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

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations of Officials, especially Article 20 and Articles 9, 11 and 13 of Annex VII;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application as unfounded;**
2. **Orders the parties to bear their own costs.**

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 3 May 1972.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 MARCH 1972[1]

Mr President,
Members of the Court,

The applicant in the case on which I shall deliver my opinion today worked for many years at the Joint Nuclear Research Centre at Ispra as a scientific officer of the European Atomic Energy Community. By letter of 12 June 1968 from the Directorate-General for Personnel and Administration he was informed that, within the context of the change in its organization

1 — Translated from the German.

and in view of the new detailed list of posts applying to the single Commission, the Commission had decided to employ the applicant as from 20 June 1968 as an Administrator in the Directorate-General for Energy in Brussels. Thereupon Mr de Haan evidently made immediate preparations for the removal of his family residence to Brussels. According to his statements, by registered letter of 17 June 1968 he terminated as from 15 September 1968 the agreement whereby he had rented a house at Ispra. He brought proceedings before an Italian Court against his landlord for the repayment of a loan which he had made to him three years earlier for a period of five years, two annual instalments of which apparently remained outstanding. By contract of 29 July 1968, entered into for a period of three years, he rented a house in the Brussels area at a monthly rent of Bfrs 11 000. Finally, he also contacted two transport undertakings and submitted to the appropriate departments of the Commission for selection two estimates for the costs of the removal.

Nevertheless, on 2 August 1968 Mr de Haan was informed by a letter from the Director of the Personnel Division that the decision to transfer him to Brussels had been made in error. This information was specifically set out once again on 5 August by the head of the Personnel Division and Mr de Haan was asked to remain at Ispra. He seems to have been put in considerable difficulties thereby. At any rate in two memoranda of 7 and 8 August 1968 Mr de Haan pointed out to the head of the Personnel Division the financial consequences in which the transfer order and its revocation involved him. He subsequently learnt from a memorandum from the head of the Personnel Division of 9 August 1968 that a member of the Commission had agreed to his going 'on mission' to Brussels 'until the definitive transfer decision can be taken by the Commission'.

The projected removal nevertheless took place on 16 August 1968. As from the autumn of that year Mr de Haan apparently worked permanently in Brussels, returning only occasionally to Ispra on mission. In addition to his salary he regularly received the daily subsistence allowances for officials on mission. This situation continued until March 1970. Then Mr de Haan was informed by a memorandum from the Directorate-General for Personnel and Administration of 25 March 1970 that he had been appointed a principal administrator with Brussels as his place of employment, that as from 1 January 1970 his salary would be paid out of the administrative budget and that he was no longer considered as an official belonging to the scientific group. Further, the daily subsistence allowance for officials on mission would cease as from 1 April 1970. If he had not yet moved, the authority to do so would be granted in accordance with Article 9 of Annex VII to the Staff Regulations. Subsequently Mr de Haan received an installation allowance in accordance with Article 5 of Annex VII to the Staff Regulations. There were however difficulties with regard to the payment of the removal expenses from Ispra to Brussels. His claim in this connexion and the complaints which he addressed to the head of the Individual Rights Division on 10 November 1970 were unsuccessful. A memorandum by the head of the Individual Rights Division set to Mr de Haan on 13 January 1971 stated that removal expenses could not be reimbursed without a transfer. Mr de Haan had moved to Brussels at his own risk without prior authorization and without having previously submitted an estimate. In accordance with the view of the financial control department, the removal expenses could not therefore be reimbursed.

Dissatisfied with this decision, Mr de Haan made a formal complaint to the Commission on 1 March 1971. Since he received no reply thereto he finally instituted legal proceedings on 29 June 1971. In his application Mr de Haan claims that the Court should:

(1) Rule that the implied rejection of his complaint through official channels of 1 March 1971 is null and void;

(2) Order the Commission to pay the sum of Bfrs 80 000 in application of Article 9 of Annex VII to the Staff Regulations:

(3) Alternatively, declare that there has been a wrongful act or omission on the part of the administration and consequently order the Commission to pay damages amounting to Bfrs 80 000.

Let us now see what view should be adopted toward these claims, all of which the Commission considers unfounded.

The main problem in this case is clearly the clarification of the conditions upon which the reimbursement of removal expenses depends under the service regulations of the Community and what possible obstacles may stand in the way of reimbursement. In this connexion reference must first of all be made to Article 20 of the Staff Regulations of Officials, according to which 'An official shall reside either in the place where he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties'. With regard to the removal expenses, Article 9 of Annex VII to the Staff Regulations provides that 'The expenses incurred in respect of removal of furniture and personal effects, including the cost of insurance against ordinary risks ... shall be reimbursed to an official who is obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations and who has not been reimbursed in respect of the same expenses from another source. Such reimbursement shall not exceed the amount of an estimate approved in advance. Not less than two estimates shall be submitted to the appropriate departments of the institution, which may, if they consider the estimates to be excessive, select another removal firm. In the latter case, entitlement to reimbursement may be limited to the amount of that firm's estimate'.

