JUDGMENT OF THE COURT (FIRST CHAMBER)
12 JANUARY 1984 [1]

Mariette Turner, née Krecké, v Commission of the European Communities

(Official — Change of assignment)

Case 266/82

1. *Action for annulment — Judgment annulling a measure — Effects — Adoption of measures of compliance — Reasonable time*
   (ECSC Treaty, Art. 34; EEC Treaty, Art. 176)

2. *Officials — Assignment — Statement of reasons — Duty — Scope*

1. It is not normally possible to comply immediately with a judgment annulling a measure, since it requires the adoption of a number of administrative measures. The second paragraph of Article 34 of the EEC Treaty has taken account of those circumstances by expressly allowing the High Authority "a reasonable time" to take "the necessary steps to comply with the judgment". The reasons behind the second paragraph of Article 34 of the ECSC Treaty constitute grounds for accepting that the Commission also has a "reasonable time" to comply with a judgment annulling a decision taken under the EEC Treaty even in the absence of an express provision in the Treaty with regard thereto.

2. A decision assigning an official to a given post satisfies the requirement to state the reasons on which it is based when it mentions the reasons for the assignment without its being necessary to state why the official was not assigned to another post or kept in his previous post.

In Case 266/82

MARIETTE TURNER, NÉE KRECKÉ, an official of the Commission of the European Communities, residing at 213 Avenue Louise,. Brussels, assisted

1 — Language of the Case: French.

and represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of J. Biver, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, Bernard Paulin, acting as Agent, assisted by Daniel Jacob, of the Brussels Bar, 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 20 October 1981 compulsorily transferring the applicant to Division IX-A-6, Sickness Insurance and Building Loans, and for an order for the payment to the applicant of BFR 250 000 as compensation for the non-material damage suffered as a result of the contested decision,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Dr Turner entered the service of the Commission of the European Atomic Energy Community in 1966 and was at first assigned to the Hygiene and Atomic Medicine Division of the Directorate of Health Protection.

By a Commission decision of 8 April 1968 the applicant was appointed a probationary official with effect from the previous 1 February and remained in the same post; a Commission decision subsequently established her with effect from 1 August 1968.

Following the appearance of Vacancy Notice No COM/92/70 Dr Turner, by a Commission decision of 22 July 1970, was appointed with effect from 1 July 1970 to a post of Principal Administrator in the medical department attached to the Directorate General for Personnel and Administration. Her duties in the medical department comprised medical examinations of newly recruited staff, medical check-ups, the examination of reports on check-ups, vaccinations, the sick-bay, medical supervision of the crêche and consultations requested by staff. Between 1971 and 1973 she also performed some of the duties of medical officer for the office responsible for settling claims.

On 4 May 1979 the Director General for Personnel and Administration asked Dr Turner to take up new duties as part of the reorganization of the medical department in Brussels. She took the view, however, that the new duties were insufficiently formulated and alien to her specialized field and she expressed her disagreement with the alteration in her duties.

By a decision of 8 June 1979 of the Member of the Commission responsible for personnel and administration Dr Turner was assigned to a specialized unit, the Brussels Medical Branch for Brussels Staff by way of change from her previous assignment to the medical division.

On 3 July 1979 Dr Turner lodged a complaint against the decision of 4 May 1979.

On 20 May 1980 a fresh Commission decision transferred Dr Turner to the post of Principal Administrator in Directorate General XII for Research, Science and Education with effect from 1 June 1980. That decision was also challenged by Dr Turner by means of a complaint made on 28 May 1980.

Following the express rejection of the two above-mentioned complaints Dr Turner brought an action against the decision changing her assignment.

By judgment of 9 July 1981 in Joined Cases 59 and 129/80 *Turner* v *Commission* [1981] ECR 1883 the Court annulled the decision at issue on the ground that they were vitiated by an insufficient statement of the reasons on which they were based and misuse of powers.

