JUDGMENT OF THE COURT (Fifth Chamber)

14 September 1995 *

In Case C-396/93 P,

Helmut Henrichs, a former member of the temporary staff of the Commission of the European Communities, residing in Sankt Augustin (Germany), represented by Frank Montag, of the Brussels Bar,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 24 June 1993 in Case T-92/91 *Henrichs* v *Commission* [1993] ECR II-611 seeking the annulment of that judgment,

the other party to the proceedings being:

Commission of the European Communities, represented by Gianluigi Valsesia, Legal Adviser, acting as Agent, and Bertrand Wägenbaur, of the Brussels Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, P. Jann, J. C. Moitinho de Almeida (Rapporteur), D. A. O. Edward and L. Sevón, Judges,

Advocate General: A. La Pergola,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 9 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 4 May 1995,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 6 September 1993, Helmut Henrichs brought an appeal under Article 49 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the ECSC and EAEC Statutes against the judgment of the Court of First Instance of 24 June 1993 in Case T-92/91 *Henrichs* v *Commission* [1993] ECR II-611 dismissing his claim for annulment of the Commission decision of 25 April 1991 concerning calculation of the allowance due to him, annulment of the Commission decision of 3 May 1991 excluding him from the Joint Sickness Insurance Scheme, and damages for the harm suffered by him as a result of the Commission's improper conduct.

2 According to the contested judgment, the facts of the case are as follows:

'1 Until 31 December 1990, the applicant, Mr Helmut Henrichs, was a member of the temporary staff of the Commission of the European Communities (hereinafter "the Commission"). On that date the two parties jointly agreed to terminate Mr Henrichs's contract of indefinite duration; he had completed 16 years of service. Since 3 January 1991 the applicant has been a civil servant in a ministry of the Federal Republic of Germany. As such he receives emoluments consisting of a basic salary and various bonuses and allowances.

2 On leaving the Commission, the applicant was covered by Council Regulation (Euratom, ECSC, EEC) No 2274/87 of 23 July 1987 introducing special measures to terminate the service of temporary staff of the European Communities (OJ 1987 L 209, p. 1, hereinafter "the Regulation") as amended by Council Regulation (EEC) No 2168/89 of 18 July 1989 (OJ 1989 L 208, p. 4). Following the accession to the European Communities of the Kingdom of Spain and the Portuguese Republic, the Regulation provides that certain members of the temporary staff, with at least 15 years service, may, following their termination of service, qualify for the application of the provisions of the Regulation. In principle, the Regulation provides for the payment to eligible employees of an allowance equal to 70% of the salary previously received as a member of the temporary staff and for the amount of remuneration received by the member of staff from his new post to be deducted from the allowance due.

3 To that end, Article 4 of the Regulation provides that:

"4. Gross income accruing to the former member of the temporary staff from any new employment shall be deducted from the allowance provided in paragraph 1, in

so far as that income plus that allowance exceeds the total gross remuneration received by him, determined by reference to the salary scales in force on the first day of the month for which the allowance is payable. That remuneration shall be weighted as provided for in paragraph 3.

Gross income and total gross remuneration last received, as referred to above, mean sums paid after deduction of social security contributions but before deduction of tax.

The former member of the temporary staff shall provide any written proof which may be required and shall notify the institution of any factor which may affect his right to the allowance.

...

6. Recipients of the allowance shall be entitled, in respect of themselves and persons covered by their insurance, to the benefits provided under the sickness insurance scheme provided for in Article 72 of the Staff Regulations, provided they pay the relevant contribution, calculated on the basis of the allowance provided for in paragraph 1, and are not covered by another sickness insurance by virtue of legal or statutory provisions."

4 On 23 April 1991, the applicant notified the Commission of his new administrative situation, forwarding a salary statement showing a gross monthly remuneration of DM 8 681.66 received in the Federal Republic of Germany. That statement contained no indication of any social security contributions borne by the applicant. By decision of 25 April 1991 the Commission reduced by DM 1 356.25 the amount of the allowance paid pursuant to the above Regulation. The basis of the Commission's decision is that the applicant's gross monthly remuneration in the Federal Republic of Germany plus the allowance paid by the European Communities under the Regulation exceeded the applicant's last salary as a member of the

Communities' staff by that amount. On 28 May 1991 the applicant submitted a complaint pursuant to Article 90(2) of the Staff Regulations of Officials of the European Communities (hereinafter "the Staff Regulations") against this decision. On 12 September 1991 the Commission, without expressly responding to the complaint, forwarded to the applicant the details of the calculations which purportedly justified its decision.

