4. The purpose of the obligation laid down in Article 25 of the Staff Regulations to state the grounds on which decisions adversely affecting officials are based is to enable the Community judicature to review the legality of the decision and to provide the official concerned with sufficient information to determine whether the decision is well-founded or whether it is defective, making it possible for its legality to be challenged. That requirement is satisfied when the measure against which an action may be brought has been adopted in circumstances known to the official concerned, which enable him to apprehend the scope of a measure which concerns him personally.

5. The concept of misuse of powers refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated.

6. The administration's duty to have regard to the interests of officials reflects a balance between reciprocal rights and obligations created by the Staff Regulations for relations between the public authority and public service employees. The requirements of the duty to have regard to the interests of officials cannot, however, prevent the appointing authority from adopting the measures reassigning officials it believes necessary in the interests of the service since the filling of each post must be based primarily on the interests of the service. Having regard to the extent of the discretion of the institutions in evaluating the interests of the service, the review undertaken by the Community judicature must therefore be confined to the question whether the appointing authority remained within reasonable limits and did not use it in a manifestly wrong way.

## JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
16 December 1993 *

In Case T-80/92,

**Mariette Turner,** formerly an official of the Commission of the European Communities, residing in Brussels, represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

* Language of the case: French.

**Commission of the European Communities,** represented by Gianluigi Valsesia, of its Legal Service, acting as Agent, assisted by Denis Waelbroeck, of the Brussels Bar, with an address for service at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for compensation for the non-material damage allegedly suffered by the applicant by reason of a compulsory reassignment and the circumstances in which it occurred,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: A. Kalogeropoulos, President, D. P. M. Barrington and R. Schintgen, Judges,

Registrar: J. Palacio González,

having regard to the written procedure and further to the hearing on 13 July 1993,

gives the following

## Judgment

### The facts

1 The applicant, a doctor, was formerly a Commission official. She reached retirement age at the end of 1992. From 1981 to February 1992 she was assigned to the Sickness and Accident Insurance Unit of Directorate B (rights and obligations) of the Directorate-General for Personnel and Administration (DG IX).

2 On 9 January 1992, the applicant had a meeting with Mr R., her director, in the course of which they discussed her reassignment to the Brussels Medical Service Unit (hereinafter 'the medical service') in the same directorate. There are differences of opinion as to what was said at that meeting: the Commission contends that the applicant was informed in clear terms that she was shortly to be reassigned in the interests of the service; the applicant, on the other hand, considers that they discussed only a reassignment proposal.

3 On 15 January 1992, the applicant had a meeting with Dr H., the head of the medical service. Here again, the parties disagree as to what was said. According to the Commission, Dr H. informed the applicant of her future duties in the medical service; according to the applicant, they discussed the possibility of her being reassigned.

4 The parties agree that the applicant made clear at those meetings that she objected to any reassignment in the final months of her career.

5 The applicant was on sick leave from 3 to 12 February 1992. She nevertheless read a memorandum sent on 6 February 1992 by Mr C., head of the Sickness and Accident Insurance Unit, to Miss A., her secretary, which stated that 'in the interests of the service Dr Turner had been transferred to the medical service with effect from 1 February 1992' and that Mr D., the Director-General of DG IX, had acceded to Miss A.'s wish to remain with the applicant following her reassignment.

6 By letter of 7 February 1992, the applicant's adviser informed Mr C. of the applicant's surprise at the decision, notified to her secretary, to reassign her compulsorily to the medical service from 1 February 1992 and pointed out that the applicant had not been informed at all of the decision concerning her.

7 By registered letter of 7 February 1992, which she received at her home address on 10 February 1992, the applicant was formally notified of the appointing authority's decision to assign her compulsorily to the medical service. That decision was dated 31 January 1992 and, according to Article 2 thereof, took effect on 1 February 1992.