On 20 October 1981 the Director General for Personnel and Administration decided to assign Dr Turner together with her post to the Division IX-A-6 Sickness Insurance and Building Loans where she was to perform the duties of Medical Officer.

The Commission expressly rejected her complaint and Dr Turner lodged an application at the Court Registry on 27 September 1982 claiming the annulment of the decision of 20 October 1981 changing her assignment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry. It nevertheless invited the Commission to answer, before the hearing, a number of questions relating

to the position of the office responsible for settling claims, the details of the procedure followed in assigning the applicant thereto and the amount of work which her duties involved. The Commission answered the questions by letter dated 10 August 1983.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Declare the application for annulment of the decision of 20 October 1981 compulsorily assigning her to Division IX-A-6, Sickness Insurance and Building Loans, to be admissible and well founded;

Award her the sum of BFR 250 000 as compensation for the non-material damage which she has suffered;

Order the defendant to pay the whole of the costs.

The *defendant* contends that the Court should:

Dismiss the action as unfounded;

Order the parties to bear their own costs.

III — Submissions and arguments of the parties

The submissions made by Dr Turner against the contested decision are as follows:

Failure to respect a judicial decision which must be regarded as a breach of the law;

Disregard of essential procedural requirements;

Misuse of powers.

All the submissions are challenged by the Commission.

Failure to respect a judicial decision

Dr Turner maintains that the Commission has disregarded both the retroactive effect and the effect in absolute terms of the judgment of the Court of 9 July 1981. The Commission in fact disregarded the retroactive nature of the annulment of an administrative measure by failing to give the applicant back the duties which were hers prior to the decision of 4 May 1979 and reestablishing her career. Moreover, it disregarded the absolute effect of *res judicata* which in the present case required the administration to do nothing which was irreconcilable with the judgment which annulled the contested decision. The decision of 20 October 1981 to transfer the applicant sets at naught the principles contained in the judgment of the Court of 9 July 1981 according to which the administration is required:

To define itself the precise scope of the tasks given to its staff;

To give its officials specific and substantial tasks;

In the event of a new assignment of a medically qualified official made against his will to take account of his specialization and experience.

In fact the Commission administration:

Instructed the applicant herself to make contact with her new superior and colleague to consider the duties which might be entrusted to her in relation to sickness insurance;

Did not, in the memorandum from the Director General for Personnel and

Administration of 20 October 1981, the same date as the decision to transfer the applicant, or in a subsequent memorandum from the Head of the Sickness Insurance and Building Loans Division of 16 November 1981, give any satisfactory description of the applicant's duties since the description in those memoranda does not accord with the actual position and seeks to represent as specific and substantial tasks which in fact are not so;

Gave the applicant, once again subjected to a new assignment against her will, duties which did not accord with her specialization and did not take account of her experience as a medical practitioner.

In the latter respect the applicant emphasizes that her new assignment "does not have effective duties, in any event none of a medical nature". They are in fact administrative duties, the medical nature of which is purely incidental since the doctors of the sickness insurance "most frequently do no more than perform a purely routine act comprising checking that the prescription given by the practitioner treating the patient satisfies the terms for its acceptance by the sickness insurance".

It is thus obvious that the Commission clearly disregarded the authority of *res judicata.*

The *Commission* rejects all the applicant's allegations. It denies that it has disregarded the retroactive effect of the Court's judgment and takes the view that although an annulment by the Court implies that the measure annulled is deemed never to have existed it does not follow that the administration may not, on the basis of the applicant's legal position as it was before the measure annulled was adopted, take a fresh decision. As to the absolute effect, the principle means on the one hand that the judgment must be complied with within a reasonable period, which goes against the applicant's criticism that the Commission did not immediately comply with the above-mentioned judgment, and on the other hand that after complying with the judgment as aforesaid, the administration "is quite free as to the action to be taken" and may for example "adopt the same decision but on a different legal basis".