5 By decision of 3 May 1991 the Commission excluded the applicant from the Joint Sickness Insurance Scheme of the European Communities (hereinafter "the Joint Sickness Insurance Scheme"). On 23 May 1991 the applicant lodged a complaint against that decision which was rejected by implied decision.'

3 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 23 December 1991, Mr Henrichs brought an action for the annulment of the decisions adopted by the Commission on 25 April 1991 and 3 May 1991 and for damages for the harm suffered.

4 By the contested judgment, the Court of First Instance dismissed Mr Henrichs's application.

5 In his appeal, Mr Henrichs challenges the reasoning on the basis of which the Court of First Instance rejected all his pleas in law supporting his claim for the annulment of the contested decisions and for damages.

6 Regarding the decision of 25 April 1991, he puts forward two pleas in law: he alleges, first, infringement by the Court of First Instance of the second paragraph of Article 25 of the Staff Regulations (applicable to temporary staff by virtue of Article 11 of the Conditions of Employment of Other Servants of the European Communities) and, secondly, infringement by the Court of First Instance of Article 4(4) of the Regulation.

7 Regarding the decision of 3 May 1991, he also puts forward two pleas in law: he alleges, first, infringement by the Court of First Instance of the second paragraph of Article 25 of the Staff Regulations and, secondly, infringement by the Court of First Instance of Article 4(6) of the Regulation.

8 He also challenges the judgment of the Court of First Instance regarding its rejection of his claim for damages and its order as to costs.

The documents produced after lodgment of the appeal

9 Before any decision is given on the pleas on which the appeal is based, it is appropriate to consider the documents which Mr Henrichs has sought leave to produce to the Court pursuant to Article 118 and the first subparagraph of Article 42(2)of the Rules of Procedure. The appellant maintains that those documents are relevant to the decision to be given and that they came to his knowledge after lodgment of the appeal. They are document No 7481/91, a memorandum entitled 'Item I/A, "Staff Regulations" Group, Committee of Permanent Representatives', social security certificates issued by the AOK Augsburg and the AOK Freiburg (Augsburg and Freiburg General Sickness Insurance Funds) and a letter from the Commission of 5 October 1993. Those documents were produced to the Court on 9 March 1994.

10 Regarding the memorandum 'Item I/A, "Staff Regulations" Group, Committee of Permanent Representatives', Mr Henrichs asserts that the Commission was aware of the unilateral declaration made by the German delegation to the effect that:

'The German delegation considers that the benefits paid in the event of sickness under the rules applicable to the civil service in Germany (Beihilfe) are not reimbursements of expenses under a compulsory insurance scheme and cannot be

treated as such. Consequently, the benefits under the sickness insurance scheme of the European Communities take precedence by reason of the subsidiary nature of the German Civil Service scheme'.

11 He observes, nevertheless, that the Commission never referred to that statement. On the contrary, the Commission sought to give the impression that its analysis of the legal character of the Beihilfe was shared by the German Government.

12 Regarding the certificates from the AOK Augsburg and the AOK Freiburg concerning the affiliation to the sickness insurance scheme of his sons Michael and Martin as students with effect from 1 August 1993 and the letter from the Commission of 5 October 1993, informing him of a reduction of his allowance of DM 1 479.25, Mr Henrichs states that, since he received an increase in his German salary but at the same time the amount of the reduction was decreased by the Commission, he assumes that the Commission now takes the view that the insurance contributions for his sons are deductible when the amount of the reduction is calculated. Moreover, the Commission's letter does not disclose how it arrived at the amount of the reduction.

13 The Court considers that, as the Commission has rightly pointed out, the unilateral statement from the German delegation is not a measure within the meaning of Article 189 of the EEC Treaty or a measure producing binding legal effects (judgment in Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraphs 9 and 10, and the order in Case 135/84 *F. B.* v *Commission* [1984] ECR 3577, paragraph 6). It is not therefore relevant to the present proceedings.

14 As regards the certificates and the letter from the Commission, these do not amount to new pleas in law but constitute evidence intended to establish that the appellant's children were covered by sickness insurance. They are inadmissible at the appeal stage, which is limited to matters of law by virtue of the first paragraph

of Article 51 of the Statute of the Court of Justice of the EEC. Moreover, they do not relate to the period covered by the contested decision, which is dated 25 April 1995.