8 On 14 February 1992, the applicant had a telephone conversation with Dr H., which the latter summarized in a memorandum sent to the applicant on the same day. In that memorandum, Dr H. confirmed that he had taken note of the reservations expressed by the applicant about her reassignment, that he nevertheless considered her reassignment to be necessary to increase the number of doctors who were established officials working in the medical service, that he wished to welcome her into his team 'under the best auspices', and that nothing would prevent her arrangements for working half-time on medical grounds from being renewed as and when required. He explained that he did not consider the applicant's request for a written description of her duties in the medical service to be of paramount importance, as the objectives of the medical service had not changed since her departure. Finally, he added that transitional arrangements between services could be made for the taking over and following up of files by her successor.

9 On 16 February 1992, Dr H. gave the applicant a document containing general information on how the medical service functioned.

10 On 17 February 1992, Mr D., the Director-General of DG IX, stated in reply to the letter of 7 February from the applicant's adviser that the applicant had been informed orally on 9 January 1992 that in the interests of the service it was intended to reassign her with her post to the medical service from 1 February 1992, and that the reasons for that decision, which were mainly linked to the medical service's increase in workload, had been explained to her on that occasion. He added that the applicant had been invited to various meetings to discuss the detailed arrangements for her transfer, but had never turned up. In those circumstances she had been sent, by way of confirmation, written notification of the decision to reassign her.

11 On 18 February 1992, a meeting took place in the applicant's office, at which her successor was introduced to her and the arrangements for handing over files to the successor were discussed. In a memorandum of the same date to Mr D., Mr C. and the applicant summarizing the meeting, Mr R. stated that it had been agreed that the transfer of files should be completed within one to two weeks at most.

12 In a memorandum of 24 February 1992 replying to Mr R.'s memorandum of 18 February 1992, the applicant stated in particular that she had not been informed at her meeting with Mr R. on 9 January 1992 that she was to be reassigned shortly, and that there could be no question of her having failed to attend successive meetings since Mr R. had never called her, in writing or orally, to a meeting. She added that she considered the period of one to two weeks suggested for handing over files and putting her successor in the picture to be unrealistic.

13 In a letter of 19 February 1992 to Dr H., the applicant reiterated her objection to being reassigned compulsorily some months before her retirement, as being, in her view, contrary to the interests of the service. She added that she still had not received a detailed description of her new duties and wondered whether there might be a link between the decision to reassign her and the fact that she was in dispute with the Commission concerning Mr C.'s management of the sickness fund.

14 In his reply of 26 February 1992, Dr H. reminded the applicant that he had sent her a synoptic table of the medical service's activities and made clear to her that she was expected at the medical service by 4 March at the latest.

15 By letter of 5 March 1992, the applicant was informed that her belongings would be moved to the medical service on 10 March 1992. On the same day she requested on medical grounds that this be put back to 25 March 1992. By letter of 6 March 1992, Mr D. informed her that he was granting that request, not only to take account of the medical grounds raised by her but also to make clear that he and his

colleagues wished to ensure that the applicant took up her new duties in the most harmonious conditions.

16 On 6 March 1992, the applicant lodged a complaint against the decision to reassign her compulsorily with her post in the interests of the service to the medical service. In that complaint, she essentially reiterated the claims that she had already set out in her earlier memoranda referred to above.

17 By letter 19 March 1992, Dr H. pointed out to the applicant, with reference to her complaint, that he could not agree that her reassignment was not justified by the interests of the service and that there was no real urgency. He also reminded her that at their meeting on 17 February 1992 he had not been able to explain to her the duties that would be assigned to her in her new service, since she had asked for that meeting to be treated as personal. He added:

'I am, however, quite happy to set out in writing the duties that I had in mind for you in the medical service, taking account of your outstanding leave entitlement and the state of your health:

— advising me personally on difficult medical problems, including those of an administrative nature, and helping me in dealings with Brussels doctors generally and Belgium medical faculties in particular, especially the university hospitals;

— strengthening the area of sick leave review;

— representing us on invalidity committees on behalf of the appointing authority;

— making annual visits (in this connection, all of us, including me when I can, make annual and special visits);

— strengthening the area of occupational medicine properly so-called, in particular site visits to the numerous buildings in which the Commission is scattered;

— conducting examinations on new staff, subject to that fitting in with your half-time hours (since they would take place in the morning).'

