confidentiality which make every doctor the judge of whether he can inform the persons whom he is treating or examining of the nature of the illnesses from which they may be suffering and which must also apply *vis-à-vis* persons entitled under a deceased official, even if that official had released the doctors from their duty of confidentiality. That is why a special procedure allowing indirect access to documents of a medical nature through the interposition of a medical examiner appointed by the official has been provided for.

REPORT FOR THE HEARING
delivered in Case 140/86 *

I — Facts

1. Mrs Gisela Strack is the widow of and the person entitled under Mr Gerhard Strack, who was an official of the Commission posted as a technician to the Atomic Research Centre of the European Communities at Geel in Belgium.

2. On 9 September 1970 Mr Strack, whose duties included the preparation of 'targets', that is say standard samples of known radioactivity, was exposed to radioactive contamination consisting of the inhalation of plutonium dust. Neither the Research Centre's doctor nor the representative for protection against radiation forbade Mr Strack to continue his work.

3. After suffering a myocardial infarction, Mr Strack requested in 1973 and was granted voluntary early retirement.

4. On 18 July 1979, Dr Sémiller, Head of the Commission Medical Service for Personnel outside Brussels, made a declaration to the Administration, 'suspecting the presence of occupational disease' within the meaning of Article 3 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease (hereinafter referred to as 'the Rules').

5. Mr Strack underwent various medical examinations in the Federal Republic of Germany and on 25 September 1980, he submitted to the Administration of the Commission a request for the recognition of the existence of an occupational disease.

6. Following Mr Strack's death on 13 February 1981, the Commission opened an inquiry and had various reports prepared by experts.

7. On 30 June 1983 Mr Burke, a Member of the Commission, informed Mrs Strack that Mr Strack's case would continue to be examined although the amount of radioactivity to which he had been exposed was below the maximum permissible doses.

8. Following an exchange of correspondence between the departments of the Commission and Mrs Strack an interview took place in Brussels at which Mrs Strack

* Language of the Case: German.

and her lawyer obtained permission to consult Mr Strack's personal file.

9. On 24 May 1985 Mrs Strack's lawyer informed the Commission that there were gaps in the file and, under Article 90 of the Staff Regulations, submitted a request for permission to inspect the complete personal file of Mr Strack, the complete file on the accident at work of 17 September 1970 and all of the medical reports and expert opinions which had been drawn up.

10. On 2 July 1985 the Commission replied, informing Mrs Strack that she was entitled, as the person entitled under Mr Strack, to access to his file pursuant to Article 26 of the Staff Regulations which sets out the content of the personal file and the conditions under which a person may acquaint himself with it. The Commission also informed her that it had prepared a draft decision based on Article 73 of the Staff Regulations, which concerns insurance against the risk of occupational disease and of accident. Under the procedure provided for in Articles 21 *et seq.* of the Rules Mrs Strack had the right to request that the medical report on which that decision was based be communicated to a doctor chosen by her.

11. On 31 July 1985 Mrs Strack appointed Professor Kuni as the doctor to whom the medical report should be communicated.

On 9 August 1985 Mrs Strack's lawyer formally appealed to the Medical Committee provided for in Article 23 of the Rules.

12. On 29 October 1985 Mrs Strack lodged a complaint under Article 90 (2) of the Staff Regulations against the Commission's decision of 30 July 1985, in which she pointed out in particular that her late husband's personal file was incomplete, did not contain an index of all the documents and did not therefore fulfil the requirements of Article 26 of the Staff Regulations.

13. By decision of 27 February 1986 the Commission declared that it authorized Mrs Strack to examine the personal file of her deceased husband in the Commission offices and that, pursuant to Article 21 of the Rules, it allowed access to all the documents concerning the accident of September 1970, thereby enabling Mrs Strack to acquaint herself with the reasons on which the Commission's draft decision was based and to decide whether it was worthwhile to bring the matter before the Medical Committee. The Commission agrees that Mr Strack's personal file did not comply with all the formal conditions of Article 26.

