OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 22 June 1988

My Lords,

Mrs Aldinger and Mrs Virgili are temporary agents of the European Communities who work for the Group of the European People's Party ('the PPE group') of the European Parliament. Their contracts of employment, signed on 8 May 1981 and 1 April 1981 respectively, specified Luxembourg as the place of employment. They work with certain committees of the Parliament, which for several years now have met almost exclusively in Brussels.

Following a series of discussions in 1984, the Bureau of the PPE group decided to transfer a number of personnel working with those committees, including the applicants, to Brussels. Mrs Aldinger and Mrs Virgili did not and do not wish to go. By the present applications, lodged at the Court on 28 January 1987, they seek the annulment of various general decisions of the PPE group concerning the intention to establish the majority of the group's activities in Brussels; the annulment of two individual decisions, addressed respectively to Mrs Aldinger and Mrs Virgili, informing them of those general decisions and setting 1 July 1987 as the date for their transfer to Brussels; and the annulment of two decisions of the President of the PPE group in which, in reply to Mrs Aldinger's letter to the Secretary-General of the group of 7 September 1986 and Mrs Virgili's similar letter of 17 September 1986, the date for the transfer was confirmed.

The Court by Order of 22 June 1987 (ECR 2841 and 2847) suspended the implementation of the contested decisions in so far as they provided for the transfer of the applicants to Brussels on 1 July 1987, pending the determination of the cases.

The Parliament objects that these actions are inadmissible. The letters of 7 September and 17 September 1986 are, the Parliament claims, merely administrative requests under Article 90 (1) of the Staff Regulations, rather than administrative complaints under Article 90 (2) (applicable by analogy to temporary agents by virtue of Article 46 of the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment')). If that is right, the absence of administrative complaints before the applications were lodged with the Court renders the actions inadmissible. In my view, however, those letters contain the necessary elements to be considered as complaints under Article 90 (2); and the content of the decisions taken by the President of the PPE group in his responses of 29 October 1986 confirms that the letters should be interpreted in that way. I do not consider that these applications are inadmissible *in toto*.

However, and without reading them too strictly, it seems to me that what is complained about in these letters is not the transfer as such, but the time of transfer. They wanted the date put back. Mrs Aldinger spoke of 'the particularly serious problem that would be caused by leaving Luxembourg for Brussels on the date indicated' and Mrs Virgili requested 'that the date for transfer be put back' explaining that 'my complaint is not against the transfer itself but rather to obtain a sufficient delay to solve certain family problems'. In so far as they seek in these actions to set aside the transfer *in toto*, they go beyond the grounds relied on in the complaints. To that extent the applications are inadmissible (see Case 242/85 *Geist* v *Commission*, judgment of 20 May 1987, ECR 2181, paragraph 9).

Accordingly, in my view, the cases are admissible only in so far as they contest the validity of the date chosen for the transfer.

The decision to transfer certain personnel, including the applicants, was confirmed by the President of the PPE group at a meeting held on 17 June 1986 but it was decided, *inter alia* for social reasons, to defer the implementation of that decision until July 1987. The transfer was again confirmed by the President of the PPE group on 1 July 1986, at which time it was expressly stated that 'to take full account of the social problems of the persons concerned, and in particular educational problems, the transfer will take place in July 1987'.

It was obviously fair to expect that the Parliament would give those to be transferred a reasonable time to make their arrangements, and that within limits dictated by the demands of the service personal circumstances should be taken into account.

On the other hand, the employment of temporary agents is subject to termination on three months notice and if the two applicants had been told that their contracts were to be terminated at the end of that period if they did not wish to go, they could in law have had no grounds for complaint. Moreover the transfer had been mooted at least from 1984 and personnel knew that one day those working with the committees would have to transfer. In the event even when the final notice was given they had a further year to prepare. That seems to me a fair, even a generous, period of notice as a general rule.

It is said, however, that the present two applicants were under particular difficulties which were not taken into account. Mrs Aldinger was expecting a baby which would only be four months old at the date of transfer and her husband's contract of employment in Luxembourg would not come to an end until the beginning of 1989. Mrs Virgili's husband was employed as a freelance with the Office of Publications, had been seeking a post as an official for four years, and was due to take a competition in December 1987. These are matters to take into account but on balance, in the light of the needs of the service, it seems to me that they were not in all the circumstances such as to oblige the Parliament to give a further extension. The moment had to come when each had to decide whether

husband and wife would both stay in Luxembourg (the wife looking for another job), both go to Brussels, or one commute weekly to Luxembourg or Brussels.

I do not accept that their individual circumstances were not taken into account. True the replies to their complaints from the President of the PPE group were couched in general terms and did not deal specifically with their personal circumstances but those replies state that the file had been re-examined. The facts had already been drawn to the attention of those responsible both orally and in writing. I reject the suggestion that the replies were a mere formality and that the individual cases were not properly looked at.

The applicants have in any event had a further year by virtue of the Court's interim order and I see no reason to reject the PPE group's statement that even though the finance and research departments are still here there is no vacancy for either applicant in Luxembourg.

Accordingly, in my opinion, these applications should be dismissed and I would order that each party should pay its own costs pursuant to Article 70 of the Court's Rules of Procedure.

Had I come to the view that these applications were admissible so as to challenge the transfer *in toto*, I would not have accepted that the specification of Luxembourg as the place of employment in their letters of appointment meant that they could never be transferred elsewhere. Some place has to be specified *ab initio*, but by Article 7 of the Staff Regulations: '1. The appointing authority shall, acting solely in the interests of the service . . . , assign each official by appointment or transfer to a post in his category or service which corresponds to his grade'. That article applies to temporary agents by virtue of Article 10 of the Conditions of Employment applicable to such agents.