The judgment in question was complied with by the very fact that the applicant's assignment to Directorate General XII was not maintained, and that the decision to reassign her was taken within an exceptionally short period. In addition the administration, far from "adopting in the same circumstances the same measure as had been held to be unlawful", made a fresh assignment which was in no way incompatible with the operative part of the judgment of 9 July 1981 and with the statement of reasons which provide the necessary basis therefor.

In that respect the Commission observes that the applicant's new duties were defined in detail in the memoranda from the Director General for Personnel and Administration of 20 October 1981 and the Head of the Sickness Insurance and Building Loans Division of 16 November 1981 and are moreover listed in Articles 11 and 20 of the Joint Rules on Sickness Insurance. For that reason the claim to the effect that the description of the duties at issue "does not accord with the facts or exaggerates their scope" appears quite irrelevant.

In the same way it is impossible to see in what respect the duties at present

entrusted to the applicant do not correspond with her "specialization" and experience "as a medical practitioner in the medical department". In the first place it must be observed that the applicant was not recruited as a member of the Commission's staff or transferred to the medical department because of any specialization and that during the course of the years she has performed various types of work in the medical department. As regards the nature of the duties properly so called, it is sufficiently clear from the description which has been given several times that they are of an obviously medical nature and in any cases involve the examination of patients.

The contested decision took full account of the judgment of 9 July 1981 which annulled the decision of 4 May 1979 to transfer the applicant on the ground that "although the applicant was originally recruited to carry out work predominantly scientific in nature, the fact is that for most of her career she has been assigned to duties which were appropriate to her own specialized field, a good part of which involved work related to the practice of medicine" and that "the Commission was not entitled, for reasons of pure administrative convenience, to assign the applicant to duties which were manifestly inappropriate to her training and previous service record. In fact, in contrast to the decision to transfer the applicant which was the subject of the aforementioned judgment and which assigned the applicant to duties appertaining to "the field of psychology and social service" which might have been performed equally well by persons without any real medical training, the decision at present at issue assigned Dr Turner to a post which could be entrusted only to a medical practitioner and "a good part of which involved work related to the practice of medicine".

Infringement of essential procedural requirements by reason of an insufficient statement of the reasons on which the decision was based

The contested decision, assigning the applicant to Division IX-A-6, states as the reasons on which it is based, the importance of checking all the medical documents in the Sickness Insurance and Building Loans Division. It refers moreover to Article 7 (1) of the Staff Regulations which gives the appointing authority the power to assign officials by transfer "solely in the interests of the service".

In *Dr Turner's* view the Commission failed to state why it considered it impossible to keep the applicant in the medical department and moreover it exaggerated the importance of the medical examinations in Division IX-A-6. The decision to transfer her was therefore not in the interests of the service.

(a) The failure to retain the applicant in the medical department

Dr Turner observes first of all that the decision of 20 October 1981 states no reason for not keeping the applicant in the medical department. That failure to state a reason is all the more important inasmuch as, according to the principle of the re-establishment of an official's career, the administration was obliged, according to the judgment of the Court of 9 July 1981, to give the applicant back her duties in the medical department unless there were some overriding reasons to the contrary and to recognize in good faith the need to keep her there by reason of her previous honourable service.

The Commission's statement in an Explanatory Note of 11 December 1981 to the effect that "the operation of the medical department for the staff in

Brussels does not at present require the assignment of an additional doctor" is belied by the facts. During the very period when the decision at issue was taken the medical department in Brussels experienced a considerable additional resurgence of work which made it necessary to engage two doctors, the one as a full-time official and the other as a part-time visiting practitioner. The urgent need for additional full-time doctors is moreover apparent from a draft report from Dr Hoffmann in December 1982 relating to the year 1981.

The *Commission* answers that a decision assigning an official to a given post does not have to state the reasons for which the official is not assigned to another post.

It adds that the medical department as at present constituted is in a position to perform all its duties and that the report mentioned by the applicant, whilst referring to the need to assign an additional doctor to the medical department for the staff in Brussels, recommends only the engagement of a doctor under the conditions of service of temporary staff.

