procedure without instituting a preparatory inquiry.

II — Conclusions of the parties

The applicant claims in his application that the Court should:

1. 'Declare the implied rejection by the opposite party of the complaint made by the applicant on 27 February 1976 and communicated on 15 March 1976 to be null and void as soon as such refusal shall have become definitive;
2. Declare the applicant's transfer to be null and void;
3. Order the opposite party to pay to the applicant a sum of FB 100 000 for material and non-material damages resulting from his transfer while reserving the right to increase the sum during the proceedings;
4. Declare the persistent refusal of the opposite party to describe the duties with which the applicant has been entrusted since 1967 and to draw up two-yearly periodic reports concerning him to be null and void;
5. Rule that the opposite party must describe the duties and draw up the reports referred to under paragraph 4 above;
6. Order the opposite party to pay to the applicant the sum of FB 100 000 as damages for the non-material damage suffered by the applicant as a result of the facts referred to in paragraph 4) above of this application, while reserving the right to increase the sum during the proceedings;
7. Declare the refusal of the opposite party to permit the applicant to continue, except marginally, his studies, research and collaboration in the field of thermal breeder reactors, and in particular to act as chairman and rapporteur of the Committee of Experts set up by the International Atomic Energy Agency to be null and void;

8. Rule that the applicant will be able to continue these acitivities without hindrance;
9. Order the opposite party to bear the full costs of the proceedings;

In the alternative

A. Order the opposite party to produce:
(i) the complete administrative file on the applicant, that is, a file containing all the documents which should appear on it, and in particular his previous complaints;
(ii) all the documents relating to the transfer, in particular the memoranda which were exchanged in this connexion prior to those complaints;
(iii) the reports of the Directors-General concerned, that is, the Director-General of the establishment at Ispra and the Directors-General of the Directorates-General for Industrial and Technological Affairs and for Research, Science and Education;
(iv) the decisions of the Council of Ministers which show that the latter decided to discontinue all research, study and collaboration in the field of thermal breeder reactors;

B. Order the following facts to be confirmed by witnesses:
(i) Mr Grass, Head of Division at the Ispra establishment and the applicant's superior told the applicant that his transfer constituted a sanction, but that there were others ...
(ii) When the applicant arrived at Ispra both Mr Grass and the applicant's immediate superior, Mr Nijsing, told the applicant that they had not been informed of that arrival, that there was no vacant post and that they had nothing specific for him to do, and that they had moreover not been consulted previously.'

The *defendant* contends in its defence that the Court should:

'(1) Dismiss the application as unfounded;
(2) Order the applicant to pay the costs'.

The *applicant* completes or amends his conclusions in the reply on the following points:

3. Order the opposite party to pay to the applicant a sum of FB 1 for non-material damages resulting from his transfer and the sum of FB 71 000 for material damages, while reserving the right to increase the sum during the proceedings, and with the deduction of daily subsistence allowances;
5. ... and rectify the applicant's position in the service;
6. ... an amount to be fixed *ex aequo et bono* by the Court;
8a. Order the opposite party to pay to the applicant an amount to be determined by the Court *ex aequo et bono* for damages resulting from the negative attitude taken by the Commission with regard to the applicant's role in the Committee of Experts established by the International Atomic Energy Agency;

In the alternative:

A. ...
(ii) ... and in addition the establishment plan and detailed list of posts of the Ispra establishment after 1 March 1976;
(v) all the documents concerning the obstacles put by the opposite party in the way of the performance by the applicant of his duties within the Committee of Experts of the International Atomic Energy Agency and in particular in this connexion:
(aa) Memorandum from Mr Villani to Mr Schuster (No 1077 of 28 November 1975)
(bb) Memorandum from Mr Schuster to Mr Villani (No 2219 of 12 February 1976)
(cc) Telex from Mr S. Finzi to Mr Villani (No 2300 of 12 March 1976)
(dd) Correspondence between Mr Finzi and Mr Grass in connexion with the

applicant's work for the Committee of Experts of the International Atomic Energy Agency

(vi) the Euratom Molten Salt Reactor Cooperation Agreement of 1962 between the United States of America and the European Communities;

B. ...

(1) ... that moreover Mr Van Westen was settling scores;

...

