calculate the pension rights which have been acquired by an official in his country of origin and which he has been obliged to forfeit by reason of his entering the service of one of the Communities, the pension rights retained by virtue of supplementary voluntary insurance with the national insurance institution, it must nevertheless exclude voluntary contributions paid by the person concerned after the termination of his national employment.

In Case 131/80,

GERHARD WILL, an engineer and an official of the Commission of the European Communities, resident in Luxembourg, with an address for service at the Chambers of his Counsel, Victor Biel of the Luxembourg Bar, 18A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jörn Pipkorn, a member of its Legal Department, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for

(1) Annulment of the Commission decision of 11 December 1978 determining the number of years' pensionable service credited to the applicant pursuant to Article 102 of the Staff Regulations of the ECSC:

(2) A declaration that the Commission is obliged to credit the applicant with several years' pensionable service not taken into consideration in the said decision,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

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

I — Facts and written procedure

1. The applicant, born on 8 December 1915, was appointed as a probationary official by the High Authority of the ECSC on 15 October 1956. He has continued to serve first with the High Authority and thereafter with the Commission since that date without interruption.

In accordance with the transitional provisions of Title VIII of the Staff Regulations of Officials of the ECSC of 1 January 1962 (hereinafter referred to as "the ECSC Staff Regulations") and of Article 48 of Annex VIII to those regulations he was included in the Communities' pension scheme with effect from 15 October 1956.

By decision of the appointing authority of 11 December 1978 the provisions of Article 107 of the Staff Regulations of the European Communities and of Article 102 (2) of the ECSC Staff Regulations were applied to the applicant, who was awarded by the same decision a credit of three years one month and fifteen days in addition to his Community pension rights.

2. Article 102 (2) subparagraphs (a) to (f) of the ECSC Regulations corresponded to Article 107 of the EEC and the EAEC Staff Regulations as set out in Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 (Official Journal, English Special Edition 1959-1962, p. 135).

The Staff Regulations of Officials of the European Communities (hereinafter referred to as "the 1968 Staff Regulations") laid down by Regulation (EEC, Euratom, EAEC) No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I) p. 30), reproduces the above-mentioned Article 107 with some drafting changes (first paragraph of Article 2, No 17). It retains however Article 102 (2) of the ECSC Staff Regulations for those officials who, like the applicant, were recruited according to the provisions of the 1956 ECSC Regulations (third paragraph of Article 2 of Regulation No 259/68).

The relevant provisions of Article 102 (2) of the ECSC Staff Regulations are in the following terms:

"(a) An official to whom these Staff Regulations have been applied in accordance with these transitional provisions and who furnishes evidence of having been obliged by reason of his entering the service of the Community to forfeit in whole or in part the pension rights which have accrued to him in his country of origin and of being unable to obtain the actuarial equivalent of such rights shall be credited, for the purposes of his retirement pension in the Community and without payment of arrears of contributions, with annual contributions corresponding to the number of years of pensionable service accrued in his country of origin.

(b) The number of years of pensionable service thus credited shall be determined by the appointing authority of the institution to which the official belongs after receiving the opinion of the Staff Regulations

Committee provided for in Article 10. It shall not exceed:

— The number of years of actual service which it will be possible for the official to complete up to the age of 65 years;

— Half the number of years of service which upon his attaining the age of 65 years would be required for him to complete 35 years of pensionable service.

(c) An official to whom the foregoing provisions apply shall pay to the Community a portion of the sums paid to him in settlement of his pension rights in his country of origin which do not correspond to the actuarial equivalent of those rights; that proportion should be equal to the ratio between the number of years' pensionable service with which he is credited by the Community and the number of years of pensionable service forfeited by him in his country of origin".

The Commission adopted on 2 July 1969 general implementing provisions for Article 107 of the 1968 Staff Regulations and Article 102 (2) of the ECSC Staff Regulations. They were published in the Courrier du Personnel [Staff Courier] No 77 of 29 June 1969, pp. 601 et seq. Following this publication the applicant requested on 10 November 1969 compensation for the pension rights which he had been obliged to forfeit by reason of his entering the service of the Community.