(b) The importance of medical examinations in Division IX-A-6

Dr Turner challenges the importance of such examinations from both the qualitative and the quantitative points of view.

From the point of view of quality it is basically an administrative medical matter which ought to be voluntarily undertaken and not imposed on a doctor and does not require any special skill; in any event it in no way demands the qualifications of a cardiologist and specialist in internal medicine such as the applicant. From the quantitative point of view, the work, until the decision at issue, has been done without any problems by a single part-time practitioner. Although the applicant has been assigned wholly to sickness insurance she has only a fraction of the files (the remainder having been left to the part-time practitioner, Dr Laurent) and is therefore far from being overworked.

From May 1974 until October 1981 the examinations were always effected by a single doctor (first Dr Siddons, who at the same time was responsible for duties connected with checking absences, and then Dr Laurent). Moreover the very large number of persons covered by the sickness insurance scheme in no way means that there are as many medical files requiring any steps on the part of the medical officer. Finally, Articles 20 and 22 of the Joint Rules on Sickness Insurance mention only "a" (one only) medical officer for each office responsible for settling claims so that it is unlawful to appoint another especially when the work-load does not justify it.

The *Commission* answers that the qualitative and the quantitative importance of the tasks entrusted to the medical officer of the Brussels office for settling claims cannot be contested.

On the basis of the descriptions in the aforesaid memoranda of 20 October and 16 November 1981 it lists those tasks as follows:

Consideration of applications for authorization in relation to convalescent treatment, thermal cures, cures for delicate children, psychotherapy and so forth;

Detailed consideration of cases of serious illness giving rise to 100% reimbursement of medical expenses;

Consideration of files in relation to surgical operations if there is a doubt as to their classification;

Checking any application for reimbursement if any anomaly is found;

Joining in the work of the medical officer.

From the quantitative point of view the work has continually increased and the number of those covered by the Sickness Insurance Scheme covered by the Brussels office for settling claims rose from 27 000 in 1977 to 34 000 in 1982.

As to the argument referring to Articles 20 and 22 of the Joint Rules the Commission contends that it is quite without foundation. It is obvious that the applicant alone has been appointed as medical officer but there is nothing to prevent her from being assisted by another doctor.

(c) Interests of the service

Dr Turner refers to the case-law of the Court to the effect that different criteria apply to the mobility of officials according to whether the new post has been voluntarily chosen or imposed and observes that the interests of the service cannot be pleaded to assign a doctor, as in the present case, against her will to duties patently inappropriate to her training and previous service record.

The interests of the service require on the contrary the applicant's assignment to tasks corresponding to her specialized field and in any event that they should be tasks of real substance not confined to purely administrative measures and clearly and precisely shared with the other doctor concerned with the work. On the latter issue it is to be observed that the administration did nothing in practice to give specific effect to the statement in its letter of 11 December 1981 to the effect that "Dr Turner is the medical officer; Dr Laurent will assist her as a visiting practitioner" but deliberately left ambiguities in the respective duties of the parties.

The *Commission* answers that the applicant's present duties involve "to a considerable extent work relating to the practice of medicine". The new assignment thus complies with the judgment of the Court of 9 July 1981 and in addition meets the needs of the service, regard being had to the scope and level of the medical duties in the office for settling claims. Further, contrary to Dr Turner's view, her position within the sickness insurance office has been clearly defined and is not open to any "ambiguity".

In the Commission's view the applicant has thus in no way succeeded in showing that there was any mistake of law or fact in the statement of reasons on which the contested decision was based.

Misuse of powers

Dr Turner claims that her assignment to Division IX-A-6 was not effected as a result of any objective consideration or

in the interests of the service but with the sole aim of avoiding at any price her return to the medical department, which was achieved by assigning her to duties incompatible with her specialized field and already performed by another doctor who had not complained of being overworked.