II — Written procedure and conclusions of the parties

1. By application lodged at the Court Registry on 5 June 1986, Mrs Gisela Strack brought an action before the Court of Justice for the annulment of the Commission's decision of 27 February 1986.

2. *Mrs Gisela Strack*, the applicant, claims that the Court should:

(i) declare the defendant's decision in the letters of 2 and 30 July 1985, as formally expressed in the decision of 27 February 1986 on her complaint, unlawful and annul it in so far as the applicant was refused the right to consult the complete personal file of Mr Gerhard Strack;

(ii) order the defendant to allow the applicant to consult the complete personal file of Mr Gerhard Strack, containing all the documents concerning his administrative status and all reports relating to his ability, efficiency and conduct, and in particular:

(a) the records of the regular routine medical examinations;

(b) the findings of fact relating to the circumstances of the accident at work in September 1970, established in 1970 and in February 1983 by the persons charged by the defendant with that task, including the radiological health and safety officer;

(c) the medical findings in regard to the accident at work in September 1970 established by the doctors and experts appointed by the applicant;

(iii) order the defendant to make up a single personal file in conformity with Article 26 of the Staff Regulations containing all documents concerning the administrative status of the late Mr Gerhard Strack.

3. The *Commission*, the defendant, contends that the Court should:

dismiss the conclusions in the application as inadmissible;

to the extent that the conclusions are admissible, dismiss them as unfounded.

4. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. The Court did however request the Commission to answer a number of questions and the Commission complied with this request within the time allowed.

III — Submissions and arguments of the parties

A — *Admissibility*

1. The *Commission* notes that the object of the applicant's conclusions is to enable her to acquaint herself with the complete personal file of her late husband, within the meaning of Article 26 of the Staff Regulations, including in particular the records of the routine medical examinations, the findings concerning the accident at work in 1970 and the medical findings established in relation to that event. The conclusions in the application are inadmissible in so far as they seek inspection of medical documents. The administrative status of an official within the meaning of Article 26 of the Staff Regulations covers decisions concerning his appointment, his employment, his administrative position and the final decision concerning the termination of his service, but not the medical documents referred to in the application. The applicant has been able to consult the personal file of her husband. Her legal interest is to have the illness which caused her husband's death recognized as an occupational disease. Since the documents in the personal file have no bearing on this problem, the formal defects which have been found in the file had no connection with the applicant's request.

2. *Mrs Gisela Strack* submits that the conditions for bringing an action laid down by Articles 90 and 91 of the Staff Regulations are fulfilled. She submitted to the Commission a request that she be allowed to consult the personal file and/or the documents concerning the accident at work and the corresponding medical findings. Her complaint against the decision refusing her request had been rejected and she was now challenging this rejection before the Court of Justice.

The conclusions in the application seek consultation of all documents forming part of the personal file within the meaning of Article 26 and all medical documents in a special file or indeed not contained in any file even if such documents should not, as a matter of law, form part of a personal file.

The right to acquaint herself with the personal file is not exhausted by the fact that she has been able to inspect that file since it was incomplete. She may therefore claim a definite legal interest since it may validly be supposed that the missing documents have a direct or indirect connection with the accident at work.

In German civil service law an official and his surviving dependants have the right, even after his employment has been terminated, to acquaint themselves with his personal file, to which medical documents also belong.

B — *Substance*

1. *Mrs Gisela Strack* submits that Article 26 of the Staff Regulations provides that in respect of every official a personal file is to be made up containing all the documents concerning the administrative status of the official, registered, numbered and classified in serial order, and including medical findings, reports and opinions concerning an accident at work which have an intrinsic link with the official's duties. The Commission may not rely on the confidential nature of those documents or medical confidentiality as grounds for placing those documents in a special file and refusing access thereto to the official or to the person entitled under him. Medical confidentiality may, if necessary, be invoked against an official who is a patient and whose physical or mental state is to be assessed but not against a person claiming under a deceased official within the meaning of Article 73 of the Staff Regulations. Furthermore, the applicant's late husband had expressly released the doctors from their duty of professional discretion.

The administration's obligation to draw up a complete personal file under Article 26 does not prevent it from placing certain documents in a part of that file which may be consulted by third parties only to a limited extent.