(b) *In addition it is necessary to examine Mr Grass as to the following points:*

(3) Whether he interviewed the applicant on his arrival at Ispra;

(4) How he explains that he first expressed the view that the applicant would be able to carry out his work at the Committee of Experts of the International Atomic Energy Agency fully and that he subsequently took responsibility for a memorandum providing that the applicant would not be able to carry out this work at all ...;

(5) Whether he did not ask Mr Dinkelspiler to transfer the applicant to a post in which he would be able to carry out his work at the Committee of Experts of the International Atomic Energy Agency;

(6) Since Mr Grass did not receive written instructions concerning the applicant, whether he wrote to Mr Dinkelspiler to obtain them;

(c) *It is necessary in addition to examine Mr Nijsing as to the following points:*

(7) Whether Mr Nijsing did not inform the applicant that the work which it was envisaged giving him could be done by an official who was a newcomer in Grade A 8 or even by a technician in Grade B 1;

The *defendant* in its rejoinder adheres to the conclusions contained in its defence.

III — Summary of the submissions and arguments of the parties

Preliminary observation: The parties are in total disagreement as to the nature and the significance of the facts which are at the basis of the dispute and which have been summarized under Section I above. They dispute the meaning of each memorandum, each letter, each incident and each expression used by the opposite party. It is therefore useless to repeat all this detailed discussion which will be found in the pleadings and the annexes thereto. On the other hand the following summary will mention the principal contradictions which relate not only to the objectives of the European Atomic Energy Community and the organization of its departments but, more precisely, to the definition of the 'interests of the service' referred to in the decision of 10 December 1975, to the possible employment of the applicant at Ispra, to the need for his external contacts and to the absence of periodic reports. All the other documents referred to illustrate these fundamental conflicts and to list them in the report would be irksome. On the other hand it may be useful to read them in order to establish the context and the atmosphere in which the dispute arose and developed.

A — The transfer decision

The *applicant* claims that this decision affects him adversely since:

— it was taken against his will

— it has prevented him since then from taking part in the work of the group of experts of the International Atomic Energy Agency

— it places the applicant in a serious situation from the family point of view since his three young children in his charge are in the care of a person in Petten who would be difficult to replace.

Secondly, according to the applicant, this decision, which affects him adversely,

should have stated the reasons on which it was based within the meaning of Article 25 of the Staff Regulations, since the Court cannot exercise its powers of judicial review on a mere reference to the interests of the service.

Thirdly, the applicant states that in so far as there is a statement of the reasons upon which it is based it is

— inaccurate, since the allusion to the opinion of the Directors of the establishments concerned is false because the officials at Ispra who were concerned had not been informed of the arrival of the applicant and of the duties with which he was to be entrusted,

— necessarily incomplete because it was made after examination of a personal file which was incomplete, in particular because the 1969 periodic report was criticized by the Joint Reports Committee and the following reports are non-existent.

Fourthly, the applicant considers that a decision taken in those circumstances must be considered as a disguised sanction or a deliberate downgrading of his position, for his new duties which are neither described nor identifiable, do not in any case come within the scope of an official of the level and the ability of the applicant who has since then been subject in Ispra to a hierarchy to which he was not subjected in Petten.

Finally, fifthly, the applicant states that the transfer decision makes it impossible for him to fulfil his duties at the Committee of Experts of the International Atomic Energy Agency while first, the subjects dealt with by that Committee are of the greatest interest and, secondly, it comes within the duty of the administration to assist officials (third paragraph of Article 24 of the Staff Regulations) and not to prevent them from taking part in work which is useful for science and for their career.

The *defendant* replies, it seems, to the first three arguments of the applicant by a reference to the judgment in the *Gutmann* case (Joined Cases 18 and 35/65, [1966] ECR 103) according to which a transfer decision taken in the interests of the service cannot adversely affect an official and therefore need not state the reasons upon which it is based. The defendant claims the exercise of a discretionary power in the organization of services and the optimum allocation of the staff and it maintains that the burden of proof has shifted because it is for the applicant to prove the existence of reasons extraneous to the service with the help of objective, relevant and concordant evidence. In reality, the transfer remained the only possibility of usefully employing Mr Geist. Internal memoranda, which appear on the file, enable the reasons for the transfer to be understood (Memoranda Nos 1017 and 1257 from Mr Villani to Mr Geist of 17 November 1975 and 11 December 1975).

