decision could only give rise to another decision substantially identical to the decision annulled.

2. Officials paid from research appropriations pursue research objectives specially defined by the Council. An official paid from research appropriations cannot therefore be assigned together with his budgetary post to tasks which are not part of a research programme since such a practice would be in breach of decisions taken by the Council in relation to research and of the budgetary rules for allocation of appropriations.

3. The distinction between officials of the scientific or technical staff paid from appropriations in the research and investment budget and officials of the administrative or language staff paid from operational appropriations follows from the very provisions of Title VIII of the Staff Regulations which introduces various differences of treatment between those two categories of staff in consideration of the special features of their duties. It cannot therefore be maintained that a vacancy notice creates unlawful discrimination between officials of the Commission inasmuch as it excludes from consideration for the vacant post officials paid from research and investment appropriations, since the additional difference is justified by the need to ensure application of a Commission decision in accordance with the decisions taken by the Council in relation to research and in accordance with the budgetary rules for allocation of appropriations.

4. The Commission decision of 23 July 1975 setting up a rotation system for officials assigned to delegations and offices in non-member countries is not a general provision for giving effect to the Staff Regulations as referred to in Article 110 of those regulations but flows from the general power which each institution has to organize its own departments in the interests of their efficient working.

In Case 117/81

JEAN-JACQUES GEIST, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Advocate, Centre Louvigny, 34 B Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Jörn Pipkorn and Hendrik Van Lier, acting as Agents, 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 14 July 1980 to the effect that the applicant's candidature for Post No 120 could not be accepted, of the decision contained in Vacancy Notice No 120 to reserve the post for officials paid from the operational appropriations and of all the decisions taken following the publication of that notice to fill Post No 120,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

Mr Geist, a French national and an engineer, was recruited on 1 April 1962 as scientific officer by the Commission of the EAEC and on 1 January 1966 was promoted to Grade A 5 after a period of secondment in the USA.

Mr Geist was employed in a special field which seemed to suit him and was assigned to the hydraulic studies section of the Joint Nuclear Research Centre at Petten.

Following a Council decision dated 15 June 1965 amending the 1962 second research programme the hydraulic studies section at Petten was abolished; the group directed by the applicant was disbanded on 24 July 1967.

It appears that thereafter Mr Geist, having no specific assignment in the organization of the Joint Nuclear Research Centre, was provisionally attached to the Directorate of the Centre and devoted himself to research on molten-salt fuelled breeder reactors.

The reorientation in the applicant's career caused serious difficulties due mainly to the fact that he was emotionally very much affected by the abolition of the research sector in which he specialized.

The Directorate of the Joint Nuclear Research Centre attempted several times to find a solution. Thus for example in 1975 it invited Mr Geist to seek a post of scientific attaché with the Community's delegation in Washington. That post was however given to another official.

On 22 August 1975 the Council of Ministers confirmed that the development of reactor families should be left to the exclusive initiative of the Member States (Official Journal, L 231 of 2. 9. 1975).

Faced with the impossibility of integrating Mr Geist into the new programme of research at Petten as defined by the Council, the Director-General of the Joint Research Centre requested him to choose between two vacant posts at the Joint Nuclear Research Centre at Ispra in Italy.

Since Mr Geist did not make his choice known the Director-General of the Joint Research Centre at Petten decided on 10 December 1975 to transfer him to the department for heat transfer and fluid mechanics at the Centre in Ispra.

On 30 June 1976 the applicant brought an action for the annulment of the decision but the action was dismissed by the Court by judgment dated 14 July 1977 (Case 61/76 [1977] ECR 1419).

For reasons relating to his family situation (three dependent children in his custody in the Netherlands) and his state of health, which, in the view of his doctor in the Netherlands, prevents him from working at Ispra, Mr Geist has since then requested the Commission to find him a post outside the Ispra Centre consistent with his ability, experience, grade and scientific interests.

It seems that the solutions in that respect proposed by the Commission especially in 1979 could not be accepted.

In those circumstances Mr Geist applied for Post No 120 referred to in a vacancy notice published by the Commission of the European Communities in the Staff Courier dated 13 June 1980 and worded as follows:

"Post No 120 — pursuant to the system of rotation adopted for delegations and information offices, the Directorate-General I, External Relations, seeks for the delegation in Washington: an official of Grade A 4 to Grade A 7, First Secretary responsible for Scientific and Technical Matters. Wide experience in the field of scientific and technical problems and in particular in the field of energy is required ... applications are reserved to officials of the Commission paid out of operational appropriations."