18 Dr H. added that in his view those duties were neither incompatible with the applicant's grade nor insufficient having regard to her experience, and were therefore not beneath her level of training and experience as an internist; that was what he had wanted to discuss with her at the lunch to which she had been invited but had twice cancelled.

19 By letter of 19 March 1992, the applicant's adviser invited Mr D. to reconsider the decision to reassign his client. By letter of 25 March 1992, Mr D. replied that the decision had been taken solely in the interests of the service and that the applicant had been informed of the nature of her new duties.

20 On 27 March and 6 April 1992, two meetings took place between the applicant and her adviser on the one hand and Commission representatives on the other, at which the parties set out their respective positions.

21 By letter of 14 April 1992 to Dr H., the applicant criticized the description of her future duties in the medical service, stating that it 'demonstrated by its lack of structure the makeshift nature of the whole sorry process of the compulsory reassignment'.

22 By letter of 7 August 1992, the applicant was informed that the Commission had adopted on 31 July 1992 a decision rejecting her complaint. While upholding the decision to reassign her, the Commission had nevertheless substituted 15 February 1992 as the date on which it took effect to avoid any criticism on a formal level.

## Contentious procedure and forms of order sought

23 In those circumstances, the applicant, by an application lodged at the Registry of the Court of First Instance on 28 September 1992, brought an action seeking compensation for the non-material damage that she considered she had suffered by reason of the decision to reassign her compulsorily and the circumstances in which it had occurred.

24 The written procedure followed the normal course and ended on 24 April 1993.

25 Upon hearing the report of the Judge-Rapporteur the Court decided to open the oral procedure without any preparatory inquiry. The parties presented oral argument and answered the questions put to them by the Court at the hearing on 13 July 1993. In particular, the Commission's representative replied to three questions that the Court had asked beforehand. The President declared the oral procedure closed at the end of the hearing.

26 The applicant claims that the Court should:

— award her the token sum of one ecu as compensation for the non-material damage suffered by her as a result of the decision to transfer her compulsorily to the Brussels medical service as from 1 February 1992 and the circumstances in which that decision occurred;

— order the Commission to pay the entire costs.

27 The Commission claims that the Court should:

— dismiss the application as unfounded;

— order the applicant to bear her own costs.

## Substance

28 The applicant contends that she has suffered non-material damage as a result of various faults committed by the Commission — procedural errors, infringement of Articles 7 and 25 of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'), misuse of powers and breach of the duty to have regard to officials' interests — and that compensation for that damage is warranted. Before considering the various pleas put forward by the applicant alleging a wrongful act for which the Commission may incur liability, the legal classification of the measure at issue should be clarified.

29 The parties agree that the measure, which transfers the applicant with her post from the Sickness and Accident Insurance Unit to the medical service, was adopted without her consent. Such transfers are often called 'compulsory transfers' and that term and the term 'transfer' were used by the parties to describe the measure at issue both in the discussions before the applicant brought this action and in the written procedure itself.

30 In Case T-50/92 *Fiorani* v *Parliament* [1993] ECR II-555, paragraph 27, the Court of First Instance (Fourth Chamber) pointed out, first, that 'the fact that the parties describe a measure as a transfer or reassignment cannot bind the Court of First Instance' and, secondly, that 'it is clear from the general scheme of the Staff Regulations that there is a transfer in the strict sense of the term only where an official is transferred to a vacant post. It follows that any transfer, properly so-called, is subject to the formalities prescribed by Articles 4 and 29 of the Staff Regulations. However, those formalities do not apply when an official is reassigned with his post because such a transfer does not give rise to a vacant post.'