The administration's duty here is not one of consideration for a sick offical but one of cooperation and assistance in the interests of the information of the person entitled under the official. In its judgments of 27 October 1977 in Case 121/76 *Moli* [1977] ECR 1971 and of 13 April 1978 in Case 75/77 *Mollet* [1978] ECR 897, the Court recognized that the person concerned has the right to acquaint himself directly or indirectly with documents of a medical nature upon which a decision of the administration is based.

The Commission may not rely on the provisions of the Rules in order to limit the scope of Article 26 of the Staff Regulations. The applicant's right to enforce her claims under Article 73 of the Staff Regulations is dependent on the possibility of being able to acquaint herself with the complete personal file. The interpretation of these Rules given by the Court in its judgment of 21 May 1981 in Case 156/80 *Morbelli* [1981] ECR 1357, according to which review by the Court is confined to questions concerning the constitution and proper functioning of the Committee provided for in Articles 19 and 23 of these Rules and may not extend to medical appraisals properly so-called, is unjustified. Article 28 of the Rules guarantees the person concerned the full range of rights in the matter of complaints and legal protection and thus implies that all the relevant facts must be stated and proved, in particular matters relating to an occupational disease or an accident at work. The

severance of review by the Court from the factual and medical circumstances antecedent to a decision of the administration constitutes a breach of the official's fundamental rights. No such system is applied in any Member State.

The applicant initiated the procedure provided for under Articles 21 *et seq.* of the Rules in order to protect her rights once the Commission had notified her of its draft decision, but she did not thereby waive her right to acquaint herself personally with the file. Article 21 of the Rules, which provides that the Commission must notify the person entitled under the official of the draft decision and of the findings of the doctor or doctors appointed by the institution, and Article 23, which provides for the possibility of appealing to a medical committee, are only meaningful if it is possible for that person to compare those findings with the factual and medical findings concerning the accident at work. The person entitled must be in a position to assess the financial risk entailed in initiating that procedure. The second sentence of the first paragraph of Article 21 allows the official or those entitled under him to request that the full medical report be communicated to a doctor chosen by them but does not specify the nature or the scope of that report. This provision must therefore be interpreted as meaning that it is always open to the official or the person entitled under him to acquaint himself with the file at the seat of the administration and that, in the exceptional case referred to by that provision, the file or part thereof may be sent to the appointed doctor. The Commission's attitude prevented the applicant from arriving at an opinion on the medical facts and problems and possibly convincing the Commission that the medical reports which it had had prepared were based on incorrect premises or that they contained errors. There is a risk that the Medical Committee may repeat errors contained in the prior experts' reports.

As regards the documents which must appear in the personal file special attention must be drawn to the following: the document drawn up by Dr Sémiller declaring that he suspected the presence of an occupational disease under Article 3 of the Rules, the report on the accident and the report of the radiological health and safety officer which, furthermore, should be drawn up pursuant to the provisions of Council Directive 76/579/Euratom of 1 June 1976 laying down the revised basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation (Official Journal, L 187, p. 1) and the report containing the findings as to the nature of the contaminating substance and the records of the various specific methods of examination applied following the accident. Neither the applicant nor the doctor appointed by her have had sight of these documents.

The Commission cannot claim that the applicant agreed with its *modus operandi* and in particular with the slowness of the procedures for examination and obtaining of experts' reports.

2. The *Commission* contends that the applicant's claim directed to obtaining inspection of the medical documents in so far as they form part of the personal file within the meaning of Article 26 of the Staff Regulations is unfounded. The medical documents do not relate to the administrative status of the official and may not appear in the personal file. The applicant's remarks concerning German law are irrelevant since the Commission is only required to ensure that Community law is

observed. Under Community law consultation and communication of medical documents are only possible under the procedure instituted by the Rules, a procedure which the applicant has moreover initiated.