The Commission seems to reply to the fourth argument relating to the disguised sanction that it is in fact a correct application of the second paragraph of Article 4 of the Staff Regulations.

Finally, the Commission replies to the fifth argument concerning the duty of assistance imposed on the administration that the third paragraph of Article 24 of the Staff Regulations does not make it possible to acknowledge that an official has the right to spend as much time as he wishes on a task which has been given to him by another organization.

In his reply, the *applicant* attempts to refute the replies given by the Commission by emphasizing the following points relating to his first two arguments:

— after the judgment in the *Gutmann* case the Court gave judgment in the *Kley* case (Case 35/72, 27 June 1973) according to which a transfer decision taken against the wishes of the person concerned is an act adversely affecting him and the reasons on which it is based must therefore be stated;

— the stereo-typed reference to the interests of the service does not enable the person concerned to appraise whether it is necessary to lodge an application or enable the Court to exercise its power of judicial review;
— the reasons on which it is based may only be deduced from factors other than the measure which was notified; it is in fact obvious that it is always possible to find motives for a measure; it is impossible to make good the administration's failure to act by recalling past events.

The applicant supports his third argument relating to the inaccuracy of the so-called reasons on which the decision was based by means of the following factors:
— the defendant does not prove that it had recourse either to all the competent Directors-General or to the establishments at Mol and Karlsruhe
— the defendant does not reply to the argument based on the *Reinarz* case according to which a transfer can only be made after examination of the file and the periodic reports, which were in this case partially non-existent; this is all the more so since, in the absence of such an examination, the decision must have been taken 'blind' and therefore for reasons which have not been acknowledged.

The fourth argument of the applicant is based on misuse of powers. He admits that although administrative measures must normally be presumed to have been taken in the interests of the service, that is only a presumption *juris tantum* which is capable of being rebutted, above all in the absence of valid reasons for the decision, by very broad evidence such as the statements of witnesses or circumstantial evidence; whatever the formulae used in national or Community law, it is always for the court to come to a decision on the basis of a 'group of presumptions'. However, in the present case it is possible to come to such a decision by means of many views and documents.

Finally, the applicant explains his fifth argument concerning the possible employment of the applicant either in programmes in which he could make full use of his abilities or in external contacts which were in the past considered very desirable, as the file shows and as senior officials have acknowledged. Why is the applicant not permitted to continue to work in a direction in which he had been encouraged to persevere? That duty was acknowledged in the judgment in the *Guillot* case (11 July 1974).

In its rejoinder the *defendant* begins, in connexion with the reasons upon which the decision in question was based, by stating that the judgment in the *Kley* case was delivered in a different situation. Then it states that the requirement that measures should state the reasons upon which they are based is less a question of form than of substance. However, the reasons upon which the measure in question was based which are essentially clearly stated in detail by previous documents which have already been referred to, fulfil the requirements laid down in the judgment in the *Kley* case. The applicant is aware of this because he attempts secondly to prove, with the help of arguments which have already been refuted, that these reasons are inaccurate. Finally, the absence of the most recent periodic reports is of no influence since a transfer is not comparable to a promotion and in any case the Director-General who took the decision in question was fully aware of the ability and the conduct of the applicant.

With regard to the allegation of misuse of powers, both learned authors and case-law require proof, objective, pertinent and concordant evidence which is in this case totally lacking. The facts which have been referred to are the results of the change of programme of

the European Atomic Energy Community imposed by the Council on the Commission, or of the personal conduct of the applicant. In particular, the applicant is, in Ispra as he was in Petten, a scientific officer who kept his grade and was necessarily subject to a hierarchy. Only his 'persecution complex' explains the fact that he impugns to the administration objectives other than those which have been clearly acknowledged.

B — The vacant post

The *applicant* observes that there was no vacant post at Ispra which had been published in accordance with the second paragraph of Article 4 of the Staff Regulations. The guarantees which are thus given to any applicants or to officials who are officially transferred disappear.