By letter dated 14 July 1980 Mr Geist was informed that his application had been rejected. On 13 October he made a complaint under Article 90 (2) of the Staff Regulations claiming on the one hand the withdrawal of the decision

notified by letter dated 14 July 1980 and on the other hand, as far as necessary, the withdrawal of the decision to transfer or to promote another official and finally the amendment of the terms of Vacancy Notice No 120 with the object of making the vacancy also accessible to officials paid from appropriations in the research and investment budget.

When on 14 February 1981 he noted that his complaint had been rejected by implication, Mr Geist brought the present action which was filed at the Court Registry on 14 May 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Second Chamber), pursuant to Article 22 of the Protocol on the Statute of the Court of Justice of the EAEC and Article 45 of the Rules of Procedure, decided to proceed to measures of inquiry.

By letter dated 12 May 1982 the Registrar of the Court invited the Commission to reply to the following questions:

"1. What is the legal nature of the decision of 23 July 1975? Is it an internal directive or administrative arrangement? What is its effect and binding nature? Since the Commission maintains that the decision was not taken pursuant to Article 110 of the Staff Regulations what distinction does it make in pursuing its staff policy between measures such as the decision of 23 July 1975 and the general provisions for giving effect to the Staff Regulations, provided for in Article 110 of those regulations?

2. Are there other decisions of the same kind as that of 23 July 1975? If so, what are their characteristics? When they concern staff management are they brought to the attention of the staff?

3. Does the decision of 23 July 1975 concern the scientific and technical staff paid from research appropriations? What are the reasons leading the Commission to give an affirmative or negative answer to that question?

4. What are the basic criteria for staff management in the case of scientific and technical staff subject to the provisions of Title VIII of the Staff Regulations in view of the uncertain or temporary nature of research programmes? Can the Commission provide a brief analysis of the management policy which it has pursued, together with statistics if possible?

5. What is the basis for the Commission's decision, contained in the vacancy notice, to reserve the vacancy to officials paid from operational appropriations?

   Is it based on the decision of 23 July 1975? Is it based on other reasons connected with the fact that according to the Commission's statement (defence, p. 7) 'as regards Post No 120 what was involved was just a specific assignment that is to say one outside the general annual rotation, and secondly the reassignment to the post of Mr Reichart who was previously employed in Washington'? What discretion did the Commission have with regard to the vacancy in the Washington delegation in view of

the research programmes adopted by the Council?

6. Why did the Commission in 1975 encourage the applicant to make an application for a post of scientific attaché with the delegation in Washington when according to its own statements 'external offices do not have officials covered by Title VIII of the Staff Regulations' (defence, p. 16) and 'none of the tasks performed by any of the external offices comes under the research programmes' defined by the Council (rejoinder, p. 10)?

7. What are the actual reasons for the decision taken with regard to the applicant? Are they exclusively related to the terms of the vacancy notice? Did the Commission consider the comparative merits of the applicants?

8. Has the Commission in other vacancy notices decided to reserve the post offered to scientific and technical officials paid from operational appropriations?

9. The Commission is requested to forward the document mentioned at the bottom of p. 79 of Annex III to its defence, namely document COM (75) p.v. 349, second part."

The Commission was required to submit its observations by 7 June 1982.

By letter dated 25 May 1982 addressed to the President of the Court the Commission requested further time which was granted and a date fixed for 14 June 1982.

Because of the change in its composition the Court, by order dated 7 October 1982, decided to assign the case to the Third Chamber.

II — Conclusions of the parties

The applicant claims that the Court should:

1. Declare that the decision communicated to the applicant by letter dated 14 July 1980 stating that his application for Post No 120 could not be accepted is null and void;

2. Declare that the decision of the opposite party, communicated in Vacancy Notice No 120, to reserve the post in question to officials paid from operational appropriations is null and void?

3. Declare that all decisions taken after the publication of that vacancy notice with a view to filling Post No 120 are null and void whether they concern appointment, promotion, transfer or any other method of assignment;

4. Order the opposite party to pay the costs.

The defendant contends that the Court should:

1. Dismiss the action as unfounded;

2. Order the applicant to pay the costs;

subject to all necessary reserves.