31 Since it is clear in this case that the applicant was transferred with her post and not to a vacant post, and so as to avoid any confusion as regards the legal classification of the measure at issue, reference will be made in this judgment to the 'reassignment' of the applicant.

32 The legal classification of the measure at issue has no bearing on the assessment of the applicant's grounds of challenge. In particular, as the Court of Justice held in Case 60/80 *Kindermann* v *Commission* [1981] ECR 1329, paragraph 14, 'decisions to reassign are subject, just as transfers, as regards the protection of the rights and legitimate interests of the officials concerned, to the rules of Article 7(1) of the Staff Regulations inasmuch as in particular the reassignment of officials may take place only in the interests of the service and in conformity with the principle of equivalence of posts'.

**Procedural error**

*Arguments of the parties*

33 The applicant states that at the meetings on 9 and 15 January 1992 she was not informed of a decision to reassign her, only of a reassignment proposal. She adds that it was purely by chance, in a telephone conversation with her secretary while on sick leave, that she became aware of the decision at issue.

34 In her view, that decision has retroactive effect inasmuch as it took effect on 1 February 1992 but was not notified to her until the letter of 7 February 1992. That retroactivity must be regarded as unlawful, she contends, since derogations from the principle of legal certainty are permitted only in exceptional cases, where the purpose to be achieved so demands and the legitimate expectations of those concerned have been duly respected. Those conditions are not satisfied in this case.

35 In reply, the Commission contends that a reassignment decision such as the one at issue cannot take effect until the official concerned actually joins his or her new department. It submits that under settled case-law publication and notification of an act do not amount to essential procedural requirements within the meaning of Article 173 of the EEC Treaty and that any irregularities in the publication or notification of an act cannot render it invalid but at most inapplicable (Case 48/69 *ICI* v *Commission* [1972] ECR 619 and Case 185/73 *Hauptzollamt Bielefeld* v *König* [1974] ECR 607). Since the applicant could not be bound by the decision to reassign her until it had been notified to her, the fact that it was 'late' could not amount to a wrongful act, nor could it result in any harm.

36 The Commission further maintains that the applicant was informed of her impending reassignment in her meeting with Mr R. on 9 January 1992 and that the issue was also raised in a meeting between her and Dr H. on 15 January 1992.

*Findings of the Court*

37 The Court finds, first, that the decision at issue was adopted on Friday 31 January 1992 and, under Article 2 thereof, took effect on Saturday 1 February 1992. It finds next that the applicant was on sick leave from Monday, 3 February 1992 until 12 February 1992 and she that she was formally notified of the decision by letter of 7 February 1992, which she received at her home address on 10 February 1992. It finds, finally, that the Commission postponed until 4 March 1992, and then until 25 March 1992, the date on which the applicant was to take up her duties in the medical service.

38 Accordingly, the Court considers that the fact that the decision in its original version formally took effect before being notified to the applicant cannot prejudice legal certainty to the applicant's detriment. First, she should have known, following the meetings on 9 and 15 January 1992, that it was at least highly likely that she would be reassigned in the near future. Secondly, the decision at issue, which *inter alia* required the applicant to make herself available to the medical service, could not by its very nature have practical effect before being notified to her. Nor could

it have practical effect while the applicant was on sick leave. Finally, by agreeing to postpone until 4 March 1992, and then until 25 March 1992, the date on which the applicant was to take up her duties in the medical service, the Commission in reality postponed until those dates the date on which the decision actually took effect.

39 The applicant's first plea must therefore be rejected.

## Infringement of Article 7 of the Staff Regulations

*Arguments of the parties*

40 The applicant points out that under Article 7(1) of the Staff Regulations decisions to reassign officials are to be adopted solely in the interests of the service and she claims that was not so in the case of the decision at issue.