The *defendant* replies that the absence of publicity is explained, according to the case-law of the Court, (Case 61/70 of 16 June 1971, *Vistosi* v *Commission of the European Communities)* by the fact that the official was in this case transferred together with his post and that there was no vacant post. In such a case there is no right to a specific post (Case 21/68 of 6 May 1969, *Huybrechts* v *Commission of the European Communities)* but only to the maintenance of that grade.

The *applicant* observes that in the absence of a vacancy notice and because of the terminology used to notify the contested measure nobody was mistaken as to the true nature of the decision adopted. In addition, the *Vistosi* case is not a precedent in this case because there was no vacant post at Ispra and the applicant's post was not transferred there to any 'space' in the detailed list of posts. Finally there was no common measure between the duties of the applicant before and after the transfer operation: a head of service, he has become in fact a mere technician.

The *defendant* replies by arguments which have been already mentioned under Section A above *in fine* in connexion with the complaint of misuse of powers. It adds that the argument based on the detailed list of posts (organigramme) is irrelevant since the Staff Regulations only refer to the concept of the list of posts (tableau des effectifs).

C — The action for damages based on the state of the personal file and the conduct of the defendant

The *applicant* insists on the fact that the 1969 periodic report drawn up concerning him was the subjectmatter of the criticisms of which the Court is aware and that no report has been drawn up since then, which is in breach of the first paragraph of Article 43 of the Staff Regulations. The applicant, who has, moreover, been deprived of the right to continue his studies and his external contacts, provisionally assesses the non-material damages he has suffered at FB 100 000.

Moreover he evaluates the non-material and material damages caused by the transfer, particularly in view of the disturbance to his family life, at the same amount.

The *defendant* considers that it is doubtful whether those requests are admissible and that there is not a sufficient causal connexion between the conduct of the administration and the alleged damage which he has suffered.

The *applicant* replies first concerning the damage caused by the criticized 1969 report and the absence of the following reports. He points out that the old reports were favourable until the conflicts arose between the applicant and the administration at Petten. He states that the previous acknowledgement of his worth should normally have led to reclassification and that the 'loss of opportunity' must be considered as a loss

for which the Court will fix the compensation at the figure which it considers fair whatever the standard and very low amount proposed in the application. The payment of such compensation should not, moreover, prevent the administration from re-establishing the applicant's position in the service.

The applicant next points out that the damage caused by the obstacles put in the way of his external activities depends on the request for a suspension of operation which has since been settled by the Order of 21 December 1976.

The damage caused by the transfer itself is the subjectmatter of a provisional calculation by the applicant amounting to FB 71 000, from which it is necessary to deduct the daily subsistence allowances which have already been paid.

The *defendant* replies first that the complaint within the meaning of Article 90 of the Staff Regulations does not refer to damages for lack of promotion or increase in step and that that complaint appears for the first time in the reply. It adds that the applicant's career depended on the promotion procedure for research staff for which two levels of joint committee have been created, committees of which the Director General of the Joint Research Centre and the Director of the establishment at Petten are members and they know personally the scientific ability of Mr Geist and the nature of his duties. Moreover, Mr Geist did not express any annoyance when he was not promoted. As to the 'loss of opportunity', it cannot justify compensation for damages. Mr Geist should not in addition have wished for a promotion which would probably have involved his transfer and the end of his personal research.

Moreover, the calculation of the so-called damage results from a transfer made in the interests of the service and is therefore useless.

Finally, the applicant should have considered the authorization to keep contact, even marginally, with the International Atomic Energy Agency, as a sign of goodwill. He was never prevented by that measure from continuing his scientific work. He cannot therefore complain of any damage.

IV — Oral procedure

Prior to the hearing, the Court requested, at the suggestion of the Judge-Rapporteur and having heard the views of the Advocate General, that the Commission should submit by 10 February 1977

'all the correspondence between the Director General to whom Mr Geist was answerable and the other Directors-General or heads of establishment of Euratom concerning any posts to be given to the applicant ...

in particular, the documents relating to the contacts of any nature which have been made with the Ispra establishment',

and to reply to the following question:

'What was the state of all posts of the same grade as that of the applicant which were vacant at the date on which the applicant was transferred?'