The applicant's claims concerning consultation of specific documents in the file must also be dismissed as unfounded. The interests of an official or person entitled under him under Article 73 of the Staff Regulations are protected by means of a procedure whose exhaustive and exclusive character has already been recognized by the Court (see the judgment of 21 May 1981 in Case 156/80 *Morbelli, supra*). The obligation to state the reasons on which a decision adversely affecting an official is based must, in the case in point, be reconciled with the obligations of medical confidentiality by allowing the person concerned to have the medical report communicated to a doctor chosen by him and by the summoning of a medical committee to which the whole file is sent. It would be contrary to the principle of sound administration to allow, in addition, access to the medical file (see the order of 3 November 1980 in Case 186/80 R *Suss* [1980] ECR 3501).

The applicant, who is 'a lay person in medical matters', cannot claim any legal interest in a separate consultation of the medical file since she has indirect access by means of the appointed doctor and the Medical Committee. Since expenses incurred in connection with the proceedings of the Medical Committee are borne by the institution to which the official belongs, the applicant is not running any financial risk. Nor can she claim the right to review the proceedings of the Medical Committee which, like those of the Invalidity Committee, are secret. Furthermore, the Court has recognized that the intention of the Community legislature was to institute a procedure providing that medical questions should be entrusted to specialists. In its judgment of 26 January 1984 in Case 189/82 *Seiler* [1984] ECR 229, the Court confined its review exclusively to the legality of the task entrusted to the Committee and the manner in which the Committee discharged that task, and left questions relating to the hearing of evidence and the assessment of facts to the Committee as matters for which it alone was responsible. All the medical documents, including those not forming part of the medical report sent to the applicant's doctor, are sent to the Medical Committee. There is therefore no justification for the lack of confidence which the applicant has demonstrated.

The applicant has been precisely informed of the different stages of the procedure and it has been open to her to request at any time the notification of a draft decision pursuant to Article 21 of the Rules; she cannot therefore criticize the allegedly dilatory conduct of the Commission.

IV — Replies to the questions put by the Court

1. The *Commission*, which was requested to indicate the content of the medical report communicated to the doctor appointed by the official, pursuant to Article 21 of the Rules, states that it comprises all the information on the basis of which the doctor or doctors appointed by the appointing authority based their opinion. The documents of an internal nature, such as those concerning internal discussions on the classification of the disease as an occupational risk, are not to be regarded as

medical documents and are not included in the medical report. Those documents are, however, communicated to the doctor chosen by the person entitled upon request by that person: this has been done in the present case.

The *Commission* replies in the affirmative to the question whether that report contains in particular the factual and medical findings in connection with the accident. It states however that the radioactive charge registered on 9 September 1970 was below the maximum limit set by Euratom, so there was no ground for concluding that an accident had taken place or to draw up an accident report. The routine measurement of values on Mr Strack's hands and work clothes did not reveal any contamination and therefore it was not considered necessary to undertake a medical measurement of his body surface. Measurements with the help of the lung counter were taken and a urine analysis was made on 16 and 17 September 1970; analyses of faeces were carried out on 30 September 1970 and 27 January 1971. Records were made of all these analyses. The data measured by the Commission's Medical Service from 1959 to 1973 concerning control of assimilation were automatically available. On the basis of those data Dr Sémiller issued an internal declaration that he suspected an occupational disease. Other analyses of urine and faeces took place in the period from 1 December 1978 to 29 February 1980. The complete medical report of the doctor appointed by the Commission was drawn up on the basis of those records.

2. The Commission was also requested to indicate the content of the medical documents which were sent automatically to the Medical Committee and which the Medical Committee could call for, to state whether those documents are wider in scope than those contained in the medical report and, if so, to give reasons for this. The *Commission* states in reply that all the documents in the possession of the administration are automatically sent to the Medical Committee. In the present case these comprise the file sent to the doctor appointed by the person entitled under the official, the data concerning the control of assimilation registered between 1959 and 1973 and the data measured at the time of the autopsy. The doctor appointed by the person entitled has not requested that those tables be sent to him: he would not have been refused the communication of documents which seemed necessary to him to enable him to decide whether it was worthwhile to convene the Medical Committee. The difference between the powers of the doctor appointed by the person entitled and those of the Medical Committee are that it is possible for the latter to order further examinations.

F. Schockweiler
Judge-Rapporteur