III — Submissions and arguments of the parties

First submission

The first submission is to the effect that the official who signed the letter of 14 July 1980 lacked the authority to do so since there is nothing in the letter to make it possible to check whether the decision so notified emanated from the appointing authority as determined by

the Commission decision of 5 October 1977 adopted pursuant to Article 2 of the Staff Regulations (Staff Courier of 17 November 1977).

In *the applicant's view* this submission cannot be dismissed on the ground that on the one hand he has no advantage in the annulment of a decision by reason of a formal defect when its substance can no doubt be confirmed or on the other hand that the alleged defect cannot have affected him adversely. Such an argument would lead to a systematic breach of the terms of the Staff Regulations in so far as it is open to every institution when challenged to re-issue the measure annulled and to ensure that the omission or irregularity established is made good.

The applicant claims moreover that he was entitled to be informed of the appointment of the successful applicant and that is was not until the documents annexed to the defence were lodged that he was in fact in a position to take cognizance of the decision of the appointing authority dated 18 July 1980 to appoint François Lafontaine. The contested letter sent to him on 14 July 1980 thus contains no useful information.

The *Commission* acknowledges that the contested letter was not signed by the appointing authority. That fact, which cannot have affected the applicant adversely, is not however such as to justify annulment of the measure on the ground of a formal defect.

It may be seen from the judgments of the Court in Case 124/75 *Perinciolo* v *Council* [1976] ECR 1953 and Case 9/76 *Morello* v *Commission* [1976] ECR 1415 that if for a compelling reason it is certain that the contested decision would have been the same even had there been no such defect in form as alleged the applicant has no interest in claiming that there is such a defect.

The defendant acknowledges that those judgments were given in different circumstances from those of this case (omission by the selection board of the candidate's name in an internal recruitment competition in Case 9/76 *Morello* and the absence of a member of the disciplinary board from one of the sittings held by the board in Case 124/75 *Perinciolo*). It nevertheless considers that the principle which they illustrate should be transposed to this case in so far as the alleged lack of authority cannot alter the fact that the applicant is disqualified from applying since he is an official of the scientific and technical staff paid from appropriations in the research and investment budget.

Second submission

In the applicant's view, there has been an infringement of the provisions of Article 25 of the Staff Regulations to the effect that: "Any decision adversely affecting an official shall state the grounds on which it is based", since the letter of 14 July 1980 is confined to mentioning the contested decision without stating the grounds on which it is based.

To the extent to which his application was considered unacceptable on grounds connected with the actual wording of the vacancy notice the applicant considers that he was entitled to know the basis of the conditions required for filling Post No 120 in so far as that basis seems to follow from the Commission decision dated 23 July 1975 on the purpose and

detailed rules for the application of the system of rotation in delegations and offices in non-member countries. The applicant emphasizes that the decision was annexed to the Commission's defence and was in no way referred to in the contested letter. That observation confirms the failure of the decision notified to the applicant on 14 July 1980 to state the grounds on which is was based.

A statement of the general reasons for a decision to reject an application on the one hand allows the unsuccessful applicant to act with knowledge of the facts and on the other prevents the administration from persisting in a course likely to affect the successful applicant adversely.

In the applicant's opinion the failure to state reasons cannot be justified by the defendant's concern not to prejudice the applicant in so far as the rejection of the latter's application for Post No 120 is not the result of a consideration of the comparative merits of all the competitors.

The *Commission* emphasizes that the submission of a formal defect relied on by Mr Morello in the aforesaid Case 9/76 and rejected by the Court related precisely to a failure to state the grounds on which a decision to refuse admission to an internal competition was based.

In the Commission's opinion sufficient reasons were given in the contested letter since the applicant could not be unaware that Post No 120, as shown in the vacancy notice, was reserved to officials paid from operational appropriations. When he was informed that his application was rejected, the applicant thus necessarily knew the reasons.

However, assuming that Post No 120 was open to all officials of the scientific and technical staff — both to those paid from operational appropriations and to those paid from research appropriations — then, in the Commission's opinion, it would still be necessary to take account of the principles recognized by the Court in the case of a new assignment requested by an official.

It follows *inter alia* from the judgments in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677, Case 188/73 *Grassi* v *Council* [1974] ECR 1099 and in particular Case 101/77 *Ganzini* v *Commission* [1978] ECR 915 that the appointing authority is not required to state the reasons for which it considered another candidate more suitable for the proposed duties than the official not selected "since the recitals of such a statement of reasons might be prejudicial to the candidate".