15 The application to produce the documents in question is therefore rejected.

The decision of 25 April 1991 concerning calculation of the allowance due to the appellant

The plea alleging infringement by the Court of First Instance of the second paragraph of Article 25 of the Staff Regulations

16 Regarding the first plea in law, alleging that the decision of 25 April 1991 does not state the reasons on which it is based, the Court of First Instance stated that:

— the decision contains the factual particulars required for it to be understood, namely the relevant figures enabling it to be established that the reduction made to the allowance was correct (paragraph 14 of the judgment);

— the fact that the decision contains no reference to its legal basis is not such as to affect its legality, it being established that there could be no doubt as to the legal basis of the decision in the mind of its addressee (paragraph 15);

— the objections raised by Mr Henrichs, in his complaint to the administrative authority and subsequently, to the contested decision reveal that, in practice, he had no difficulty in identifying the figures on which the Commission based its calculation (paragraph 16).

17 According to Mr Henrichs, the Court of First Instance wrongly held (paragraphs 14 to 17 of the judgment) that the decision of 25 April 1991 contained an adequate statement of reasons. A mere reference in it to a reduction by the Commission of Mr Henrichs's allowance by DM 1 356.25 did not in his view enable the details of that decision to be understood, particularly since the application of Article 4(4) of the Regulation involves interpretation of the term 'gross income' and the allowances to be included therein. Moreover, although the appellant was aware of the legal basis of the contested decision, the latter did not provide him with the requisite information concerning the interpretation and application of the provision at issue. Finally, the pleadings at first instance clearly show the difficulties encountered by the appellant in understanding how the amounts at issue were calculated.

18 That argument cannot be upheld.

19 It is based on difficulties in understanding the contested decision which were experienced by the appellant but were found by the Court of First Instance at paragraphs 15 and 16 of the judgment not to exist. It therefore concerns a finding of fact, which the Court of Justice is not able to examine on appeal by virtue of the first paragraph of Article 51 of the Statute of the Court.

20 It follows that the first plea in law must be rejected as inadmissible.

The plea in law alleging infringement by the Court of First Instance of Article 4(4) of the Regulation

21 The second plea comprises three parts:

— failure to take account of certain social charges;

— failure to take account of Paragraph 8 of the Bundesbesoldungsgesetz (Federal Law on the remuneration of officials, hereinafter 'BBesG') or of Paragraph 56 of the Beamtenversorgungsgesetz (Law on the pension scheme for officials, hereinafter 'BeamtVG');

— failure to interpret the Regulation according to its purpose.

Failure to take account of certain social charges

22 The Court of First Instance considered (paragraph 28 of the judgment) that the evaluation of Mr Henrichs's personal contribution to the social protection scheme by which he was covered was not a matter which the Community judicature may interpret. Since it was common ground that Mr Henrichs was excluded by national law from the social protection scheme available under the ordinary law and by reason of that exclusion did not pay any social contribution with a view to entitlement to the protection available to him under specific legislation, it was not for the Court of First Instance to evaluate the extent of a notional personal contribution for which, moreover, the appellant was unable to suggest, even in approximate terms, any basis whatsoever and, at the same time, sought an evaluation on the basis of an expert's report.

23 The Court of First Instance then considered (paragraph 29) that by virtue of the rule of evidence laid down in the third subparagraph of Article 4(4) of the Regulation, it was incumbent on the appellant to prove payment of the social charges which he wished to have taken into consideration, and the amount thereof. It added that the appellant had produced no evidence in that regard.

24 Mr Henrichs maintains that the term 'gross income' in Article 4 of the Regulation refers to the laws of the Member States. He observes that, under German law, the Beihilfe scheme for the civil service is a mixed scheme involving both social welfare payments and contributions for future contingencies made by the official himself, his remuneration including a 'compensatory allowance' intended to ensure that the official covers the risk of sickness for himself. The Commission should have deducted that part of his salary and the Court of First Instance was wrong to hold that it was not required to evaluate the amount of the appellant's personal contribution to the social protection system. Mr Henrichs states that he asked for the amount of that contribution to be determined by an expert.

25 Nor, he adds, did the Commission deduct the social charges in respect of his children's affiliation to the statutory insurance scheme, for which he provided evidence.

26 That argument cannot be upheld.

27 It is incumbent not upon the Commission but rather, where appropriate, on the national legislature to determine what part of an official's salary is intended to enable him to obtain insurance cover against the risk of illness to supplement that already provided by the Beihilfe. Moreover, as regards the social charges in respect of the appellant's children, the fact that the Commission did not deduct them was not raised in the context of the plea put forward before the Court of First Instance.