In this case the misuse of powers is strikingly apparent from a series of objective facts all leading to the same conclusion, namely:

The absence of any real attempt by the Commission to reinstate the applicant in the medical department in accordance with the judgment of the Court of 9 July 1981;

The excessive importance intentionally attributed by the Commission to the sickness insurance office in an endeavour to give the impression that the applicant's assignment thereto was objectively necessary;

The applicant's assignment against her will to a post for which her specialized training and experience were irrelevant;

The absence of any justification for the decision not to keep the applicant, who had been mandatorily re-assigned to it, in the medical department, whilst another full-time doctor and a further visiting practitioner were appointed thereto.

The *Commission* confines itself to answering that the considerations on which Dr Turner bases her complaint of misuse of powers are, as the Commission has already stated in dealing with the previous submissions, without any objective foundation and are moreover wrong in fact. The submission is therefore without any foundation.

Claim for damages

Dr Turner observes that in this case because of the precedent constituted by the judgment of annulment given on 9 July 1981 and improperly complied with intentionally by the Commission, it is not possible to accept that recognition that her action for annulment of the contested decision is well founded will in itself constitute sufficient compensation for the damage suffered by the applicant. There are therefore grounds for awarding her a sum to compensate her in fairness for the slur on her professional reputation and for the prolonged deprivation of medical work in accordance with her specialized field and experience as a result of the contested decision.

The *Commission* maintains that the contested decision was taken with due regard to the provisions and principles of Community law and that therefore the claim for damages is without any foundation.

IV — Oral procedure

The parties presented oral observations at the sitting on 6 October 1983.

The Advocate General delivered her opinion at the sitting on 24 November 1983.

Decision

1 By application lodged at the Court Registry on 27 September 1982 Dr Mariette Turner, née Krecké, an official of the Commission of the European Communities, brought an action for the annulment of the Commission Decision of 20 October 1981 compulsorily assigning her to Division IX-A-6, Sickness Insurance and Building Loans, and for the payment of the sum of BFR 250 000 as compensation for the non-material damage suffered as a result of the contested decision.

2 In support of her action Dr Turner puts forward three submissions, namely disregard of a judicial decision, to be equated with a breach of the law, infringement of essential procedural requirements and misuse of powers.

3 As regards the first submission Dr Turner considers that the contested decision disregarded the judgment of 9 July 1981 (Joined Cases 59 and 129/80 *Turner* v *Commission* [1981] ECR 1883) in which the Court annulled the decision of the Director General for Personnel and Administration of the Commission of 4 May 1979, assigning the applicant to a different post as part of the reorganization of the medical branch, and the decision of the Commission of 20 May 1980 compulsorily transferring the applicant to a post in Directorate General XII (Research, Science and Education). Following the annulment of those decisions the applicant was to be regarded from the legal point of view as having been reassigned to the duties which she performed prior to 4 May 1979, that is to say the duties of preventive medicine performed as part of the medical department.

4 Dr Turner complains first of all that from 9 July to 20 October 1981 the Commission took no step to comply with the judgment of the Court by re-assigning the applicant to her previous duties and maintains that that constitutes patent disregard of the retroactive effect of the judgment.

5 In that respect it must be observed that it is not normally possible to comply immediately with a judgment annulling a measure, since it requires the

adoption of a number of administrative measures. The second paragraph of Article 34 of the ECSC Treaty has taken account of those circumstances by expressly allowing the High Authority "a reasonable time" to take "the necessary steps to comply with the judgment". The reasons behind the second paragraph of Article 34 of the ECSC Treaty constitute grounds for accepting that the Commission also has a "reasonable time" to comply with a judgment annulling a decision taken under the EEC Treaty even in the absence of an express provision in the Treaty with regard thereto.

6 In this case, in view of the nature of the measures to be taken and other relevant circumstances such as the summer holidays, the annual leave taken by the applicant from 1 to 20 September 1981 and her absences by reason of sickness during July and August 1981, the period of a little more than three months which elapsed between the delivery of the judgment and the decision making a fresh assignment cannot be regarded as excessive.