In citing that case-law the defendant's purpose is to show that, even if the applicant had not been disqualified from applying and if the comparative merits of all the applicants had been considered it would have been required to state reasons for its decision.

Alternatively, in case the rejection of his candidature is based on the fact he is an official of the scientific and technical staff paid from appropriations in the research and investment budget, the applicant makes the following submissions:

Third submission

The *applicant* alleges that the vacancy notice on the basis of which the contested decision was taken is vitiated

by misuse of power. In reserving the vacancy to officials paid from the operational appropriations the vacancy notice discriminates between officials of the scientific and technical staff to the detriment of officials paid from research appropriations. There is no objective necessity for such discrimination.

The *Commission* observes that the distinction between officials paid from operational appropriations and those paid from research appropriations, far from being arbitrary or subjective, is required by provisions relating to the budget and the Staff Regulations, the purpose of which in no way adversely affects the principle of equality of treatment between officials in comparable situations. In that respect the defendant reminds the Court that, of all officials belonging to the scientific and technical staff, those paid from appropriations in the research and investment budget are in a special position governed in particular by Article 174 (2) of the EAEC Treaty, Chapter 33 of the General Budget of the Communities, the first paragraph of Article 92 and all the provisions of Title VIII of the Staff Regulations. Those officials contribute to achieving research objects as specially defined by the Council whereas officials paid from operational appropriations perform tasks which are not so differentiated. That distinction is due both to budgetary constraints and requirements associated with the organization of research in the field of nuclear energy.

The Commisson recalls that Mr Advocate General Mayras argued in his opinion in Case 5/76 *Jänsch* v *Commission* [1977] ECR 1828 that: "The conditions of the ,'normal' career are the price for stability and permanence whilst the contingent and developing nature of nuclear research programmes is compensated for by the advantages" set out in Title VIII of the Staff Regulations which are provisions outside the normal law. That is the case with Articles 97 to 100 which provide respectively for the award of an additional advance in step in recognition of exceptional merit, a change in the original classification on completion of the period of probation, the award of a bonus for exceptional service and the grant of special allowances for arduous working conditions.

It is apparent from paragraph 19 of the judgment in the aforesaid case of *Jänsch* that the distinction thus made by the Staff Regulations is based on "objective criteria so that there can be no question of a breach ... of the principle of equality between officials."

The defendant states further that it is bound to carry out the research programmes as defined by the Council; special allowances are attributed to such work by the budgetary rules themselves (in particular Articles 88 to 95 of the Financial Regulation of 21. 12. 1977, Official Journal, L 356, as most recently amended by the Financial Regulation of 16. 12. 1980, Official Journal, L 345) and that it cannot therefore, without making itself liable, assign an official paid from research appropriations to tasks not serving one of the research programmes determined by the Council.

Those considerations are at the origin of the Commission decision to reserve the vacancy in the delegation in Washington to officials paid from operational appropriations. In the defendant's opinion the allegation of misuse of power made by the applicant cannot therefore be

accepted as proving the case for annulment.

Fourth submission

The *applicant* pleads that there is a breach of the rule *patere legem quam ipse fecisti* inasmuch as the exclusion in the vacancy notice of officials paid from research appropriations contradicts the Commission decision dated 23 July 1975 with regard to the operation of the rotation system (COM(75) PV 349).

The system of rotation of officials was adopted to prevent the ossification of departments. The decision of 23 July 1975 which excludes all discrimination between the various scientific categories, provides that officials of directorates-general other than those with genuinely external functions, when assigned to external departments, are to be posted there together with their budgetary post.

If it were to be shown that in external departments there were no officials paid from research appropriations that would prove that the defendant has appointed none since 23 July 1975, when it set up the rotation system described above. The Commission cannot therefore justify discrimination between officials in 1980 by a series of other previous cases of discrimination.

Finally the applicant observes that quite a number of officials paid from research appropriations do not perform any strictly scientific duties. There is therefore no reason to exclude them from external departments.

Before considering the substance of the fourth submission the *Commission* contends that the organization, operation and breakdown of the various working units are matters within the discretion of the Community institutions. The defendant emphasizes that whether officials belonging to directorates other than those with genuinely external functions may be assigned to external departments depends "on the special needs of the countries concerned and the economic circumstances at the time".

As regards the decision of 23 July 1975 on the operation of the rotation system it should be borne in mind that apart from exceptional cases officials working in external offices are reassigned to the directorates-general from which the applicants appointed to replace them come (Point II (4.1) of the decision) and that as part of that general movement officials are assigned together with their budgetary posts (Point III (1.2)).