By letter of 7 February 1977 the *Commission* specified that:

- all the correspondence between the Director-General to whom Mr Geist was answerable and his colleagues was already on the file;
- the agreement of the Director of the Ispra establishment to the transfer of Mr Geist had been given orally;
- thirteen vacancy motices for scientific posts in Grades A 8/A 5 had been posted on the board at the end of 1975 at the Joint Research Centre and the Commission gives a

description and the allocation of those posts.

For his part, the *applicant* lodged a document and reserved the right to use it in his pleadings.

At the hearing on 26 May 1977 the parties developed the arguments set out in the written pleadings.

The Advocate General delivered his opinion at the hearing on 30 June 1977.

Decision

1 The applicant took up his duties on 1 April 1962 at the Joint Research Centre at Petten (the Netherlands) as the 'head of hydraulic studies' and was established on 1 October 1962 as a scientific officer in Grade A 6.

2 As a result of favourable periodic reports pointing out his 'extremely sound and wide knowledge in his field of hydraulics and the allied fields of mechanics and research', he was appointed Head of the Hydrodynamics and Measures Division, a post which he occupied in 1963 and 1964.

3 In the context of these activities, he was seconded to the United States in 1964 and 1965 and on his return was promoted to Grade A 5 on 1 January 1966.

4 During the summer of 1967, the Directorate of the establishment at Petten considered, in agreement with the Director-General of the Joint Research Centre, that the change in the second research programme of 1962, which was decided by the Council on 15 June 1965, no longer enabled research to be continued in the applicant's special field (liquid fuel reactors) and that the staff should thenceforth devote themselves to new duties fixed at the institution.

5 The group of which the applicant was head was therefore disbanded on 24 July 1967 and in these circumstances the question of an appropriate posting for the applicant began to arise.

6 At first, as from April 1968, the applicant, who was directly attached to the Director of the establishment at Petten, then to the Director-General of the Joint Research Centre, was able to continue his studies on molten salt

breeder reactors and carried out several missions in that connexion to national departments and international organizations.

7 In 1975 the Directorate of the Joint Research Centre considered however that this situation could not continue and asked the applicant to apply for the post of scientific attaché to the Community's delegation in Washington, a post which was however given to another official for reasons which are extraneous to the applicant's qualifications.

8 The development of reactor systems, which was left to the initiative of the Member States, was confirmed by a decision of the Council of Ministers of 22 August 1975 (OJ L 231 of 2 September 1975).

9 At the end of September 1975, the Director-General of the Joint Research Centre considered the transfer of the applicant to a post in another programme and took care to keep the latter informed of the attempts made to find him a post.

10 At the end of 1975 he was informed that in view of the programmes and the work to be carried out the only remaining possibility was two vacant posts at Ispra and he was asked to indicate his choice between them.

11 The applicant did not make use of this option and, by decision of 10 December 1975 of the Director-General of the Joint Research Centre, he was transferred to Ispra with effect from 1 March 1976.

12 In the meantime, the applicant had, because of his abovementioned external contacts, become coordinator of a group of experts of the International Atomic Energy Agency in his special field.

13 In February 1976 the Director-General of the Joint Research Centre informed him that that work should remain marginal in relation to his work at Ispra and in any case should not exceed 10 % of the time which he owed his administration.

14 The applicant at first received flattering periodic reports but the 1969 report stated that he was only performing marginal work of a partial and temporary nature.

15 The applicant lodged a complaint on the basis of Article 90 of the Staff Regulations of Officials on 26 March 1970, because he considered that that appraisal affected him adversely.

16 On 21 May 1970 the Joint Reports Committee reported that 'Mr Geist's periodic report is irregular in so far as it gives an appraisal, without details, of the ability, efficiency and conduct in the service of this official without describing the duties with which he was entrusted and which he performed in the post which is the subject-matter of the periodic report'.

17 This report of 1969 was however not completed and those of 1971, 1973 and 1975 were not drawn up.

18 On 26 February 1976 the applicant requested the appointing authority to:

— annul the transfer decision,

— authorize him to devote all his time to the Vienna work,

— adopt a viewpoint on the observations put forward by him on the periodic reports of 1967 and 1969,

— describe his activities from 1966 to 1976,

— draw up periodic reports within the meaning of Article 43 of the Staff Regulations for the period from 1965 to 1975,

— appoint him as head of a service from 1965,

— pay him the corresponding arrears of salary, and award him damages.

