Costs

20 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

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

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 12 January 1984.

P. Heim
Registrar

T. Koopmans
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 24 NOVEMBER 1983 [1]

Mr President,
Members of the Court,

The case before the Court is an application dated 27 September 1982 made by Mariette Turner, née Krecké, for the annulment of a decision of the Commission of the European Communities dated 20 October 1981 and the award of a sum of BFR 250 000 as

1 — Translated from the French.

compensation for the non-material damage which she has suffered.

In this action the applicant is raising the question of compliance with the judgment given by the Second Chamber on 9 July 1981 in Joined Cases 59 and 129/80 [1] which she brought against the Commission.

The operative part of that judgment annulled a decision of 4 May 1979 assigning the applicant to a different post as part of the reorganization of the department; it also annulled a decision of 20 May 1980 compulsorily transferring her to a post in Directorate General XII (Research, Science and Education).

Paragraph 72 of the judgment [2] stated that:

"Under the first paragraph of Article 176 of the EEC Treaty it will be the duty of the administration to reconsider the applicant's situation in the light of the principles underlying this judgment and to adopt new measures in regard to her future posting."

As a result of that judgment the applicant was therefore back in her former position as principal administrator in Grade A 4 in the medical branch for staff in Brussels in Directorate General IX (Personnel and Administration). However, by decision of 20 October 1981 the Commission assigned her together with her post to Division IX-A-6, Sickness insurance and Building Loans, of Directorate General IX where she was to act as medical officer.

1 — [1981] ECR 1883.

2 — Ibid., p. 1921.

Dr Turner alleges that the transfer does not comply with the "principles" underlying the judgment of 9 July 1981; it does not correspond either to her training or her experience and in addition her presence in the Sickness Insurance Division was in no way essential. She maintains on the other hand that her definitive reintegration into the medical branch for staff in Brussels would not only have been in accordance with the principles underlying the judgment of 9 July 1981 but quite justified since in the meantime a full-time medical official and a visiting doctor had been engaged for the branch. In fact her new assignment would withdraw from her the practice of medicine in which she has been engaged for more than 25 years. She infers therefrom that the statement of the reasons on which the decision of 20 October 1981 is based is insufficient or inaccurate and that the decision is vitiated by misuse of powers and creates a factual situation entitling her to proper compensation.

I — It is necessary first of all to consider whether the Commission was bound to reintegrate the applicant in her former post definitively and retroactively.

The effect of the judgment of 9 July 1981 was to reinstate Dr Turner in her original position but that in my opinion is as far as it goes. That judgment was not intended to prejudge her *future* assignment and moreover could not have done so.

The Commission is entitled to settle its own internal organization. The effect of the judgment of 9 July 1981 was not to censure the reorganization of the Directorate General for Personnel and Administration which had been undertaken, or to reopen the question of the linking of the Sickness Insurance and

Building Loans Division (which was formerly part of the Management and Organization Directorate B) with General Administration Directorate B of that directorate general. Since October 1980 the medical branch in Brussels has thus been linked with the Directorate General.

The judgment of 9 July 1981 does not prevent a subsequent fresh assignment of the applicant should it be justified by the needs of the service and her qualifications — conditions which I must now examine.

1. The Commission states that even before the judgment of 9 July 1981 the work-load of the central office responsible for the joint system of sickness insurance had been constantly growing. The office is *inter alia* responsible for dealing with applications for 100% reimbursement in respect of serious illness and applications made by officials for prior authorization for cures. Before the applicant was assigned to the post on 20 October 1981 a single doctor performed the duties, which greatly exceeded the half-time for which he had been in principle recruited. It was possible to improve the position only in 1981 after the grant of an additional budgetary post. Pending the creation of that post the Commission had recourse to the procedure of reassignment of an official together with his post without publishing a vacancy notice.

The case-law of the Court has recognized that practice and in the *Kindermann* case it was clearly stated that:

"The decision taken with regard to the applicant does not give rise to a vacancy and does not therefore constitute a transfer within the meaning of the Staff Regulations". [1]

On 1 April 1983 the practitioner was replaced by another also working half-time. Thus at present the work is divided between on the one hand the applicant working full-time (and responsible for some two thirds of the work) and on the other the new doctor (responsible for about one third of the work). That ratio leads to the conclusion that the employment of Dr Turner in the office responsible for settling claims was justified.

Moreover in a judgment of 14 July 1983 [2] the Third Chamber held that:

"Any problems which might be caused to his former department by the departure of an official, the benefit to his new department which might be obtained from his reassignment ... are considerations which are governed" by the wide discretion which the Court has always recognized the Community institutions as having "in the organization of their departments in accordance with the tasks entrusted to them and in the assignment, with those tasks in view, of the staff placed at their disposal."

2. The rules adopted by common agreement between all the institutions provide that each office for settling claims shall be assisted by a medical officer. Applications for prior authorization to accept liability made to that office can be dealt with only after consultation with a *medical* officer and their consideration constitutes an appreciable part of the work of that doctor.

It is not denied that the post of medical officer is *not* "open to persons with no

1 — Judgment of 21 May 1981 in Case 60/80 *Kindermann* v *Commission* [1981] ECR 1329, paragraph 13 at p. 1341.

2 — Case 176/82 *Nebe* v *Commission* [1983] ECR 2486, paragraph 18.

real medical training or at any rate only an incomplete training in medicine." [1] Mariette Turner, a doctor, is therefore fully qualified to hold such a post full-time with the office responsible for settling claims in Brussels, the most important of all the institutions.

As a result it is not possible to regard the duties entrusted to the applicant from 20 October 1981 as "lacking in substance" within the meaning of the judgment of 9 July 1981.[2]

Let me mention that the judgment in the *Nebe* case of 14 July 1983 [3] states that:

"An official may not object, by reference to his personal interest, to measures adopted by the authorities in respect of the organization or reorganization of departments and recognized as being in the interests of the service."

The contested decision therefore does not seem to me vitiated by any mistake of fact or law.

As to the alleged misuse of powers, it suffices to observe that once the decision to reassign is recognized as being in the interests of the service it cannot be vitiated as a misuse of powers.

It follows from those findings that the claim for damages is unfounded.

II — The applicant however also complains that between 9 July 1981 when the judgment was given and 20 October 1981 she was left without instructions and without work in Directorate General XII.

The principle contained in the second paragraph of Article 34 of the ECSC Treaty to the effect that the High Authority has a *reasonable* time to take the steps to comply with a judgment declaring a measure void seems to me capable of being transposed to the first paragraph of Article 176 and also to Article 171 of the EEC Treaty. In this case in view of the holiday period and the applicant's absences from work the period of a little more than three months which elapsed between the delivery of the judgment and her new assignment does not appear excessive.

Her provisional reassignment involved her in no loss of grade or reduction in salary. The impossibility for her to practise medicine during that period results from the new situation created by the judgment and from the measures taken in the meantime in the applicant's department.

Let me add that the application for a stay of execution made during Cases 59 and 129/80 was not allowed and that Dr Turner herself objected to her assignment on 8 June 1979 to the Special Medical Branch, Brussels, for staff in Brussels.

My opinion is that the application should be dismissed and the parties should bear their own costs.

1 — Paragraph 65 of the judgment of 9 July 1981 [1981] ECR at p. 1919.

2 — Paragraph 61 of the judgment of 9 July 1981 [1981] ECR at p. 1918.

3 — Case 176/82 *Nebe* v *Commission* [1983] ECR 2486, paragraph 19.