Although it might be better to specify initially the place of work as 'X or such other place or places as the needs of the service may require', it does not seem to me that it is not possible to require a transfer when only one place is specified. The meetings of the committees had for years taken place in Brussels. The transfer of the applicants can, in all the circumstances, fairly be described as being 'in conformity with requirements relating to the rationalization and effectiveness of the servicing of parliamentary work' (letter from the President of the PPE group to each applicant dated 29 October 1986) and to be in the interests of the service. The alternative, if the transfer was unacceptable, was for the Parliament or the applicant to terminate the employment on three months notice (see Case 25/68 *Schertzer* v *Parliament* [1977] ECR 1729 at paragraphs 25 and 38 to 40).

This view seems to me to be entirely in accordance with the Court's decision in Case 61/76 (*Geist* v *Commission* [1977] ECR 1419); if anything the desirability of the transfer in the light of the needs of the

service in these cases is even more clearly established than in *Geist.*

Accordingly, I would hold that, despite the presence of the clause stipulating Luxembourg as the place of performance of duties in the contracts of employment, the Parliament was entitled in principle to decide upon the transfer of the applicants to Brussels.

The applicants then claim that:

(i) the decision of the PPE group of June 1984 is unlawful, not being adopted by the competent authority as defined by Article 10 of the internal rules of the PPE group;

(ii) the decision of the Bureau of the PPE group of 10 July 1985 is void *ab initio* because (the applicants say) it was based upon an untruthful statement by the President of the PPE group that the persons concerned consented to their transfer to Brussels and because the number of Vice-presidents in the Bureau exceeded the number indicated in Article 11 of the internal rules of the PPE group;

(iii) the decisions of the President of the PPE group dated 17 June 1986 and 1 July 1986 are also void *ab initio*, being adopted by an improperly constituted authority and are vitiated by misuse of power, since the President only has authority to implement decisions of the Bureau;

(iv) the decision of the Secretary-General of the PPE group of 16 July 1986, in so far as it is a decision rather than a mere notification, is void because *ultra vires* the official concerned;

(v) the decision of the President of the PPE group of 29 October 1986 rejecting the applicants' letters of formal complaint is unlawful, because it was adopted without any authority and in breach of the previous decision of 16 July 1986.

I accept the Parliament's contention that only the decisions of the President of the PPE group dated 17 June 1986 and 1 July 1986 are decisions open to review by the Court. The '1984 decision' is no more than a statement of intention or of principle.

The decision of 10 July 1985 which is also no more than a general decision has given rise to allegations of misinformation as to the willingness of the personnel concerned to transfer to Brussels. In my view, it is clear, however, that at that stage no individual decisions had been taken and that there was therefore no 'act adversely affecting' the applicants within the meaning of Article 91 of the Staff Regulations (see Case 124/78 *List* v *Commission* [1979] ECR 2499, at p. 2510, paragraph 5, and the Opinion of Advocate General Mayras in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677, at p. 1702). There is therefore no need to decide that point; and the same also applies to the 'five Vice-presidents' argument concerning the composition of the Bureau though as far as

I can see once the number of Vice-presidents was increased from two to five, Article 11 is to be read as permitting all five to participate. The participation of five rather than two is in any event inherently more likely to produce a situation where one or more voices would be in favour of the applicants.

It seems to me also clear that the letter from the Secretary-General of the PPE group dated 16 July 1986 is merely a notification of a previous decision.

So far as the decisions of the President of the PPE group of 17 June 1986 and 1 July 1986 are concerned, I consider that Article 10 of the PPE group's internal rules of procedure gives the Bureau the necessary power to take decisions and that the allegations of procedural irregularity are not borne out by the evidence.

Finally, the decision of the President of the PPE group of 29 October 1986 seems to me to fall squarely within the powers conferred on the Presidency by Article 12 of the PPE group's internal rules of procedure.

The applicants claim that the contested decisions were taken without respecting the principle of encouraging the compatibility of family and professional duties set out in the Parliament's own documents. The document cited refers to the day-to-day management of family and professional duties leaving aside the requirements of the service. It cannot be taken to override the judgment of the Court in Case 61/76 *Geist* concerning transfers between Member States in the interests of the service (see also Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447, at p. 2463, paragraphs 17 and 20). In my view, as already stated, family interests were taken into account: they cannot be conclusive.

The applicants further claim that the contested decisions were taken without prior consultation of the Joint Committee. That appears, from the documents submitted to the Court, to be directly contradicted by the evidence.

While it is clearly desirable that transfers should be made with the willing consent of those affected, in the end the interests of the service must prevail (see Case 61/76 *Geist*); and I do not regard the administration's statement stressing the desirability of transfers with consent as stopping it from making the present transfers.

The applicants further allege that the decisions to transfer them were taken without the prior hearing of the persons concerned required by Article 38 of the Staff Regulations. It seems to me that even if that Article applies by analogy (which at present I am not satisfied is necessarily the case) the applicants had a fair and reasonable opportunity to make their views known.

Finally, the applicants argue that the contested decisions did not take account of the criteria of rationalization and effec-

tiveness of the service in choosing which personnel were to be transferred. Some committee members were without assistants in Brussels, some assistants without committee members in Luxembourg. This may have been a temporary phenomenon whilst the move was in progress. The overall aim was the transfer of cohesive groups of personnel. I therefore consider this ground, too, to be unfounded.

Therefore, even if these other arguments are admissible, I consider that these applications should be dismissed and that each party should pay its own costs pursuant to Article 70 of the Court's Rules of Procedure.