The Court has recognized the lawfulness of the system of reassignment of officials together with their posts both in general (Case 60/80 *Kindermann* v *Commission* [1981] ECR 1329) and as part of the rotation procedures established by the Commission (Joined Cases 161 and 162/80 *Carbognani and Coda Zabetta* [1981] ECR 543).

The defendant emphasizes that although the rotation system is indeed intended to facilitate the mobility of officials and to prevent a certain ossification of the staff of external departments, it cannot result in doing violence to the specific character under the budget of the research appropriations by allowing an official paid from such appropriations to be assigned to a post which does not

come within one of the research programmes defined by the Council.

The Commission states that officials involved in scientific research of a highly specific nature are not normally qualified to serve as members of the staff of external offices. For that reason, precisely since none of the duties performed by any of the external offices falls within the research programmes, it was considered proper to state that the invitation for applications for rotated posts concerned only officials paid from the operational budget.

Hence in the Commission's view there is no contradiction in thus restricting access to posts in external departments even though the system of rotation provides for the possibility of transferring officials together with their posts.

Concluding its defence, the Commission states that even if the applicant had been able to put himself forward as a candidate and the comparative merits of the candidates had been considered together with his own, the successful candidate would have been the same, namely Mr Lafontaine.

The defendant places before the Court the personal file of Mr Lafontaine, whose exemplary career suffices to establish that he was the best applicant for Post No 120.

In that respect the applicant in his reply states that the Commission cannot claim to have considered the comparative merits of Mr Lafontaine with his own since on the defendant's own admission his application was rejected on the ground that he was disqualified from applying. The defendant's arguments imply that the choice of Mr Lafontaine was predetermined, which would be contrary to the case-law of the Court established in particular by the judgment in Case 105/75 *Giuffrida* v *Council* [1976] ECR 1395.

The defendant vigorously denies any such allegation and observes in addition that it is in no way substantiated.

Fifth submission made in the alternative during the written procedure

The *applicant* emphasizes that in Annex III to its defence the Commission produces the draft minutes of the 349th meeting of the Commission held on 23 July 1975 relating to the principles and application of the rotation system (COM(75) PV 349). In the applicant's opinion the wording adopted probably in the form of a regulation or decision disregards the terms of Article 110 in so far as on the one hand the decision adopted constitutes a general provision which was not published or brought to general notice and on the other hand was adopted without taking into account the opinion of the Staff Committee or the Staff Regulations Committee.

In the *Commission's* view that is a fresh issue which must be rejected on the basis of Article 42 (2) of the Rules of Procedure of the Court. The Commission is nevertheless minded to make the following two observations:

On the one hand in so far as the submission clearly, though by implication, seeks the annulment of the Commission decision of 23 July 1975, the applicant has no interest in making it since the vacant Post No 120 owes its

raison d'être only to the system of rotation.

On the other hand, although it is true that the decision of 23 July 1975 was not published and was not the subject of consultation as provided in Article 110 of the Staff Regulations, breach of that provision would be established only if the decision in question were a general provisions within the meaning of Article 110 of the Staff Regulations. The establishment of the system of rotation however is not a measure of a general nature but, as the applicant seems to have recognized, within the discretion of the Commission in organizing in the best possible way the interests of its various offices and the operation, breakdown and structure of the various units.

The submission alleging the infringement of Article 110 of the Staff Regulations cannot therefore be upheld.

IV — Written observations lodged in answer to the questions put by the Court

The first question asked the defendant to state the legal nature of the decision of 23 July 1975.

The Commission states that it is an internal measure which according to the aforesaid judgment of the Court of 24 February 1981 in Joined Cases 161 and 162/80 *Carbognani and Coda Zabetta* at paragraph 25 "cannot be said to have introduced any new rules of substance concerning the assignment of officials to external offices, its effect being to replace a system of *ad hoc* decisions by a regulated system of transfers more in keeping with the requirements of justice and foreseeability for the officials concerned."

The rotation system, which applies only to Commission officials working in external offices and press and information offices, allows them mobility of assignment whilst at the same time guaranteeing them a career similar to that of officials at central offices.

The Commission refers to the aforesaid judgment of 24 February 1981 and that of 17 December 1981 in Case 791/79 *Demont* v *Commission* [1981] ECR 3105 and states that in view of the nature of the decision of 23 July 1975 only the resulting individual decisions affect the officials concerned.