Investigations were then made both by the administration and by the applicant in order to calculate those pension rights which the applicant had lost and those which he had retained before entering the service of the High Authority.

3. At the end of its investigations the Commission carried out the calculation on the following basis.

(a) The applicant's last employer before he entered the service of the High Authority was the Hütten- und Walzwerks-Berufsgenossenschaft (mutual insurance fund for workers in steel foundries and rolling mills, hereinafter referred to as "the Berufsgenossenschaft"), a body incorporated under public law with a pension scheme which corresponds to the provisions of the Federal Civil Service Law (Bundesbeamtengesetz).

Initially from 1 March 1951 to 31 May 1953, the applicant worked there as a clerical employee within the meaning of the Clerical Staff Insurance Law (Angestellten-Versicherungsgesetz). During that period the applicant was not subject to the compulsory pension insurance scheme because his annual remuneration exceeded the ceiling for compulsory membership in force at the time. The Berufsgenossenschaft did not therefore have to pay a contribution for that period to the Federal Insurance Office for Clerical Staff (the Bundesversicherungsanstalt für Angestellte — hereinafter referred to as "the Clerical Insurance Office"). The applicant however himself paid 17 optional contributions to that office during that period.

For a second period from 1 June 1953 to 31 October 1956, the applicant was employed as technical supervisor under conditions of the staff rules of the Berufsgenossenschaft and under the rules applicable to the civil service in accordance with the provisions of the Federal Civil Service Law. During that period, the applicant was not subject to the compulsory pension insurance scheme provided for in Article 11 (1) of the Clerical Staff Insurance Law, because he could expect to receive a civil servant's pension. However, since he ceased his activities with the Berufsgenossenschaft on 31 October 1956 before the expiry of the qualifying period of ten years provided for by German civil service law, he could not be awarded any civil service pension. In these circum-

stances the Berufsgenossenschaft was required by Article 9 of the Clerical Staff Insurance Law to insure the applicant retroactively for the period between 1 June 1953 and 31 October 1956.

Over the same period the applicant himself made 29 voluntary contributions to the Clerical Insurance Office. Since his former employer had insured him retroactively for this period, these voluntary contributions correspond to additional insurance contributions in accordance with Article 2 (15) of the Clerical Staff Pension Reform Law of 23 February 1957 (Angestelltenversicherungs-Neuregelungsgesetz, BGBl. I, p. 980). Of these 29 voluntary contributions 13 were paid while the applicant was employed by the Berufsgenossenschaft and the others in December 1957.

(b) On the basis of these factors the Commission took as *accrued pension rights which the applicant had been obliged to forfeit* the rights relating to his period of service with the Berufsgenossenschaft from 1 March 1951 to 14 October 1956 *namely five years seven months and thirteen days,* in so far as such rights did not correspond to rights in respect of the same period retained as against the Clerical Insurance Office.

This basis of assessment of five years seven months and fifteen days was multiplied by a coefficient of 0.8322 to take account of rights which the applicant *retained* as against the Clerical Insurance Office as a result of the contributions paid to that institution as non-compulsory insurance. The amount of the coefficient was based on a fictitious calculation carried out by the Clerical Insurance Office and sent to the Commission by letter of 28 August 1976. As a result of this coefficient the number of years of pensionable service which could be credited was reduced to four years eight months and five days.

Finally a conversion coefficient was applied to this number of years to convert it into the *actuarial equivalent,* taking account of factors such as age, sex and so on. This operation gave the result of *three years, one month and fifteen days.*

This was the number of years of pensionable service which the decision of 11 December 1978 set as the credit to which the applicant was entitled pursuant to Article 102 of the ECSC Staff Regulations.