19 In the absence of a reply the applicant, by application lodged at the Court Registry on 30 June 1976, made specific by the conclusion contained in his reply, requested:

— the annulment of the transfer decision of 10 December 1975

— an order that the defendant should pay FB 1 for non-material damages and FB 71 000 for material damages

— an order that the defendant should describe the duties entrusted to the applicant since 1967 and should draw up the two-yearly periodic reports concerning him

— an order that the defendant should pay damages for the damage thereby suffered of an amount to be fixed by the Court *ex aequo et bono*

— the annulment of the refusal of the defendant to permit the applicant to continue, except marginally or for 10 %, his studies, research and collaboration in the field of thermal breeder reactors and in particular to act as coordinator and rapporteur for the Committee of Experts established by the International Atomic Energy Agency.

20 The requests formulated in the application and the reply and stated in detail during the oral procedure may be summarized in the form of three submissions which should be examined in turn.

I — The legality of the transfer decision

21 The applicant claims that the transfer decision, which was taken against his wishes and placed him in a serious position from the family point of view, did not state the reasons upon which it was based within the meaning of the second paragraph of Article 25 of the Staff Regulations and that the Court could not exercise its powers of judicial review on a mere reference to the interests of the service.

22 Moreover it was taken after examination of an incomplete and inaccurate personal file.

23 For the purpose of deciding whether the requirements of Article 25 have or have not been fulfilled, it is necessary to consider not only the transfer decision in itself but the staff memoranda on which it is based which were duly brought to the knowledge of the applicant and which clearly informed him of the reasons upon which that decision was based

24 In the present case the transfer decision was preceded by a memorandum from the Director-General informing the applicant as early as 1 June 1975

that, in view of the programmes laid down by the Council for the establishment at Petten, his skills could no longer be used there.

25 By memorandum from the Director-General of the Joint Research Centre of 11 December 1975 addressed to the applicant at the same time as the decision in question, it was explained to the applicant that the work in the field of molten salt breeder reactors could no longer be continued at the Centre and that in view of his special field it was only possible to consider transferring him to one of the two vacant posts at Ispra.

26 The transfer decision is therefore completed by a statement of the reasons upon which it is based of which the applicant must have been aware and which contains all the essential factors which guided the administration in its decision and are therefore sufficient to enable the exercise of judicial review.

27 It is therefore necessary to examine the basis of that statement of the reasons upon which the decision was based in order to see if it enables evidence of infringement of the Staff Regulations or of misuse of powers to be revealed.

28 It is therefore necessary to examine the circumstances in which the decision in question was taken.

29 The file shows that following the decisions of the Council of Ministers of 15 June 1965 and of 22 August 1975 amending the programmes it was no longer possible to use the applicant's skills in the establishment at Petten.

30 The applicant did not apply for any of the vacant posts which arose.

31 After asking the advice of the Directors of the establishments concerned the Director-General informed the applicant by a memorandum dated 1 October 1975, then in another of 17 November 1975, that in view of the instructions of the Council of Ministers he was giving him the choice, within the Joint Research Centre, of two posts in the multi-disciplinary framework of Ispra.

32 In the absence of a reply from the applicant the Director-General used his own authority to appoint him to Department B of that establishment and

informed him that a team which formed part of the Heat Transfer and Fluid Mechanics Division needed 'additional assistance', 'the work consisting of research into heat transfer and basic hydrodynamics in the field of the thermal transient of a thin layer of fuel cooled by a liquid involving phase change'.

33 These facts show that the decision validly stated the reasons upon which it was based, that those reasons were not extraneous to the interests of the service and that, moreover, the new post to which the applicant was appointed corresponded best to the exercise of his skills and involved no downgrading.

34 Finally, with regard to the difficulties caused to the applicant's personal circumstances by the decision of 10 December 1975 it is necessary to emphasize that the transfer of an official of the Community does not constitute an abnormal and unforeseeable event in his career although it may cause him family and financial difficulties, when the places of employment to which he may be assigned are spread over several States and the administration may be required to meet needs of the service which compel it to decide such transfer.