Bearing in mind the wording of those provisions it does not seem to me justifiable to allow that the essential criterion for the reimbursement of the removal expenses is the fact that the official was obliged to change his residence in order to comply with the provisions of Article 20 of the Staff Regulations. That must therefore be regarded as the determining factor which establishes entitlement. Moreover it can be said that authorization of the removal is apparently of no importance. Article 9 of Annex VII makes no express mention thereof as a condition of entitlement. That also seems understandable, for it would in fact be senseless to make the performance of a legal obligation such as that laid down in Article 20 of the Staff Regulations subject in addition to an authorization granted by the employer. Likewise, decisive importance should not be attached to the provisions contained in the second part of paragraph (1) of Article 9 on the submission and approval of estimates; they must merely be regarded as formal requirements. Their object is evidently merely to afford assistance in the fair assessment of the claim to reimbursement and to keep the costs which the Community has to reimburse at as low a level as possible. Perhaps their purpose is also to give the administration as much information as possible on the expenses which such operations generally involve and thus to ensure a reasonable interpretation of the right of reimbursement. Since at any rate the first objective may equally well be achieved by other means (I need only refer to the provision in Article 10 of Annex VII for *estimating* removal expenses), it could in fact only appear altogether unreasonable to assume that the right is lost where these formal requirements have not been observed.

Finally, in my opinion, it is possible to argue that there is no material connexion between Article 9 of Annex VII and Article 11 of Annex VII, that is, between the provisions relating to the reimbursement of removal expenses and those relating to mission expenses. This can be said because it is clear that the two abovementioned types of compensatory payment have different purposes. For that reason in cases where an official was initially obliged to work in another place because of a travel order and only subsequently moved there, the Commission likewise never considered that the right to reimbursement of removal expenses could be lost. Only in the converse case which I shall discuss presently — does it, surprisingly, seek to rely upon that connexion.

If we attempt to apply to the present case the conclusions to which we have so far come, we can straightaway establish that the position is as follows. In 1968 the applicant's place of employment was Ispra. Objectively speaking, it is equally certain that this situation remained unchanged in 1968. In fact the decision of 12 June 1968 to transfer the applicant was revoked in due course and he received express instructions to remain at Ispra and to go to Brussels only on the basis of a travel order which under Article 11 of Annex VII does not involve a change in the place of employment. One must no doubt adhere to this view even though it is certain that the applicant subsequently worked in Brussels with the consent of his employer in the same way as officials whose place of employment is Brussels. But it is moreover equally certain that the applicant's place of employment was transferred to Brussels on express instructions given in 1970. Thus it appears that the applicant was obliged to change his place of residence in the interests of the service and in view of this it certainly seems fair to say that he fulfilled the essential condition applicable with regard to the reimbursement of removal expenses.

On the other hand, it seems to be the Commission's intention to attach weight to the fact that, at the time when the decision to transfer him was taken (March 1970), the applicant had already moved to Brussels and that consequently it could not be said that this decision *resulted* in a removal. We must therefore consider in addition whether this time aspect is of importance in the present case. Let me say right away that it seems to me extremely doubtful and of little relevance. Anyway, it is significant in this respect that Article 5 of Annex VII uses similar terms in relation to the installation allowance to those used in Article 9 with regard to the reimbursement of removal expenses ('An installation allowance ... shall be paid to an ... official who' is transferred to a new place of employment and is thereby 'obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations'). The Commission's administration nevertheless did not refuse to grant an installation allowance to the applicant who had already moved to Brussels before the decision to transfer him had been adopted. Nor can I imagine that this time aspect would be a factor in relation to the reimbursement of removal expenses in a case where the administration at first issues only a travel order but where a transfer is expected in a short time and for that reason the removal actually takes place before the relevant order has been given. In such a case it would be logical to consider with regard to the reimbursement of the removal expenses that there exists an undeniable material connexion between the transfer and the removal. That is moreover how the situation could have appeared to the applicant and the administration of the Commission in the autumn of 1968. In fact one may suppose that the administration at that time expected that the applicant would soon be transferred and thus tacitly assented to his removal. The Director-General for Personnel and Administration seems to take this view when he says in his letter of 25 March 1970 'If *you have not yet moved* you are in any event authorized to move ...'. The terms of the letter of 9 August 1968 from the head of the Personnel Division which says 'that you go on mission to headquarters *until* a definitive decision on transfer can be taken by the Commission' also argue in favour of this view. If that expectation had been fulfilled shortly afterwards I have no doubt that there would have been little likelihood of objections being raised to the reimbursement of the removal expenses. Only the fact that the state of affairs described above continued for so long — and the administration alone was responsible for this — induced the latter to oppose the reimbursement of the removal expenses.