41 In particular she contends that:

— there was no urgent need to transfer her post before she retired. That was confirmed to her in her preliminary discussions with Mr R. and Dr H. in particular;

— the Commission never demonstrated why it was necessary to transfer her to the medical service;

— there was no sense in reassigning compulsorily an official who was about to retire, still had numerous days' leave to take and would have been more useful and effective in her former department;

— nobody ever explained to her the scope of the duties of a medical officer in the medical service;

— the Commission was required, as a result of her leaving her former department, to take on three new doctors and in consequence incurred extra costs.

42 The Commission states in reply that, according to settled case-law, the institutions enjoy, subject to the interests of the service, a wide discretion in the internal organization of their departments. Review of that discretion should therefore be restricted to the question whether the institution has exercised it in a manifestly incorrect way. It cites by way of example Case T-20/89 *Moritz* v *Commission* [1990] ECR II-769.

43 According to the Commission, there is nothing to indicate that it exercised its discretion in a manifestly incorrect way when it decided to reassign the applicant to the medical service. As two successive Directors-General had recognized for more than three years, it was necessary to reinforce the medical service because of its increased workload.

44 In her reply lodged on 17 February 1993, the applicant wonders why, if the post that she was to take up in the medical service was so important, it was not filled for three years and has remained vacant since she retired on 1 January 1993.

45 The Commission explains in its rejoinder that the applicant's A4 post has been exchanged for a temporary post which has been advertised and that a non-permanent doctor is currently carrying out the duties attached to that post.

46 In response to the applicant's argument that there was no need to reinforce the Brussels medical service, the Commission also refers in its rejoinder to a study of the medical services carried out at the end of 1991 that enabled a detailed assessment to be made of the needs of the Brussels medical service when the measure

reassigning the applicant was adopted. That study revealed the imbalance in human resources between the offices in Brussels (three full-time doctors who were established officials for 16 000 staff), Luxembourg (two such doctors for 3 500 staff) and Ispra (four such doctors for 2 000 staff).

47 The Commission also considers that being close to the retirement age cannot be used as an argument against a reassignment decided upon in the interests of the service, particularly in this case, where the applicant already had some experience in the medical service between 1970 and 1979 and could therefore be expected to be able to make an immediate and effective contribution to its work.

48 The Commission also rejects the applicant's argument that she was unaware of the scope of a medical officer's duties. The tasks that she would be required to carry out in her new assignment had been explained to her on a number of occasions. The Commission refers in that connection to Dr H.'s letter of 19 March 1992.

49 In her reply, the applicant counters that the service's work had evolved greatly since she had left it in 1980, she could not effectively take on her new responsibilities in the time available and the view that the medical service was a suitable place for her because she is a doctor and 'some medicine is practised there' was untenable.

50 Replying to the applicant's argument that her departure from her previous department had given rise to extra costs, the Commission states that the employment of two (not three) non-permanent doctors was attributable to the increased needs of the service and was not linked to her departure. The Commission points out that those doctors were, moreover, employed on a part-time basis, one for 20 hours a week and the other for 12 hours and that the costs entailed by their services are still much lower than those relating to the applicant.

*Findings of the Court*

51 To facilitate its assessment of the arguments put forward by the applicant (in support of this plea), the Court asked the Commission three questions, regarding the date on which the applicant actually started work in the medical service, the total number of days' leave remaining to her at that time and the date on which her successor in the medical service actually started work there.

52 In its reply to the first question, the Commission informed the Court that the applicant refused to make herself available to the medical service and continued to occupy her office at the sickness fund until she retired. The Commission regards that refusal as evidence of a manifest lack of goodwill. The applicant confirms that she refused to assist the medical service but complains of the psychological errors committed by the Commission. It is apparent from the Commission's reply to the second question that the applicant had 59 days' leave outstanding on 25 February 1992 and that she took 46 of those days in the months preceding her retirement. The Commission stated in reply to the third question that at the time of the hearing no official or other servant had yet taken the applicant's place in the medical service. The Commission gives as reason the budgetary position of the institutions and the freeze on all recruitment.