7 The applicant further challenges the decision of 20 October 1981 assigning her to Division IX-A-6, Sickness Insurance and Building Loans, on the ground that it is a measure incompatible with compliance with the aforesaid judgment of 9 July 1981 according to which "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".

8 As appears from the judgment in question the new provisions to be adopted by the administration were to take account of the applicant's training and her previous employment, the distinguishing feature of which was that the applicant had, for most of her career, been assigned to duties which were appropriate to her own specialized field, a good part of which involved work related to the practice of medicine. It is therefore necessary to check how far the assignment made by the decision of 20 October 1981 observed those criteria.

9 The contested decision assigned Dr Turner as a medical officer to the office responsible for settling claims in respect of sickness insurance. Because of the

very nature of the duties involved, that post is not open to persons with no real medical training or at any rate only an incomplete training in the field of medicine. In entrusting those tasks to the applicant the Commission thus took into consideration both her specialized field, that is to say her medical training, and her previous service. In view of the nature of the duties entrusted to medical officials of the institutions it is necessary further to emphasize that no complaint can be made of the Commission for neglecting the applicant's specialized training in one of the branches of medicine.

10 In view of the foregoing considerations the first submission in the application must be rejected.

11 In her second submission which relates to the infringement of essential procedural requirements Dr Turner alleges that the statement of the reasons on which the contested decision is based is insufficient or wrong in so far as no reason is given for the failure to keep the applicant in the medical branch, that the importance of the medical checks in Division IX-A-6 is exaggerated and that finally the decision justifies the applicant's new assignment by reference to the interests of the service.

12 As the Commission rightly observes, a decision assigning an official to a given post satisfies the requirement to state the reasons on which it is based when it mentions the reasons for the assignment without its being necessary to state why the official was not assigned to another post or kept in his previous post. It is therefore unnecessary to consider the arguments put forward by the applicant in that respect.

13 As regards the argument relating to the reference to the interests of the service it must be remembered that the existence of the interests of the service depends solely on the question whether there were objective reasons justifying a medical official's assignment to Division IX-A-6.

14 It is therefore necessary only to check whether the statement of the reasons on which the contested decision was based was correct in so far as it refers to the need to assign the applicant to Division IX-A-6 because of the increase in the medical duties involved in the work of the office responsible for settling claims.

15 The parties agree that the number of beneficiaries under the Commission's sickness insurance scheme rose from 27 000 in 1978 to 34 000 in 1982 and that the trend involved a proportional increase in the files submitted to the sickness insurance office. Dr Turner however denies that that increase involved a work-load exceeding the capacity of the visiting doctor working half-time, who was responsible for carrying out the duties of medical officer, and thus made necessary the applicant's assignment to the office responsible for settling claims.

16 It is common ground that the increase in the number of beneficiaries made the work-load of the medical officer increasingly heavy. Although it is true that until 1978 the duties of medical officer could be performed by a doctor who was also responsible for checking absences, from then on it was necessary to entrust that work to a visiting doctor, working half-time, who was however faced with a continually increasing work-load which, according to the Commission, required him to devote far more than half his time to the work and also involved delays in dealing with files.

17 In view of those circumstances and the fact that the visiting doctor was due to retire at the beginning of 1983 the Commission was justified in considering that the nature and amount of work in Division IX-A-6 required the assignment thereto of a full-time medical official. The fact that after the departure of the visiting doctor who worked there between 1978 and 1983 a new visiting doctor was engaged in addition to the applicant, even if there was no objective necessity for the appointment, cannot alter the assessment of the situation as it appeared on 20 October 1981 when the contested decision to assign the applicant was taken.

18 The second submission must therefore also be rejected.

19 From the aforegoing considerations it is apparent that the third submission of misuse of powers is also unfounded since the contested decision was based on objective considerations.

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.