The Commission recalls that in the aforesaid judgment in the *Demont* case the Court held with regard to the decision of 23 July 1975 that: "Those provisions, which were adopted moreover outside the procedure laid down in Article 110 of the Staff Regulations, derive from the general power vested in every institution to provide for its own internal organization in the interests of proper efficiency" (paragraph 8).

In the Commission's view the decision of 23 July 1975 is to be distinguished from the general provisions for giving effect to the Staff Regulations referred to in Article 110 thereof in so far as the rotation system established by the aforesaid decision concerns mainly officials working only for the Commission whereas Article 110 refers to provisions applicable to all officials, whatever the institution to which they belong.

In answer to the second question asking whether there are other decisions of the same kind as that of 23 July 1975 and whether they are brought to the attention of the staff, the Commission states that it established by decision of 24 November 1976 a rotation system similar in all respects to that of 23 July 1975 for the staff of the press and information offices. According to the Commission all officials on external assignment, including all the press and information office staff, were kept informed of the terms of the rotation systems from the first year of their application and each time there was a rotation. The other officials of the Commission were informed by the indirect means of the publication of vacancy notices for the replacement of officials returning to central offices and each such notice, like Notice No 120 at issue, specified that posts subject to rotation were involved.

The third question invited the Commission to state its reasons for considering that the decision of 23 July 1975 concerned or did not concern scientific and technical staff paid from research appropriations.

The Commission refers to point 10 of its defence and point 5 of the rejoinder and states that it is a normal rule to exclude scientific and technical officials paid from research appropriations from the rotation system in so far as such staff is recruited and assigned on the basis of the requirements of the budget and Staff Regulations relevant to the research sector and more particularly the various research programmes for the execution of which it is responsible.

The Commission considers that if such an official were assigned with his post to tasks were not part of a research programme it would be failing to comply with the decisions taken by the Council in relation thereto and to apply at budgetary level the appropriations provided for that purpose. The Commission adds that an official of the scientific and technical staff (Article 92 of the Staff Regulations) cannot be assigned with his post to an external office whose function is the representation of the Community *vis-à-vis* non-member countries to the exclusion of tasks directly or indirectly affecting the carrying out of a programme of research approved by the Council.

In answer to the fourth question asking the Commission to state the basic criteria for staff management in the case of scientific and technical staff the Commission states that it is impossible to formalize such criteria in view of the uncertain nature of the research programmes.

As illustration the Commission produces a memorandum dated 7 June 1982 from Mr Hannaert, Head of the Personnel and Administration Division at Ispra, addressed to Mr Pipkorn, a member of the Commission's Legal Department, in respect of the questions put by the Court in these proceedings. In the memorandum Mr Hannaert states that since the Joint Research Centre was set up a number of research programmes have been abandoned; the research workers concerned have been transferred to the Centre's new programmes either

after retraining or by accepting transfers to the various departments of the Commission or other research establishments of the Centre. Mr Hannaert adds that before a research project is completely abandoned the staff is progressively reduced and the reconversion takes place almost unnoticed owing to the good will shown and the desire to use the technical knowledge of the research workers concerned to the best advantage.

The Commission points out that the provisions of Article 45 (2) of the Staff Regulations, which reads: "An official may be transferred from one service to another or promoted from one category to another only on the basis of a competition", are made inapplicable to officials of the scientific and technical staff by Article 98; this facilitates mobility of employment for such officials.

The fifth question asked the Commission to state the basis for the decision, contained in the vacancy notice, to reserve the vacancy to officials paid from the operational appropriations. The Commission states that the decision is based on the one hand on the research programmes adopted by the Council and the appropriations available for that purpose and on the other on the fact that the vacancy arose as a result of Mr Reichardt's reassignment to the head office. It follows from Point II (4.1) of the decision of 23 July 1975 that Mr Reichardt, who is a member of the scientific staff, had necessarily to be assigned to his successor's former department.

The sixth question asked the Commission to explain why in 1975 it had encouraged the applicant to apply for a post of scientific attaché in Washington whereas according to its own statements there are in external offices no officials to whom Title VIII of the Staff Regulations applies.

The Commission states that the fact that there are in external offices no officials to whom Title VIII of the Staff Regulations applies does not prevent officials paid from research appropriations from applying for a vacancy for a post paid from operational appropriations in order to do scientific work outside the scope of Title VIII of the Staff Regulations and such work may fall within the task of external offices of representing the Communities.