Bearing in mind these circumstances I am necessarily forced to conclude that the Commission finds it simply shocking that the applicant, whilst having his family residence in Brussels, has been drawing mission expenses for a long time and over and above that is insisting on the reimbursement of his removal expenses. Thus in fact the Commission is trying to introduce considerations of natural justice

and to strike a fair balance, by offsetting the removal expenses against the mission expenses. If one considers whether it is really possible to argue in this way it must at once be admitted that the administration's reaction is readily understandable. Purely from a legal point of view however I have strong reservations about any admissions that the nature of the right to reimbursement of the removal expenses can be altered and even lost in this way, that is to say, by the mere passage of time. In a case such as the present, if objections of the kind which the Commission considers it sees do indeed arise, the only proper solution is to deal exclusively with the mission expenses and to order repayment thereof if the necessary conditions are fulfilled. However this is not at present the matter at issue; in the absence of precise information on all the essential factors, it seems equally impossible to give a reliable opinion.

Of course, some comments can at once be made on this point. First of all, it is an interesting factor that in his note of 13 January 1971 the head of the Individual Rights Division expressly stated: 'It follows that the mission expenses which you received until 31 March 1970 *were not an overpayment*'. In this respect he perhaps assumes that the actual disbursements have no bearing on entitlement to mission expenses. He may moreover have taken the view that during the period when the decision to transfer the applicant had not yet been taken it was necessary to take into account the possibility that the transfer would not take place and that the applicant would be obliged to return to Ispra. From this view-point the mission expenses would therefore have to be considered as a kind of compensation for risk. The particular situation in which the decision of 12 June to transfer the applicant and its revocation placed him in 1968 must next be considered. The decision to transfer the applicant led him for good reason to make certain arrangements, that is to say, to terminate his lease in Ispra and to enter into a tenancy agreement in Brussels. After the decision to transfer him had been revoked, it appeared that if the applicant had gone back on all these arrangements he would have suffered financial loss (at any rate so far as the signing of the tenancy agreement in Brussels is concerned) which in all likelihood he would have been able to pass on to the Commission. The terms of the letter of 9 August 1968 from the head of the Personnel Division must in particular be considered in this light ('... the difficulties which you have mentioned ... no longer exist and ... the notes in question have lost their purpose'). It can therefore be assumed that this official regarded the mission expenses as a kind of compensation for the financial consequences which the applicant suffered because of the administration's error and which were described in detail in the memoranda of 7 and 8 August. At any rate it is certain that if the applicant had acted in the autumn of 1968 in accordance with the Staff Regulations and had not moved he would have been able to claim ultimately from the Commission not only the daily subsistence allowance and the reimbursement of removal expenses but also some damages, that is to say, more than the Commission now has to pay him because the removal took place prematurely. In my opinion it is necessary to take account of this in the present case even if weight is attached to considerations of natural justice. Finally in order to form an opinion on the question whether it seems appropriate to offset the removal expenses against the mission expenses it is also necessary to know exactly what payments were made to the applicant as mission expenses and their several purposes. In this respect the Commission quoted figures but it is apparently not clear what it paid in respect of residence in Brussels, what relates to other missions and what it would have had to pay in respect of several missions on which the applicant was sent to Ispra if Brussels had been treated as his place of employment. This fact likewise prevents my agreeing with the conclusions of the Commission. After all these considerations and in particular in view of the finding that there is in principle no material connexion between the reimbursement of removal expenses and the grant of mission expenses the only possible conclusion is that the

applicant's claim to reimbursement of his removal expenses should be allowed. Besides, since the applicant relies on the lower of the estimates submitted by him, since he argued without being challenged that the amount referred to therein was less than the amounts reimbursed in respect of similar removals from Ispra to Brussels and since the Commission did not allege either that the sum stated was excessively high, it can in addition be explicitly stated that the applicant is entitled to reimbursement of Bfrs 80 000. His claim is therefore well-founded, that is to say, the Court must annul the implied decision rejecting his complaint and order the Commission to pay him the sum of Bfrs 80 000.

In view of this conclusion on the issue, it is unnecessary in addition to discuss the applicant's alternative claims which are based on the existence of a wrongful act or omission or unjust enrichment. Likewise, it is not necessary to order the production of the documents which the applicant mentioned in his pleadings for the purpose of clarification.

To summarize, I suggest finally that the application brought by Mr de Haan be declared well-founded, that the implied rejection of his complaint through official channels be annulled and that the Commission be ordered to reimburse the removal expenses amounting to Bfrs 80 000. In accordance with his claim and in view of the outcome of the proceedings the Commission must also be ordered to pay the costs of the proceedings.