4. This decision was communicated to the applicant by letter of 11 December 1978 requesting him to set any objections out in writing within a period of three months.

The applicant set out his views after two successive extensions of the time-limit in a note of 25 June 1979. In particular he criticized the fact that "reckonable periods prior to entry into service" ("nützliche Vordienstzeiten") had not been included in the lost years. He also criticized the fact that the rights retained with the Clerical Insurance Office on the basis of voluntary insurance had been taken into consideration.

By a letter dated 13 August 1979 the Head of the Individual Rights and Privileges Division of the Directorate General of Personnel and Administration of the Commission elucidated the calculation without modifying it. On 6 November 1979 the applicant made a complaint. After the expiry of the time for a reply provided for in Article 90 (2) of the 1968 Staff Regulations, the applicant made this application on 30 May 1980.

The Commission decided on 24 June 1980 to refuse the complaint expressly. The decision refusing it was communicated by letter of 4 September 1980 and received by the applicant on 19 September.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare the implied rejection of his complaint of 6 November 1979 unlawful and annul it;

2. Rule that the defendant is bound to credit the applicant with study periods as a result of the retroactive effect of the Bundesbeamtenrahmengesetz [Federal Civil Service Outline Law] of 1 July 1957 which inserted Article 116 a (in the Federal Civil Service Law);

3. Confirm that the Commission has no claim to payment of sums which have accrued to the plaintiff by way of voluntary insurance contributions;

4. Alternatively, confirm that the implementing provisions adopted by the Commission are incompatible with Article 102 of the ECSC Staff Regulations and therefore inapplicable; accordingly, declare them unlawful in so far as they might confer on the administration a claim to sums accrued by virtue of voluntary insurance contributions;

5. Refer the matter back to the Commission for a new calculation of the plaintiff's entitlement to be made;

6. Order the defendant to pay the costs.

The *defendant* contends that the Court should:

1. Dismiss the application as unfounded;

2. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

(a) Credits for periods prior to entry into service

The applicant submits that under the provisions of Article 116 a of the Federal Civil Service Law of 14 July 1953 certain periods prior to employment must be taken into consideration in order to calculate the years of pensionable service to be credited. This relates in particular to periods of study. The said provisions were inserted by the Federal Civil Service Outline Law of 1 July 1957 with retroactive effect to 1 September 1953. Hence at the date of entry into force of the new provision, the applicant was still in the service of the Berufsgenossenschaft. Because of the retroactivity of the new Law he was entitled to the benefits conferred by it so that the corresponding periods must be taken into account in order to calculate his lost pension rights. Finally, the applicant points out in his reply that he is requesting a credit of five years, five months and three days. This number corresponds to the maximum number of years to which he would be entitled under Article 102 (2) (b) of the ECSC Staff Regulations as applied by the Commission in the contested decision.

The *defendant* stresses that the pension rights which accrued to the applicant with his previous employer must be assessed in the light of the national measures in force when the applicant had to forfeit them (Article 102 (2) (a) of the ECSC Staff Regulations; Article 7 (1) of the general implementing provisions).

Since he had not completed the qualifying period of ten years' service in accordance with Article 106 of the Civil Service Law the applicant neither acquired nor lost any right to receive a civil service pension when he entered the service of the Community. He had simply had prospects of a pension or an expectancy which would only have crystallized into a substantive right if the applicant had remained in the service of the Berufsgenossenschaft and if the risk had only occurred after the end of the qualifying period or for reasons of incapacity for work.

The period during which the applicant was qualifying for a civil service pension covered solely the period during which he was actually in the service of the Berufsgenossenschaft. Periods prior to the entry into service were not taken into consideration (Art. 116 (1) (3) of the Civil Service Law), because those periods were not part of the qualifying period mentioned in the aforesaid Article 106. The same applies to the study period within the meaning of Article 116 a of the Law. Moreover the provisions of Article 116 a were inserted into the Civil Service Law with effect from 1 September 1953 only by the Civil Service Outline Law of 1 July 1957. It applied only to civil servants and those treated as such who were actually employed when it came into force; it did not therefore affect the applicant, who ceased his employment with the Berufsgenossenschaft from 31 October 1956 that is to say before the coming into force of the said provisions.

(b) The inclusion in the calculation of voluntary contributions

The *applicant* submits that the defendant is not entitled to an assignment of benefits paid by the Clerical Insurance Office in respect of voluntary contributions. Such an assignment could not apply to contributions which do not by their very nature fall under the provisions of the 1968 Staff Regulations which deal only with pension rights.

Even supposing that what was under consideration was not an assignment but a factor of the calculation, it is nevertheless the case that the amounts of voluntary contributions paid in order to be covered by a supplementary insurance scheme would involve a reduction in the number of years of pensionable service credited to the applicant.

The defendant's proposition that not only pension rights should be taken into account but also rights which the applicant may have acquired by way of voluntary contributions cannot be based on the wording of Article 102 of the ECSC Staff Regulations or Article 107 of the 1968 Staff Regulations. Article 4 of the general implementing provisions has no effect on the interpretation of those provisions since it came into effect only in 1969; it cannot have any retroactive effect.

According to the applicant the scheme for crediting years of pensionable service is quite distinct from payment by an official of voluntary contributions since schemes of non-compulsory insurance cannot be assimilated to pension schemes.

The *defendant* points out first that the decision of the appointing authority of 11 December 1978 does not relate in any way to an "assignment" of pension rights in respect of the Clerical Insurance Office.

For the defendant the question is whether it is entitled in applying Article 102 (2) of the ECSC Staff Regulations and Article 107 of the 1968 Staff Regulations to take into consideration, in order to calculate the value of the lost pension rights to be made good, pension rights maintained after an official's entry into service with the Commission, even if such rights are in part based on voluntary contributions.

The defendant's own view is that account must be taken not only of rights actually accrued relating to a period of employment before entry into service with the Communities, but also of those which have not accrued to the official, but which he may have obtained by payment of voluntary contributions. This conclusion follows first from the actual wording of Article 107 of the 1968 Staff Regulations and Article 102 (2) of the ECSC Staff Regulations. Secondly it would not be in accordance with the purpose of the rules in question, which is to grant compensation for a deficit in pension which cannot be covered in any other way, to grant such benefits in cases in which there is no such deficit (as is the case with the applicant) or where it is the official's own fault (as in the case where an official does not take advantage of the possibility of paying voluntary contributions).

For these reasons the implementing provisions, in particular at Article 4, do nothing more than make specific the legal consequences resulting from the provisions of the Staff Regulations themselves, in particular where they specify that for the calculation of lost pension rights to be made by the Community pension scheme retained pension rights based on voluntary contributions are to be taken into consideration.

Moreover the taking into consideration of voluntary contributions does not cause the applicant any injury since the only right denied to him is that of being compensated for a pension deficit which does not exist.

IV — Oral procedure

At the sitting on 5 February 1981 the parties presented oral argument.

The Advocate General delivered his opinion at the sitting on 2 April 1981.

Decision

1 By application lodged at the Court Registry on 30 May 1980 Gerhard Will, an official of the Commission of the European Communities, brought an action for annulment of the decision of the Commission dated 11 December 1978 by which the provisions of Article 102 (2) of the Staff Regulations of Officials of the ECSC (hereinafter referred to as "the ECSC Staff Regulations") were applied to the applicant and the number of years' pensionable service to be credited to him under those provisions was determined.

2 The said Article 102 (2) of the ECSC Staff Regulations whose wording corresponds substantially to that of Article 107 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as "the Staff Regulations"), provides that an official who furnishes evidence of having been obliged by reason of his entering the service of the Community to forfeit in whole or in part the pension rights which have accrued to him in his country of origin and of being unable to obtain the actuarial equivalent of such rights shall be credited, for the purposes of his retirement pension in

the Community with annual contributions corresponding to the number of years of pensionable service accrued in his country of origin. The same article provides that the number of years of pensionable service thus credited shall be determined by the appointing authority of the institution to which the official belongs after receiving the opinion of the Staff Regulations Committee and that it shall not exceed either the number of years of actual service which it will be possible for the official to complete up to the age of 65 years, or half the number of years of service which upon his attaining the age of 65 years would be required for him to complete 35 years of pensionable service.

3 The applicant entered the service of the High Authority of the ECSC on 15 October 1956. Before that date he was employed by the German Mutual Insurance Fund for workers in steel foundries and rolling-mills (Hütten- und Walzwerks-Berufsgenossenschaft hereinafter referred to as "the Berufsgenossenschaft"), a body incorporated under public law as defined by German legislation. From 1 June 1953 he had the status of an official; his remuneration was therefore subject to deduction of pension contributions pursuant to the German Civil Service Law. Previously from 1 March 1951 he had worked for the same body as a clerical employee within the meaning of the German Clerical Staff Law (Angestelltenversicherungsgesetz); since he was not subject to the compulsory pension insurance scheme set up by that Law because of the amount of his remuneration he paid voluntary contributions to the Federal Insurance Office for Clerical Staff (Bundesversicherungsanstalt für Angestellte, hereinafter referred to as "the Clerical Insurance Office").

4 When he entered the service of the Community, the applicant had not completed the qualifying period of 10 years' service provided for in the German Civil Service Law as a condition for the grant of a pension. In these circumstances, the Berufsgenossenschaft was required pursuant to the Clerical Staff Insurance Law to insure the applicant retroactively for the period during which he had been an official. It complied with this requirement by paying to the Clerical Insurance Office an amount calculated by reference to the pension for that period. The applicant for his part paid voluntary contributions to the said office during the same period and after his entry into the service of the Communities.

5 It appears from a letter of the Clerical Insurance Office to the Commission dated 26 August 1976 that it considers that the voluntary contributions paid by the applicant both during his employment with the Berufsgenossenschaft and after the termination of that employment are to be considered as insurance contributions supplementary to the retroactive insurance taken out by the Berufsgenossenschaft on the applicant's behalf.

6 In the contested decision the Commission credited the applicant with years of pensionable service under Article 102 (2) of the ECSC Staff Regulations. The decision on the one hand determines the maximum of years of pensionable service to be credited under those provisions at 5 years, 5 months and 3 days, and on the other hand fixes the number of years of pensionable service actually credited at 3 years, 1 month and 15 days.

7 As to the amount of the maximum, the application refers to a period of 15 years and 18 days which ought to be taken into consideration but this allegation which is unsupported by any explanations was not pursued after the explanations which the Commission gave in this respect in its defence.

8 On the other hand the number of years of pensionable service credited is disputed by the applicant for two reasons. First the Commission took as the basis of its calculation the wrong number of years of service, failing to take account of the periods of study undertaken by the applicant before he entered the service of the Berufsgenossenschaft. Secondly, the Commission ought not to have taken into account his voluntary insurance contributions paid to the Clerical Insurance Office.

9 According to the schedule to the decision under review, it was based on the following calculation so as to arrive at the credit of 3 years, 1 month and 15 days;

(a) It took as a basis for the calculation the period during which the applicant was employed by the Berufsgenossenschaft, that is to say 5 years, 7 months and 13 days;

(b) A coefficient of 0.8332 was applied to this period so as to take account of the voluntary insurance which the applicant took out with the Clerical Insurance Office;

(c) A coefficient of conversion was then applied so as to give the actuarial equivalent of the period so obtained.

10 The applicant contests first the basis of calculation indicated at (a). He does not deny that he had actually completed the period to which the decision refers at the time at which he left his employment with the

Berufsgenossenschaft in 1956. In his view however the period taken as a basis for calculation should have included not only the actual duration of employment but also the periods of study prior to the employment which according to the applicable German legislation are to be taken into consideration in order to calculate years of pensionable service.

11 In support of this submission the applicant claims that a German Law of 1 July 1957 inserted in the Federal Civil Service Law a new Article 116a according to which periods of study prior to employment are to be taken into consideration in order to calculate years of pensionable service. That Law of 1957 had retroactive effect to 1 September 1953 at which date the applicant was still in the employment of the Berufsgenossenschaft. Therefore the scheme provided for in the Law was made retroactively applicable to his situation; this scheme therefore caused pension rights to accrue to him which he was obliged to forfeit by reason of his entering the service of the Community.

12 The Commission rejects this argument. It submits that according to Article 102 (2) of the ECSC Staff Regulations, the crediting of years of pensionable service can apply only to years of service which have accrued to the official in his country of origin and that the wording must be interpreted to mean that the "accrued" years of service must actually have accrued at the time when the official was obliged to forfeit his rights. This interpretation is supported by the general implementing provisions relating to Article 107 of the Staff Regulations and Article 102 (2) of the ECSC Staff Regulations, which were adopted by the Commission on 2 July 1969 and published in the Courrier du personnel [Staff Courier] of 29 July 1969 (No 77, p. 601). Article 7 of the general provisions expressly makes the credit depend on the national pension scheme as it applied to the official "at the moment when he was obliged to forfeit these rights".

13 The Commission's submission must be accepted. Credits for years of pensionable service provided for in Article 102 (2) of the ECSC Staff Regulations and in Article 107 of the Staff Regulations are intended to provide within the framework of the Community pension scheme some compensation for pension rights which the official had already acquired but which he was obliged to forfeit by reason of his appointment by one of the Communities. The rights which he is obliged to forfeit are those which he has acquired at the time of the termination of his previous duties; subsequent national

legislation cannot have the effect of modifying for the purpose of determining such compensation the calculation of the rights which he had acquired at that time.

14 The same applies where national legislation which comes into effect after the termination of national employment has a retroactive effect to a date prior to that time. The official cannot be deemed to have forfeited pension rights by reason of his entering the service of one of the Communities when those rights have not accrued to him at the actual time at which he ceases to pursue his previous employment.

15 It follows that the first head of the applicant's claims is unfounded.

16 The applicant further disagrees with the application in the contested decision of a coefficient of 0.8332 to the number of years during which he was employed by the Berufsgenossenschaft, so as to take account of the voluntary insurance with the Clerical Insurance Office. In his view, to take into account voluntary contributions is equivalent to confiscating an official's savings and is in any case contrary to the wording and to the purpose of Article 102 (2) of the ECSC Staff Regulations.

17 The Commission submits that it is entitled to take pension rights which the official has retained after entry into service with the Commission into consideration in order to calculate the value of lost pension rights which are to be made good in accordance with the said provisions, even if those rights are based in part on voluntary contributions. The purpose of the rules applicable is to grant compensation for a deficit in pension which cannot be made good in any other way so that it is not appropriate to grant these benefits where there is no such deficit.

18 Moreover the Commission points out that Article 4 of the general implementing provisions mentioned above provides expressly that pension rights which the official has been obliged to forfeit are retirement pension rights under a "statutory or contractual" pension scheme.

19 The applicant replies that the said Article 4 is based on an incorrect interpretation of Article 102 (2) of the ECSC Staff Regulations and Article 107 of the Staff Regulations; he therefore requests the Court to declare the said Article 4 null and void.

20 It appears from the file that the voluntary contributions paid by the applicant to the Clerical Insurance Office amounted to 46, of which 17 were paid during the period when the applicant worked as a clerical officer of the Berufsgenossenschaft (1951 to 1953), 13 during the period when he had the status of an official with that institution (1953 to 1956), and 16 after the termination of his employment in December 1957. A comparison of the applicable German legislation with the information in the file shows that these 16 voluntary contributions, whilst paid after the termination of employment, were intended to cover insurance periods between 1 January 1955 and the termination of employment as supplementary contributions within the meaning of the Clerical Staff Pension Reform Law of 23 October 1957 (Angestelltenversicherungs-Neuregelungsgesetz).

21 It should be recalled moreover that the Berufsgenossenschaft took out insurance retroactively for the applicant for the period during which he had the status of a German civil servant (1953 to 1956) by paying an amount representing the pension calculation for that period to the Clerical Insurance Office, which considers that the voluntary contributions made by the applicant must be treated in the same way as supplementary insurance contributions within the meaning of German Law.

22 In these circumstances the Commission was entitled to take into account, in order to calculate the pension rights which the applicant was obliged to forfeit within the meaning of Article 102 (2) of the ECSC Staff Regulations by reason of his entering the service of the Community, the pension rights retained by virtue of voluntary insurance with the Clerical Insurance Office. In this respect the Commission has therefore correctly interpreted the said Article 102 (2); consequently Article 4 of the general implementing provisions is not incompatible with the provisions of the ECSC Staff Regulations.

23 The Court however considers that the 16 voluntary contributions which the applicant paid after the termination of his employment with the Berufsgenossenschaft should be treated differently. It appears from the considerations set out that the date to be taken into account for the purpose of calculating lost and retained pension rights so as to make such rights good within the framework of the Community pension scheme is the date at which

the official terminates his previous employment in order to enter the service of one of the Communities.

24 The Commission was not therefore entitled to take into account the voluntary contributions which the applicant paid after his entry into the service of the Community pursuant to national legislation which came into effect after that date.

25 It follows from the foregoing that the contested decision must be annulled to the extent to which the application of the coefficient of 0.8332 to the period of 5 years, 7 months and 13 days of pensionable service, corresponding to the period during which the applicant was employed by the Berufsgenossenschaft, represents the retention of the applicant's pension rights based on the payment of 16 voluntary contributions which he made to the Clerical Insurance Office after the termination of his employment with the Berufsgenossenschaft.

26 The remainder of the application must be rejected.

Costs

27 Since each party has failed in one of its submissions, it is appropriate for the parties to bear their own costs in accordance with the first subparagraph of Article 69 (3) of the Rules of Procedure.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Annuls the decision of the Commission dated 11 December 1978, by which the provisions of Article 102 (2) of the Staff Regulations of Officials of the ECSC were applied to the applicant, to the extent to which the application of a coefficient of 0.8332 to the period of 5 years, 7 months and 13 days of pensionable service, corresponding**

to the period during which the applicant was employed by the German Mutual Insurance Fund for Workers in Steel Foundries and Rolling-Mills (Hütten- und Walzwerksberufsgenossenschaft) represents the retention of the applicant's pension rights based on the payment of 16 voluntary contributions which he made to the Federal Insurance Office for Clerical Staff (Bundesversicherungsanstalt für Angestellte) after the termination of his employment with the Berufsgenossenschaft;

2. Orders the parties to bear their own costs.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 7 May 1981.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 2 APRIL 1981 [1]

Mr President,
Members of the Court,

The present staff case concerns the application of Article 102 (2) of the Staff Regulations of the European Coal and Steel Community of 1 January 1962, subparagraphs (a) and (b) of which correspond in substance to Article 107 (1) and (2) of the Staff Regulations at present in force. These provisions, which were expressly maintained in force by the third paragraph of Article 2 of Regulation No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials of the European Communities (Official Journal, English Special Edition 1968 (I), p. 30) for those officials who had already been employed during the validity of the ECSC Staff Regulations of 1956, reads as follows in the version amended by Regulation No 1473/72 of 30 June 1972 (Official Journal, English Special Edition 1972 (III), p. 703):

"(2) The following provisions shall apply to officials to whom Article 108 of

1 — Translated from the German.