The Commission states that it would have been possible for the applicant to apply for the post of scientific attaché in Washington which was vacant in 1975 when the system of rotation was not yet in force, provided that he ceased to be a member of the scientific staff (Article 98 of the Staff Regulations).

The Commission nevertheless adds that as regards the vacancy at issue it was not a question of filling a vacancy for a post included in the list of posts but a reassignment together with the budgetary post, which made it impossible to accept an official covered by Title VIII without infringing the budgetary rules.

In answer to the seventh question as to the actual reasons for the decision taken with regard to the applicant, the Commission states that there were none

other than those set out above. The Commission did not consider the comparative merits of the applicant and the successful candidate.

In answer to the eighth question the Commission states that pursuant to Article 92 of the Staff Regulations defining the scope, *ratione personae,* of Title VIII, only officials paid from research appropriations are members of the technical staff. Officials paid from operational appropriations belong either to the administrative or the language staff (Article 5 of the Staff Regulations).

Document COM(75) PV 349, second part, referred to in Annex III to the defence and requested by the Court, was produced by the Commission.

V — Oral procedure

The applicant, represented by Mr Slusny, advocate, and the Commission of the European Communities, represented by J. Pipkorn, acting as Agent, and H. Henrichs, a technical expert, presented oral argument at the sitting on 28 April 1983.

The Advocate General delivered his opinion at the sitting on 2 June 1983.

Decision

1. By application lodged at the Court Registry on 14 May 1981 Mr Geist, a scientific official assigned to the Joint Research Centre at Ispra, brought an action for the annulment of the decision notified to him on 14 July 1980 to the effect that his application for Post No 120 as First Secretary responsible for Scientific and Technical Matters with the Communities' delegation in Washington could not be accepted; of the decision contained in Vacancy Notice No 120 to reserve the post to officials paid from operational appropriations and of all decisions taken pursuant to the publication of the vacancy notice for the purpose of filling Post No 120.

2. The applicant took up duty on 1 April 1962 at the Joint Research Centre at Petten (the Netherlands) as the Head of Hydraulic Studies; in 1963 he was appointed Head of the Hydrodynamics and Measurements Division and on 1 January 1966 was promoted to Grade A 5 after a period of secondment in the USA. As a result of the change decided by the Council on 15 June 1965

in the 1962 research programmes for which Mr Geist performed work appropriate to his specialist qualifications he was forced to devote himself to new tasks defined by the institution. After the new change in the research programmes decided on 22 August 1975 by the Council it was found impossible to use Mr Geist's capabilities at the Joint Research Centre at Petten and the Director-General of the Joint Research Centre therefore decided on 10 December 1975 to transfer him as from 1 March 1976 to the Heat Transfer and Fluid Mechanics Division of the Joint Research Centre at Ispra.

3 That post did not suit Mr Geist and he brought an action for the annulment of the decision to transfer him, which was dismissed by judgment of the Court of 14 July 1977 (Case 61/76 [1977] ECR 1419). Mr Geist then asked the Commission to find him a post outside the Joint Research Centre at Ispra.

4 In expectation of a new assignment Mr Geist submitted an application for Post No 120 advertised in a vacancy notice in the Staff Courier of 13 June 1980 and worded as follows:

"Post No 120 — Pursuant to the system of rotation adopted for delegations and information offices, the Directorate-General I, External Relations, seeks for the delegation in Washington: an official of Grade A 4 to Grade A 7, First Secretary responsible for Scientific and Technical Matters. Wide experience in the field of scientific and technical problems and in particular in the field of energy is required ... applications are reserved to officials of the Commission paid out of operational appropriations."

5 In a memorandum dated 14 July 1980 Mr Geist was informed that his application had been rejected. On 13 October 1980 he made a complaint under Article 90 (2) of the Staff Regulations claiming the withdrawal of the decision notified by letter of 14 July 1980, the withdrawal, so far as necessary, of the decision to transfer or promote another official and finally the amendment of the terms of Vacancy Notice No 120 with the object of making the vacancy available also to officials paid from appropriations in the research and investment budget. When by implication the administration rejected his complaint Mr Geist brought the present action.

The first two submissions

6 In support of his application the applicant first of all makes two submissions of patent defects in the decision notified on 14 July 1980 rejecting his application. He claims on the one hand that the official who signed the memorandum of 14 July 1980 had no power to do so and on the other that the grounds on which the decision was based were not stated.