53 It is settled case-law that the institutions enjoy a broad discretion to organize their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition, however, that the staff are assigned in the interests of the service and in conformity with the principle that assignment must be to an equivalent post (see, most recently, Case T-49/91 *Turner* v *Commission* [1992] ECR II-1855, paragraph 34). The Court of Justice has made clear that any problems which might be caused to an official's department by his departure and the benefit to his new department which might be obtained from his reassignment are considerations which are governed by the same discretionary power (Case 176/82 *Nebe* v *Commission* [1983] ECR 2475, paragraph 18). Having regard to the extent of the institutions' discretion in evaluating the interests of the service, the review undertaken by this Court must be confined to the question whether the appointing authority remained within the bounds of that discretion and did not use it in a manifestly wrong way (see *Moritz* v *Commission*, paragraph 39).

54 Also, all officials owe a fundamental duty of loyalty and cooperation to the authority they serve (see Case 3/66 *Alfieri* v *Parliament* [1966] ECR 437, p. 448). The Court therefore considers that when the Commission assesses the likely consequences for the service of a decision to reassign an official, it is entitled to expect that official to act in accordance with the duty of loyalty and cooperation incumbent on him. In the case of reassignment, that duty entails an obligation on the official to make himself available to his new administrative unit. If the official considers the decision to be in any way defective, he can have recourse to the remedies laid down by the Staff Regulations, but he is not entitled to refuse to carry out his duties in the new unit to which he has been assigned.

55 The circumstances in which the decision resulting in the applicant's reassignment was adopted must be considered in the light of those principles.

56 As regards the benefit that the medical service could have obtained from the applicant's reassignment, it should be noted, first, that the head of the medical service had, prior to the decision at issue, applied for reinforcement of the staff assigned to his service and, secondly, that a study carried out by the Commission at the end of 1991 had revealed that the Brussels medical service had very few full-time doctors who were established officials compared with the Ispra and Luxembourg services. Furthermore, it is not disputed that the workload of the Brussels service has increased. It should also be noted that the applicant had worked in that service between 1970 and 1979 and, after the decision to reassign her had been adopted, the head of that service demonstrated his concern to welcome her under the most favourable conditions possible and, in particular, sent her a letter on 19 March 1992 with a description of her future duties there.

57 The Court accordingly finds that the applicant could have made a significant contribution to the operation of the medical service in the final months of her career and that the Commission, at the time when it adopted the contested decision, was entitled to assume that the applicant would act in accordance with her duty of cooperation and loyalty.

58 As regards the adverse consequences that the applicant's reassignment could have had for the Sickness and Accident Insurance Unit, the Court considers that the applicant has failed to demonstrate that they would have been more significant than the benefit which the medical service could have obtained from her work, in particular in view of the need to reinforce the staff of that service.

59 In view of the foregoing, the Court holds that the Commission did not exercise its discretion in a manifestly incorrect way when it decided to reassign the applicant to the medical service. The second plea must therefore be rejected.

## Infringement of Article 25 of the Staff Regulations

*Arguments of the parties*

60 The applicant calls into question the grounds for the decision to reassign her, essentially on the basis that the reference in the decision to the interests of the service results from a misjudgment of the actual contribution she could make to the medical service at the end of her career. She also submits that, despite making a number of requests, she never received a detailed description of her future duties in her new assignment.

61 According to the Commission, the applicant was clearly reassigned in the interests of the service and the decision to reassign her was preceded and followed by a series of meetings and correspondence which enabled her to understand the reasons for the decision and to be acquainted with the nature of the duties to be assigned to her. It refers in that regard to the meetings that the applicant had with Dr H. on 15 and 16 January 1992, Dr H.'s letters of 14 February and 19 March 1992 and the fact that the applicant twice cancelled a lunch with Dr H. at which her future activities were to be discussed.

*Findings of the Court*

62 As the Court of Justice and this Court have consistently held, the purpose of the obligation laid down in Article 25 of the Staff Regulations to state the grounds on which decisions adversely affecting officials are based is to enable the Court to review the legality of the decision and to provide the official concerned with sufficient information to determine whether the decision is well founded or if it is defective, making it possible for its legality to be challenged. That requirement is satisfied when the measure against which an action may be brought has been adopted in circumstances known to the official concerned, which enable him to apprehend the scope of a measure which concerns him personally (Joined Cases 36/81, 37/81 and 218/81 *Seton* v *Commission* [1983] ECR 1789).

63 The Courts notes that, in a memorandum to the applicant of 14 February 1992 (annex 7 to the application), the head of the medical service informed her in writing that the purpose of her reassignment was to increase the number of doctors who were established officials in the medical service, where there were only three doctors for 12 000 officials and other servants, and that three years earlier he had applied for an increase in staff.

64 In view of the extent of the discretion enjoyed by the appointing authority as regards departmental organization, the Court holds that the explanation given in the memorandum of 14 February 1992 complies with the obligation to give reasons laid down in Article 25 of the Staff Regulations.

65 The applicant's third plea must therefore be rejected.

**Misuse of powers**

*Arguments of the parties*

66 The applicant submits that a variety of consistent motives other than the interests of the service lie behind the decision to reassign her. That decision was, she contends, in fact adopted to remove her from the sickness fund service because of the

dispute between her and Mr C., her head of unit. For the details of that dispute she refers to the account of the facts in Case T-49/91 *Turner* v *Commission*, cited above.

67 That was why the common sense arguments she raised against the decision to reassign her were not satisfactorily answered and the Commission refused her offer to consider other amicable solutions to settle the dispute.

68 The Commission counters by pointing out that, under settled case-law, 'a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated' (Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447). The applicant has adduced no evidence in this case showing that when the Commission adopted the measure reassigning her it made improper use of the discretion that it enjoys as an institution in organizing its departments.

69 The Commission adds that it would be quite untrue to assert that the reassignment decision was adopted on account of the dispute between the applicant and Mr C. and, in any event, 'the [reassignment] of an official in order to put an end to an administrative situation which has become intolerable must be regarded as having been taken in the interest of the service' (Joined Cases C-116/88 and C-149/88 *Hecq* v *Commission* [1990] ECR I-599).

*Findings of the Court*

70 It must be borne in mind, first, that the concept of misuse of powers has a precisely defined scope and refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it and, secondly, that it has been consistently held that a decision may amount to a misuse

of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (Case T-146/89 *Williams* v *Court of Auditors* [1991] ECR II-1293, paragraphs 87 and 88).

71 The specific arguments advanced by the applicant in support of this plea are as follows:

— the fact that in 1990 and 1991 there was a major divergence of views between the applicant and her head of division concerning a decision to reorganize the service to which she was at that time assigned;

— the fact that, according to the applicant, the reassignment decision was adopted on the initiative of the Director-General of DG IX and not at the request of the medical service;

— the fact that the arguments advanced by the applicant against the reassignment decision concerning her were not satisfactorily answered according to her;

— the fact that, in spite of the opposition evinced by the applicant to her reassignment, the Commission refused to consider the possibility of an amicable settlement of the dispute.

72 The Court holds that those arguments do not constitute objective, relevant and consistent evidence such as to establish to a satisfactory legal standard that the

reassignment at issue had been decided upon for any purpose other than that of reinforcing the staff of the medical service. Accordingly, the applicant's fourth plea must be rejected.

## Breach of the duty to have regard to the interests of officials

*Arguments of the parties*

73 The applicant points out that the Court of Justice and this Court have held that the duty to have regard to the interests of officials means, in particular, that 'when the authority takes a decision concerning the situation of an official it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned' (order of 7 June 1991 in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235, paragraph 50). In this case, the Commission did not, according to the applicant, take any account at all of her personal interests.

74 The Commission counters that, according to settled case-law, the requirements of the duty to have regard to the interests of officials cannot prevent the appointing authority from adopting the measures it believes necessary in the interests of the service (judgments of the Court of Justice in Case 123/75 *Küster* v *Parliament* [1976] ECR 1701 and Case 111/86 *Delauche* v *Commission* [1987] ECR 5345). It adds that, under the case-law of the Court of First Instance, 'the filling of each post must be based primarily on the interest of the service' and 'the administration's duty to have regard to the interests of its staff reflects the balance of reciprocal rights and obligations established by the Staff Regulations in relations between the public authority and civil service employees' (*Moritz* v *Commission*, paragraph 39).

75 The Commission submits that, in any event, the facts show that it fulfilled its duty to have regard to the applicant's interests. Dr H., Mr R. and Mr D. invited the applicant to meetings on several occasion to discuss the detailed arrangements for her transfer, the Commission acceded to her wish that her secretary be allowed to join her in her new service, Dr H. was always concerned to devise the arrangements

necessary to enable her to carry out satisfactorily her duties in the medical service and, finally, the Commission took account of the medical and other reasons put forward by the applicant for allowing the date of her transfer to be deferred.

76 In her reply, the applicant counters that she was constantly subjected to intimidatory and humiliating acts. She refers by way of example to the decision reassigning her being sent by registered post to her home address when she was on sick leave and there was no reason for urgency. She also refers to the circumstances in which her move took place.

*Findings of the Court*

77 The Court observes that it has been consistently held that the administration's duty to have regard to the interests of officials reflects a balance between reciprocal rights and obligations created by the Staff Regulations for relations between the public authority and public service employees and that the requirements of the duty to have regard to the interests of officials cannot prevent the appointing authority from adopting the measures it believes necessary in the interests of the service since the filling of each post must be based primarily on the interests of the service (Joined Cases T-59/91 and T-79/91 *Eppe* v *Commission* [1992] ECR II-2061, paragraph 66). Having regard to the extent of the discretion enjoyed by the institutions in evaluating the interests of the service, the review undertaken by the Court must be confined to the question whether the appointing authority remained within the bounds of that discretion and did not use it in a manifestly wrong way (*Moritz* v *Commission*, cited above).

78 In this case, the Court considers that the Commission complied with its duty to have regard to the interests of officials by the way in which it took into account the wishes expressed by the applicant concerning the detailed arrangements for her change in assignment. The Court notes that the head of the medical service indicated to the applicant in clear terms in his memorandum of 14 February 1992 that he was 'fully prepared to devise in agreement with [her] any arrangements required for [her] duties in [that] service to be carried out in a manner satisfactory to both

[herself] and the institution', and that the Commission in fact agreed to postpone the effective date of reassignment and acceded to the applicant's wish that her secretary be allowed to go with her to her new service. Accordingly, even if it is regrettable that the valuable contribution made by the applicant to the service of the Communities came to an end in unsatisfactory circumstances, the Court holds that the Commission none the less did not exceed the wide bounds of its discretion when evaluating both the requirements of the interests of the service and the applicant's interests.

79 The fifth plea must therefore also be rejected.

80 It follows from the foregoing that the applicant has not proved that the Commission committed a wrongful act for which it may incur liability. In those circumstances the action must be dismissed without it being necessary to consider the arguments relating to the damage allegedly suffered by the applicant.

## Costs

81 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

**1. Dismisses the application;**

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

Kalogeropoulos Barrington Schintgen

Delivered in open court in Luxembourg on 16 December 1993.

H. Jung

Registrar

A. Kalogeropoulos

President