35 It follows from the foregoing that the transfer decision of 10 December 1975 was taken regularly both as to form and as to substance.

36 Consequently, the application for annulment of the transfer decision of 10 December 1975 and the corresponding action for damages must be dismissed.

II — The legality of the decision prohibiting the applicant to spend more than 10 % of his time on work for the International Atomic Energy Agency

37 The applicant complains that the administration only authorized him to spend a small proportion of his working time on the studies being carried out within the context of the International Atomic Energy Agency because he considers that this decision hinders the development of his career and that Article 24 of the Staff Regulations has thus been infringed.

38 The administration is alone responsible for the organization of the services which it must be able to fix and alter on the basis of its tasks.

39 The applicant's contribution to the work of the group set up by the International Atomic Energy Agency had to be judged on the basis of the compatibility of that external collaboration with the scientific objectives of that group and the duties which he was called upon to perform at Ispra.

40 Thus, taking into consideration the fact that the research carried out by the International Atomic Energy Agency in the field of thermal breeder reactors was not at that time being pursued within the European Atomic Energy Community, the Director-General for Research, Science and Education correctly considered that the applicant's participation in that work could only be incidental.

41 This decision was taken regularly within the limits of the powers of the administration which were exercised in what that administration considered was the interests of the service and without in any way affecting adversely the rights of the applicant laid down in the Staff Regulations.

42 This submission must therefore be rejected.

III — The periodic reports

43 Article 43 of the Staff Regulations provides that a periodic report on the ability, efficiency and conduct in the service of each official must be drawn up at least every two years.

44 This document must compulsorily be drawn up for the good administration and the rationalization of the services of the Community and in order to safeguard the interests of officials. It constitutes an indispensable criterion of assessment each time the official's career is taken into consideration by the administration.

45 One of the bounden duties of the administration is therefore to ensure that that report is drawn up periodically on the dates laid down by the Staff Regulations and that it is drawn up in proper form.

46 The file shows that the competent authority failed to fulfil its obligations by drawing up a report in 1969 the regularity of which is contestable in so far as it gives an appraisal, without details, of the ability, efficiency and conduct in the service of the applicant and by omitting to draw up the periodic reports concerning him in 1971, 1973 and 1975.

47 The Commission has been in breach of the Staff Regulations of Officials and it will be very difficult and doubtless impossible in view of the time which has elapsed and the dispersal or departure of the authorities who draw up the reports to fill objectively the lacunae in the applicant's personal file.

48 Although the applicant cannot prove that he has suffered material damage, it is not in dispute that he suffers non-material damage resulting from the fact that he possesses a personal file which is irregular and incomplete, when the compulsory periodic report is a guarantee to an official for the regular progress of his career.

49 This absence of periodic reports owing only to the institution put him in an uncertain and anxious state of mind with regard to his professional future.

50 The Court considers that it must fix the amount of that damage at FB 10 000.

Costs

51 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

52 However, under Article 70 of the Rules of Procedure institutions shall bear their own costs in proceedings brought against them by servants of the Communities.

53 Since the applicant has only been unsuccessful in two submissions and since he has been partially successful in his conclusions in the third, it is necessary to order the Commission to bear one third of his costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application against the transfer decision of 10 December 1975;**

2. **Dismisses the application against the decision prohibiting the applicant from spending more than 10 % of his time on work for the International Atomic Energy Agency;**

3. **Orders the Commission to pay the applicant FB 10 000 as damages for failure to draw up periodic reports;**

4. **Orders the Commission to bear its own costs and to pay one-third of the applicant's costs;**

5. **Orders the applicant to bear two-thirds of his own costs.**

Pescatore Mackenzie Stuart Touffait

Delivered in open court in Luxembourg on 14 July 1977.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 30 JUNE 1977 [1]

Mr President,
Members of the Court,

The proceedings with which we are dealing today essentially concern the transfer of a scientific officer of the European Atomic Energy Community from the Joint Research Centre at Patten to the Joint Research Centre at Ispra.

This official took up his duties with the Commission in 1962. In February 1963

1 — Translated from the German.