28 The part of the plea alleging infringement of Article 4(4) of the Regulation by reason of non-deduction of the social charges must therefore be rejected.

Failure to take account of Paragraph 8 of the BBesG or Paragraph 56 of the BeamtVG

29 Paragraph 8 of the BBesG provides:

'If an official [...] receives an allowance in respect of his activities in the service of an international or supranational institution, his salary shall be reduced. That reduction shall amount to 1.875% (2.14% until 31 December 1991) for each full year spent in the service of the international or supranational institution; however, he shall retain at least 40% of his salary'.

30 Paragraph 56 of the BeamtVG provides:

'If a retired official receives a pension in respect of his activity in the service of an international or supranational institution, his German pension shall be reduced by 2.14% for each full year of service in the international or supranational institution [...]. For the application of the first sentence, the period for which the official, although not engaged in any activity in an international or supranational institution, acquires rights to remuneration or any other payment and pension rights shall be reckoned as a period spent in the service of the international or supranational institution; the same shall apply to the period following termination of service with the international or supranational institution where that period is taken into account for calculation of the retirement pension.

The first sentence shall also apply where, on termination of his service with an international or supranational institution, an active or retired official receives a capital sum in place of a pension, by way of allowance or payment from a retirement fund [...]'

31 The Court of First Instance took the view (paragraph 37 of the judgment) that the legality of the contested decision should be appraised by reference to the requirements by which the administrative authority was bound on the date on which the decision was adopted.

32 It therefore concluded (paragraphs 37 and 40) that the Commission was not required to take account, in its appraisal, of the impact of Paragraph 8 of the BBesG and Paragraph 56 of the BeamtVG, in so far as those provisions had not fallen to be applied in fact to the appellant's situation.

33 According to Mr Henrichs, whilst it is true that no reduction of his salary was made on the basis of Paragraph 8 of the BBesG and that Paragraph 56 of the BeamtVG is applicable only to retired officials, the Court of First Instance should nevertheless have taken account of those provisions in order to avoid a dispute at a later stage, once the national administration has made the reduction prescribed by law.

34 That argument cannot be upheld.

35 Where the Commission is called on to rule on a request by an official or other employee, it must base itself solely on the factual and legal circumstances prevailing at the time of the decision. Neither the Court of First Instance in proceedings for annulment nor the Court of Justice in an appeal has the power to determine the legal situation of a party to the proceedings as regards the future.

36 The Court of First Instance therefore properly took the view that it was not appropriate to take account of the abovementioned national provisions since, at the time of the Commission's decision, no deduction had been made from the appellant's remuneration.

37 The part of the plea alleging infringement of Article 4(4) of the Regulation through failure to take account of Paragraph 8 of the BBesG and Paragraph 56 of the BeamtVG must therefore be rejected.

Failure to interpret the Regulation according to its purpose

38 According to the Court of First Instance (paragraph 58 of its judgment), the appellant's reasoning to the effect that it was appropriate to take account of the cumulative effect of the progressive nature of the tax must be rejected since Article 4(4) of the Regulation provided for account to be taken of income before tax. Contrary to what the appellant contended, when referring to the steeply progressive nature of the German system, application of the Regulation necessarily depended, in part, on the national tax systems, however diverse they might be.

39 According to Mr Henrichs, Article 4 is intended to place employees of he Communities who terminate their service but continue their professional activity in a financial situation comparable to that which they enjoyed previously. The part of the national salary which is offset is taken into account in order to determine the relevant tax band, the resultant rate being applied not only to the official's German remuneration but to all his other income as well. Accordingly, if it is borne in mind that the German tax rates are the highest, the appellant finds himself, in the absence of any offsetting tax arrangements, in a less favourable situation than before termination of his service as an employee of the Communities.

40 In view of the foregoing, a non-purposive interpretation of Article 4 would lead to differences of treatment as between Community employees as a result of the differences between the various national tax systems. Referring to the judgment of the Court of Justice in Case 6/60 *Humblet* v *Belgian State* [1960] ECR 559), the appellant maintains that an amount in respect of the tax difference should be deducted from the gross income within the meaning of the abovementioned provision.

41 That argument cannot be upheld.

42 The second subparagraph of Article 4(4) of the Regulation unambiguously states that 'Gross income and total gross remuneration last received, as referred to above, means sums paid after deduction of social security contributions but before deduction of tax'. The Community legislature was aware of the difference between national tax systems, so it clearly accepted that such differences could have an impact on the financial situation of the persons concerned.

43 As regards the appellant's argument as to breach of the principle of equal treatment, it must be stated that the circumstances of former employees of the Communities must be considered not merely from the tax point of view but in overall terms, taking account of all the advantages which they receive from the Member State on whose territory they carry on their professional activity.

44 It follows that all three parts of the second plea in law must be rejected.

The decision of 3 May 1991 excluding the appellant from the Joint Sickness Insurance Scheme

The plea alleging infringement by the Court of First Instance of the second paragraph of Article 25 of the Staff Regulations

45 As regards the first plea in law, alleging that the decision of 3 May 1991 did not state the reasons on which it was based, the Court of First Instance stated

(paragraph 66 of the judgment) that that decision clearly identified the measure adopted, the date on which it took effect and its legal basis. As regards the reference to the equivalence of benefits (that is to say those paid by way of assistance guaranteed to officials by national law and those paid under a sickness insurance scheme governed by ordinary law), it observed (paragraph 67) that the point at issue was not the existence or adequacy of a statement of reasons but whether the decision was well founded.

46 According to Mr Henrichs, the decision of 3 May 1991, which merely reproduces the text of Article 4(6) of the Regulation, does not adequately state the reasons on which it is based. The question whether the Beihilfe scheme may be regarded as a statutory sickness insurance whose benefits are comparable to those of an ordinary social insurance scheme was a new question which the contested judgment answered in the affirmative without any explanation. The appellant was thus prevented from assessing the answer given and choosing the necessary means of defending himself. He was also prevented from basing his future conduct on a legal situation that was certain.

47 In that connection, it need merely be pointed out that the contested decision is based on a comparison between the benefits guaranteed by the German scheme and those guaranteed by the ordinary social insurance scheme and that the appellant had no difficulty in verifying whether that comparison was sound. Accordingly, in accordance with settled case-law of the Court of Justice, the statement of reasons provided the appellant with the information necessary to determine whether or not the decision was well founded and to enable it to be reviewed by the Court (Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447, paragraph 36, and Case 108/88 *Jaenicke Cendoya* v *Commission* [1989] ECR 2711, paragraph 10).

48 The first plea alleging absence of any statement of reason for the decision of 3 May 1991 must therefore be rejected.

The plea alleging infringement by the Court of First Instance of Article 4(6) of the Regulation

49 As regards the second plea, alleging infringement of Article 4(6) of the Regulation, the Court of First Instance (paragraphs 78 to 82 of its judgment) first examined Paragraph 79 of the BBesG and Paragraph 1(1) of the provisions for the implementation of that paragraph, and concluded that the Beihilfe displayed all the features of an insurance governed by legal or statutory provisions within the meaning of Article 4(6) of the Regulation. It considered that that mechanism was governed by public law and that the appellant had no grounds for claiming that the benefits were not comparable to those of a social security scheme governed by the ordinary law. It found that the amount paid to German officials by way of assistance was equal to 50% of the expenses incurred by the recipient, that rate being raised to 70% if the person concerned had two or more dependent children, 70% of the expenses incurred by the official's spouse and 80% of those incurred by his dependent children. Thus, since he had two children, the appellant enjoyed, without paying a contribution of any kind, a rate of reimbursement of 70% or, as the case may be, 80% of the expenses incurred, as indeed was expressly confirmed in his answers to the written questions put to him by the Court of First Instance.

50 The Court of First Instance also held (paragraphs 83 to 85) that the principles of interpretation developed by the Court in its judgment in Case C-163/88 *Kontogeorgis* v *Commission* [1989] ECR 4189 were applicable by analogy to the present case, having regard to the similarity of the provisions with which that judgment was concerned.

51 Mr Henrichs maintains, first, that the Court of First Instance was wrong to find that the Beihilfe displayed all the features of an insurance governed by legal or statutory provisions within the meaning of Article 4(6) of the Regulation. He

states that it covers only 50% of the expenses incurred whilst the Community scheme covers 80 to 100%. He concedes that, in view of his family circumstances, he qualifies for the higher rate of reimbursement provided for by the Beihilfe rules, namely 80%. However, the rate of reimbursement will soon be reduced to 50%, when his older son reaches the age of 26.

52 Mr Henrichs then criticizes the reference made by the Court of First Instance to *Kontogeorgis*; he considers that the principles of interpretation expounded by the Court in that case cannot be transposed to this one. Mr Kontogeorgis enjoyed limited but complete insurance cover whereas the appellant has only partial cover.

53 That argument cannot be upheld.

54 Article 4(6) clearly excludes former employees from membership of the Community sickness insurance scheme if they are covered by another sickness insurance by virtue of legal or statutory provisions.

55 As the Court of First Instance held in paragraphs 81 and 82 of its judgment, the Beihilfe displays all the features of an insurance governed by legal or statutory provisions within the meaning of Article 4(6) of the Regulation, since it is a scheme created by statute which provides the insured with cover comparable to that under a social security scheme governed by the ordinary law.

56 As regards the appellant's argument that he will shortly be entitled to cover for medical expenses only at the rate of 50%, a rate lower than that provided by the Joint Sickness Insurance Scheme, it must be observed that the Commission was

required to take account of the legal situation of the appellant at the time of the decision and, in any event, at that time the rate of cover for medical expenses corresponded to that normally provided by sickness insurance schemes governed by legal or statutory provisions.

57 It must also be pointed out that, as the Court held in *Kontogeorgis*, assessment of the equivalence of the Community scheme and the applicable national social security scheme is required only where provided for by the Community rules, in particular Article 72(1) of the Staff Regulations. It is also provided for by Article 11 of Council Regulation No 422/67/EEC-5/67 Euratom determining the emoluments of the President and Members of the Commission, the President, Judges, Advocates General and Registrar of the Court of Justice and the President, Judges and Registrar of the Court of First Instance, and by Regulation (EEC, Euratom, ECSC) No 2290/77 determining the emoluments of the Members of the Court of Auditors, as amended by Council Regulation (EEC, Euratom, ECSC) No 2426/91 of 29 July 1991 (OJ 1991 L 222, p. 1). However, contrary to what the appellant contended at the hearing, the latter provisions cannot be interpreted as laying down a principle applicable to the Community civil service in general.

58 It follows that Mr Henrichs's second plea alleging illegality of the decision of 3 May 1991 must be rejected.

Damages

59 The Court of First Instance held (paragraph 91) that since the claims for annulment of the decisions of 25 April and 3 May 1991 had been rejected in their entirety, the appellant could not invoke any instance of maladministration such as to cause the European Communities to incur non-contractual liability towards him.

60 Mr Henrichs claims that the failure to state the reasons for the contested decisions and the subsequent conduct of the Commission, which failed to provide him with the necessary clarifications, caused him damage in several respects for which he claims compensation.

61 Regarding the allegation that the Commission failed in its obligation to state reasons and provide information when it adopted the decisions of 25 April and 3 May 1991, the Court has held above that the Court of First Instance rightly took the view that the claims and pleas for the annulment of those decisions were unfounded. Consequently, no finding of maladministration could be made against the Commission such as to incur the non-contractual liability of the European Communities.

62 As regards the plea concerning the Commission's conduct after the adoption of the abovementioned decisions, the Court of First Instance found in paragraph 91 of the contested judgment that the alleged damage, even if established, was not a consequence of the Commission's conduct but of the lateness, however caused, of the appellant's notification of his new circumstances to the Commission. That finding is one of fact. It cannot be reviewed by the Court by virtue of the first paragraph of Article 51 of the Statute of the Court.

63 Both pleas must therefore be rejected, the first as unfounded and the second as inadmissible.

The costs of the proceedings at first instance

64 Mr Henrichs also objects to the fact that the Court of First Instance awarded costs against him. In particular, he considers that if the Commission had complied with its duty to assist him and provide him with information, the dispute could

have been avoided, so that the Court of First Instance, pursuant to the second subparagraph of Article 87(3) of its Rules of Procedure, should have ordered the Commission to pay all the costs.

65 According to the second paragraph of Article 51 of the Statute of the Court of Justice, 'No appeal shall lie regarding only the amount of the costs or the party ordered to pay them'.

66 All the other pleas advanced by the appellant having been rejected, the plea concerning costs must, by virtue of that provision, be rejected as inadmissible.

67 The appeal must therefore be dismissed in its entirety.

Costs

68 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Under Article 70 of the same rules, institutions are to bear the costs incurred by them in proceedings brought by their servants. However, by virtue of Article 122 of the Rules of Procedure, Article 70 does not apply to appeals brought by officials or other servants. Since Mr Henrichs's appeal has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellant to pay the costs.

Gulmann Jann Moitinho de Almeida

Edward Sevón

Delivered in open court in Luxembourg on 14 September 1995.

R. Grass
Registrar

C. Gulmann
President of the Fifth Chamber