7 The Court finds that even assuming that the contested decision is vitiated by the two breaches of procedural requirements alleged, an applicant has no legitimate interest in securing the annulment of a decision for a formal defect where the administration has no discretion and is bound to act is it did. In such a case the annulment of the contested decision could only give rise to another decision substantially identical to the decision annulled.

8 The Commission alleges that such is the case here. The vacancy notice required it to exclude Mr Geist's application since he was not paid from operational appropriations. The validity of that argument ultimately depends on whether Vacancy Notice No 120 could lawfully prescribe that the post in issue could be assigned only to an official paid from the operational appropriations. In those circumstances it is appropriate to reserve judgment on the first two submissions and to consider the other submissions in the application in which Mr Geist challenges the legality of Vacancy Notice No 120 inasmuch as it lays down the rule that only officials paid from operational appropriations may apply for the post at issue.

The third and fourth submissions

9 According to the applicant the exclusion in the vacancy notice of officials paid from research appropriations is in the first place contrary to the provisions of the decision of 23 July 1975 which defined very widely the system of rotation of officials posted to delegations and offices in non-member countries.

10 In that respect it must be pointed out that although the decision of 23 July 1975 arranges for the transfer of officials between the offices in non-member countries and central offices without expressly making a distinction between officials paid from operational appropriations and those paid from research appropriations it is nevertheless the fact that under Point II (1.2) of the said decision officials who take part in general movements of rotation are assigned together with their budgetary posts.

11 It is apparent both from the documents produced by the Commission and from the arguments put forward before the Court that officials paid from research appropriations pursue research objectives specially defined by the Council. An official paid from research appropriations cannot therefore be assigned together with his budgetary post to tasks which are not part of a research programme since such a practice would be in breach of decisions taken by the Council in relation to research and of the budgetary rules for allocation of appropriations.

12 It is common ground that in this case the post of First Secretary responsible for Scientific and Technical Matters in the delegation in Washington was simply intended to represent the European Communities *vis-à-vis* non-member countries and in no way contributed to carrying out a research programme approved by the Council.

13 It follows from the foregoing that in the absence at that time of any mechanism enabling the research budget to be compensated the Commission could not assign an official paid from research appropriations together with his budgetary post to the post of First Secretary in Washington. Mr Geist has therefore no ground for maintaining that in reserving that post to officials paid from operational appropriations Vacancy Notice No 120 was in breach of the decision of 23 July 1975.

14 In the second place the applicant maintains that in excluding officials paid from research appropriations Vacancy Notice No 120 discriminated without any objective justification against officials of the scientific and technical staff.

15 It must be remembered in that respect that the distinction between officials of the scientific or technical staff paid from appropriations in the research and investment budget and officials of the administrative or language staff paid from operational appropriations follows from the very provisions of Title VIII of the Staff Regulations which introduces various differences of treatment between those two categories of staff in consideration of the special features of their duties.

16 It follows from the foregoing that when Vacancy Notice No 120 established an additional difference between those categories it was justified by the need to apply the decision of 23 July 1975 in accordance with the decisions taken by the Council in relation to research and with the budgetary rules on allocation of appropriations. The applicant has therefore no ground for maintaining that Vacancy Notice No 120 unlawfully discriminated between officials of the Commission.

17 The applicant's first four submissions must therefore be dismissed.

Fifth submission

18 Finally the applicant claims that the decision of 23 July 1975 on the system of rotation of officials assigned to non-member countries was unlawful since it was in breach of the provisions of Article 110 of the Staff Regulations inasmuch as the Staff Committee and the Staff Regulations Committee were not consulted and there was insufficient publicity.

19 As the Court has already held in its judgment of 17 December 1981 in Case 791/79 *Demont* v *Commission* [1981] ECR 3105 the decision of 23 July 1975 is not a general provision for giving effect to the Staff Regulations as referred to in Article 110 of those regulations but flows from the general power which each institution has to organzie its own departments in the interests of their efficient working.

20 It follows that without its being necessary to decide upon its admissibility the submission that the formalities of Article 110 of the Staff Regulations were disregarded is invalid and must be rejected.

Costs

21 Pursuant to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

22 The applicant has failed in his submissions.

23 However, pursuant to Article 70 of the Rules of Procedure, in proceedings brought by officials of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

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

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 6 July 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber