Having regard to the ECSC Staff Regulations which came into force on 1 January 1962, particularly Article 92 and the single article of Annex X;
Having regard to the Rules (No APE 351) of the European Parliamentary Assembly concerning servants recruited by contract in the institutions of the Communities other than the High Authority of the ECSC;
Having regard to the Staff Regulations of the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 1 of Annex II:

THE COURT (First Chamber)

1. **Dismisses the action.**
2. **Orders each party to bear its own costs.**

Delivered in open court in Luxembourg on 4 April 1973.

Monaco Donner Mertens de Wilmars

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 1 MARCH 1973 [1]

Mr President,
Members of the Court,

The applicant in the case on which I am presenting my opinion entered the service of the Common Assembly of the European Coal and Steel Community as an 'auxiliary assistant adviser' on the basis of a contract dated 28 May 1957. The said contract was originally valid for the period 16 May 1957 to 30 June 1957. Later it was repeatedly extended, it

1 — Translated from the German.

being each time emphasized that the 'conditions d'engagement des auxiliaires' were to apply.

After the creation of the Single Assembly of the three European Communities calling itself the European Parliament, there was entered into between this body and Mr Angelini on 26 June 1958 and again on 6 October 1958 a further contract of employment on the terms of the well-known Brussels precedent. This contract provided that it could be terminated by either party on one month's notice. It was, as regards remuneration, repeatedly varied; on the last occasion, if I am right, in the sense that the applicant as from 1 April 1961 received remuneration which corresponded to his being classified in grade A 4/4 of the Salary Scale in the Staff Regulation.

By decision dated 13 December 1962 and with effect from 1 January 1962 Mr Angelini was, pursuant to Title IX (Transitional and Final Provisions) of the EEC-EAEC Staff Regulations given established appointment as Divisional Head of Department in career bracket A 3/2. In this connection Mr Angelini pursuant to Article 104 of the EEC-EAEC Staff Regulations on 2 January 1963 made a declaration renouncing the advantages arising from his previous contract. In the career bracket assigned to him Mr Angelini, in accordance with Article 44 of the Staff Regulations, steadily advanced; finally, with effect from 1 October 1971, reaching grade A 3, incremental level 7.

Since he reached the age of 65 on 2 January 1972, he was retired with effect from that date. This was done by decision of the President of the European Parliament dated 6 January 1972 in which, referring to the provisions of the Staff regulations (in the version set out in Regulation No 259/68) it was laid down that the pension became due as from 1 February 1972. The decision was communicated to Mr Angelini under cover of a letter dated 28 January 1972. A communication on the amount of the payments due to Mr Angelini is said to have been sent on 8 February 1972.

Before that date — on 10 January 1968 — Mr Angelini had already been informed that the relevant date for determining his pensionable service under Article 48 of Annex VIII to the Staff Regulations, was 16 May 1957.

Furthermore it must be mentioned that in view of his impending retirement, Mr Angelini addressed a letter to the President of the European Parliament which was received on 4 January 1972. In this letter he submitted that his engagement on 26 June 1958 could not have taken effect otherwise than as a service relationship of an ECSC servant; a subsequent variation of this legal relationship was not possible. He also contended that the transfer from salary scale A 4 to salary scale A 3 should not have resulted in a loss of salary steps.

The President of the European Parliament replied to this submission by letter dated 7 March 1972. Therein he stressed that the special provisions for auxiliary employees, which also in the case of Mr Angelini were of primary relevance, had no connection with the ECSC Staff Regulations. The same it was said applied to Regulation APE 351 in regard to the employment of servants who had been employed by institutions of the Communities other than the High Authority, i.e. the provisions to which the letter of appointment dated 26 June 1958 applicable to Mr Angelini had adhered. It was especially important in this connection that as regards provision for old age there was a special pension fund with special regulations and that a fund independent of the fund for ECSC pensions had existed. Looked at from this point of view and also because Mr Angelini had, with effect from 1 January 1962, been granted the advantages of the EEC and Euratom Staff Regulations, it could only be assumed that his pension was to be assessed according to EEC law. Likewise no objection could be taken to the transfer from salary grade A 4 to salary grade A 3 arising by virtue

of Article 46 of the Staff Regulations. Besides one could not go back on this because Mr Angelini had not raised objections in time. Accordingly, the application received on 4 January 1972 should be rejected.

Since Mr Angelini was not prepared to accept this position he appealed to the Court by application received on 12 June 1972. The pleas in his application are as follows:

— that the decision of the President of the European Parliament rejecting his submission of 4 January 1972 be declared null and void;

— that the requests set out in the letter of 4 January 1972 be granted.

Let us now consider what view should be taken of these requests.

I — On admissibility

In the forefront of the arguments there are questions of admissibility, since the defendant Parliament above all considers the claim to have been made too late, and that furthermore the renunciation made by the applicant on 2 January 1963 precludes this application.

1. *Firstly as regards observation of the time limit.*

Here the Parliament considers it important that the applicant's argument to the effect that the pension fell to be decided according to ECSC law and on the basis of a higher step in the salary grade A 3 formed the subject matter of a submission received by the Parliament on 4 January 1972. Calculated from that date there had, pursuant to Article 91 of the Staff Regulations been an implied rejection of his claim and agianst this rejection an appeal should have been lodged within a further period of two months, that is to say by 4 May 1972 at the latest. The time limit for lodging the claim — that is to say one of three months — should on the other hand not be calculated as from the date of notification of the express decision of the President of Parliament dated 7 March 1972, since this step, according to the case law of the Court, constituted a mere confirmatory action which was irrelevant on the question of the time limit for lodging an appeal. — Furthermore one could not render the appeal admissible even if one regarded as decisive the notification of the decision dated 6 January 1972 and of the communication on the amount of the pension. Even calculated in relation to these events, the appeal had not been received by the Court before the expiry of a period of three months.

Let me say at once that we shall indeed have to concur with these arguments.

Admittedly, it is certainly true that — as the applicant maintains — his communication of 4 January 1972 could not be regarded as a complaint within the meaning of the Staff Regulations, bearing in mind that at this point in time there did not exist a decision of the appointing authority against which a complaint could have been submitted. One cannot however avoid the fact — that is equally clear — that this communication could be termed a *request* within the meaning of Articles 90 and 91 of the Staff Regulations. This may fairly be said, since Mr Angelini already in 1971 made an unsuccessful approach on the same matter to the Director General of administration of the European Parliament. He was therefore aware of the point of view held by the administration of the Parliament and he desired at the time of his retiring on pension once again emphatically to direct the attention of the appointing authority to the issues which had already been dealt with and to bring about an appropriate decision. Furthermore, at the conclusion of his submission he expressly underlined that unfavourable decisions would oblige him to take other steps (by which expression he could only have meant lodging an appeal with the Court).

When proceeding from these facts there now in fact arise for consideration several possibilities which are equally unfavourable to the applicant's case.

Firstly it can be considered decisive that after his submission of 4 January 1972 there was an express decision on 6 January 1972 and that based upon this a notification as to the amount of the pension was issued. The applicant could have deduced from these facts (which only referred to EEC law and did not show any correction of his classification) that his application had not been acceded to and that, if you like, they therefore constituted a tacit rejection of his application. That meant that from the date of their notification a three months' period for lodging the appeal was to be observed. If, as is claimed, the notification occurred on 28 January and 8 February 1972, then the appeal lodged on 12 June 1972 was certainly not lodged in time, even if, contrary to the views of the Parliament, one allows the applicant an 'extension on account of distance' of ten days, having regard to his Italian residence.

Yet even if one leaves out of consideration the two above-mentioned facts, bearing in mind that in the light of the observations made by the applicant in the oral proceedings there is no complete certainty as to the fact of delivery or of its date, one nevertheless cannot avoid the following conclusions. According to Article 91 of the Staff Regulations we are obliged to assume that on the expiration of a period of two months from receipt of the complaint, that is to say on 4 March 1972, an implied rejection occurred. This decision had to be appealed against within a further period of two months; taking into account the 'extension on account of distance' that means by 14 May 1972 at the latest. On the other hand the express rejection notified on 7 March 1972 has no bearing upon the lodging of an appeal. Bearing in mind the recent case law (Cases 24/69, Rec. 1969, p. 145, 53/70, Rec. 1971, p. 601) it must be treated as a purely confirmatory act and thus left out of consideration; taking the correct view it could not therefore have caused the three months' period for lodging the appeal to start to run afresh.

Starting therefore from the applicant's application which was received by the appointing authority on 4 January 1972 one can only conclude that his appeal was lodged altogether too late and that for that reason it must be rejected as inadmissible.

2. *Renunciation (acquiescement)*

According to the views of the Parliament, the appeal must be treated as inadmissible for another reason, that is to say renunciation on the part of the applicant.

This concept can in my view also hardly be rejected. It is in this connection important to realize that when on 2 January 1963 the applicant was transferred to the position of an official under EEC law pursuant to Article 104 of the Staff Regulations, he declared that he renounced the legal advantages under his previous contract of employment. This statement is perfectly clear. In particular there are no grounds for thinking that it had not been made freely and might thus be void; after all, the applicant had in all these years never raised objections on this point or made any complaints.

It thus follows indeed that the applicant can no longer take the point that he is entitled to be treated according to the ECSC Staff Regulations and his application — looked at from this angle also — cannot be admitted.

3. Finally one might also point out that as regards his assignment to a step within salary grade A 3 (which is relevant in connection with the calculation of his pension) this arises from the applicant's assignment to a step in the scale laid down by decision dated 13 December 1962 on the occasion of his transfer to the status of a Community

official. At the time the applicant did not object to this; not even after judgment No 70/63 (Rec. 1964, p. 861) did he apply to the Court, that is after the Court had pronounced a judgment the principles of which he desired to see applied to his case. From this one can only draw the conclusion that the original decision, i.e. that dated 13 December 1962 which resulted in the applicant's assignment to a step has become legally effective [similarly to the decisions dealt with in Cases 43/64 (Rec. 1965, p. 499), 50/64 (Rec. 1965, p. 1015) and 47/65 (Rec. 1965, p. 1251)]. However looked at correctly, this not only excludes a request for retrospective alteration of the assigned step; it renders it equally impossible for the said decision as to the applicant's assignment to a salary step within the framework of the pension scheme to be treated as contrary to law and to be disregarded.

On these grounds too a part of the claims in the application should be treated as inadmissible.

II — On the merits

Considering the unequivocal conclusions which in my view result from the examination of admissibility, it is really superfluous further to consider the merits. In order to assist I wish however to add a few words thereon.

1. Firstly, as regards the applicant's claim that his pension be assessed according the the Staff Regulation of the ECSC it is conclusive that the applicant never was an official within the meaning of the Staff Regulations of that body. At the commencement of his service with the Common Assembly of the ECSC he only held the contractual position of a member of the auxiliary staff for whom there applied a special scheme independent of the Staff Regulations. — From June 1958 onwards he was employed on the basis of a so-called Brussels contract. The regulations applicable (Règlement APE 351) admittedly in some respects refer to the existing Staff Regulations. The Staff Regulations do not however apply without further ado; they were in particular of no significance in relation to the pensions scheme since, as we have heard, this was provided for in a special regulation (Règlement APE 1658 dated 8 April 1959) and had a special pensions fund.

It follows from this that in a legal sense the applicant acquired the status of an official pursuant to Article 102 of the EEC and Euratom Staff Regulations and not pursuant to Annex X of the ECSC Staff Regulations which expressly refer to Article 93 of these Regulations and thus make it clear that they only apply to former ECSC officials. It furthermore follows from this that the provisions made for the applicant's pension are not open to objection under the EEC and Euratom Staff Regulations.

2. Further as regards the applicant's view that on acquiring the status of an official he should have been appointed to that step in salary scale A 3 to which on the basis of his contract of employment and having regard to the Staff Regulations which applied at that time he had been assigned within salary scale A 4, it has already been made clear by the case law (Case 70/63) that such a transfer only applied to former ECSC officials, since only they were subject to specific provisions for assignment to a particular step in the scale. On the other hand as regards contractual employees whose assignment to a step did not take place in strict compliance with such provisions, there did not on their assignment to a higher salary scale follow from that the automatic transfer to the previous salary step. Rather, the step had to be decided by applying Article 46 of the Staff Regulations (i.e. the provisions applicable to promotions). That too has already been expressly decided by case law. (Case 15/64, Rec. 1966, p. 663).

After all that has been said the applicant cannot object to the fact that his

assignment to a step, upon his acquiring the status of an official, was decided on the basis of Article 46. Equally it is therefore clear that the defendant Parliament acted correctly when it fixed the applicant's pension entitlement by reference to his assignment to this step whilst having regard to his biennial increments within the salary scale.

Even assuming its admissibility, the application could not therefore under any circumstances succeed.

III — Having said all this, I would summarize my opinion as follows:

The application made by Mr Angelini is inadmissible in all respects and must for that reason be dismissed. Upon such an outcome of an application the question of costs is dealt with by Article 70 of the Rules of Procedure, i.e. each party is to bear its own costs.