OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 10 JULY 1974 [1]

Mr President,

Members of the Court,

1. As the present proceedings are for the purpose of considering whether, in the light of the procedural objection raised by the defendant, the action is admissible, it could be brought to an end by upholding, without difficulty, the objection that it is out of time. But it was not to reach this simple conclusion that the Chamber to which the case was originally assigned decided to refer it to the Court in plenary session. The main purpose was to answer the question of general interest whether and to what extent trade union organizations representing European officials could use the channels of appeal provided under the Staff Regulations of the Communities, which raises questions far more serious than the question primarily in issue whether deductions can be validly made from pay for the duration of strikes. The Advocate-General has the task of presenting his opinion on this preliminary question of the right to bring an action, even though, as I have indicated, for the purpose of reaching its decision, it may be enough for the Court to rule on the other objection against admissibility based on expiry of the time-limit. On this latter issue I think a few simple comments should suffice.

It is clear that the announcement made on 21 September 1973 by the Directorate-General for Personnel and Administration, against which the applicant union had lodged a formal complaint on 19 October 1973, adds nothing of substance to the earlier decision, adopted by the Commission on 21 March 1973, in which it ordered a deduction from the salaries of officials and other servants who took part in the strike in December 1972. The announcement of 21 September 1973 clearly did no more than give practical details about the deduction which had been announced and about how it would be applied. It was only an implementing measure put into operation by the competent administrative departments in pursuance of the decision taken direct by the Commission on 21 March. The action is not in the least concerned with these arrangements but only with the principle of the deduction.

The Commission's decision had been communicated towards the end of March both to the staff via 'informaphone' and to the representatives of the trade union and professional organizations of staff. If these organizations were entitled to take advantage of Articles 90 and 91 of the Regulations, the period within which a complaint could validly be submitted, an essential condition for any subsequent legal action, started to run from that moment.

The fact that, prior to this, the Commission had not always carried out its decisions providing for deductions from pay in respect of strike periods can in no way have the effect of excluding the definitive character of the decision of 21 March 1973. The time-limit for any action which the trade union might be entitled to take must, therefore, begin to run from this date. Any doubt which anyone may have had about the practical application of the decision to individual officials could not have affected the union's position in regard to the decision, which also marked the conclusion of the negotiating stage between it and the Commission.

The announcement of 21 December 1973 made by the Directorate-General for Personnel cannot therefore be

1 — Translated from the Italian.

regarded as an act which could operate to make the time-limits laid down by Articles 90 and 91 of the Staff Regulations begin to run afresh.

When the claim, which was formally directed against the announcement of 21 December but which, in fact, challenged the legality of the decision of 21 March, was lodged, the time-limit laid down in Article 90 had already expired.

The subsequent appeal against the Commission's implied decision rejecting a complaint which was out of time is consequently inadmissible.

But the objection raised concerning the question whether the applicant was correctly represented when instituting proceedings became of merely academic interest when the position was regularized and, as the President of the union formally declared, the application was endorsed by the body in the union empowered to do so under its rules.

2. I come now to the question of the union's general capacity to be a party to legal proceedings, which must be settled before we approach the more specific one of capacity to act within the framework of the special kind of action provided for under Staff Regulations.

This same question of principle is involved in another case, 175/73, which is still pending, and in which the Union Syndicale is contesting decisions affecting individuals in conjunction with the officials directly concerned. In the present case, however, the union organization has acted alone and the subject of the appeal is a decision of general application. This point of difference may be reflected in the ruling given on the question of capacity as regards a particular type of action or of having a legally recognized interest in the proceedings. But it has no essential effect on the terms in which in each of these proceedings the question arises whether, in principle, this kind of association is entitled to institute proceedings before this Court.

In the parallel case, my colleague, Mr Advocate-General Reischl, has proposed that you should rule that the action is inadmissible because, in that case, the union, acting in defence of the interests of two officials who, in turn, have lodged their own appeal, is unable to claim that it represents a specific and existing collective interest. But the problem common to both cases is of wider significance in this case because here it is the Union Syndicale alone which, in contesting the legality of a decision affecting about 2 600 officials of the Commission who took part in the strikes during November and December 1972, claims to represent an interest which besides being, in fact, that of a very large number of officials, is concerned with questions of principle which are of general importance for employees of the Community and for the administration: in particular, the administration's right to make deductions for days on strike, whether or not for any 'good cause'.

It should also be made clear that in this case the question of admissibility of the action has been raised exclusively on the basis of Articles 90 and 91 of the Staff Regulations; this is because the applicant waived any rights under Article 173 of the Treaty, possibly in order to avoid being caught by expiry of the time-limits provided for proceedings under this Article of the Treaty. Incidentally, though it is not without a particular significance, it should be noted that the special channel of appeal provided under the Staff Regulations could in no circumstances be used to escape from the time-limits for proceedings laid down in Article 173. The channels of appeal under these legislative provisions are not alternative ones but are mutually exclusive, each being for use in widely different circumstances.

The question which must first be disposed of in examining the problem under review arises from the fact that the Union Syndicale is not recognized as having an identifiable legal personality, a situation in which the traditional maxim 'pas d'action sans personalité' is relied

upon. I do not consider it necessary to spend much time on this question because the law in individual countries has usually got over the difficulty with admirable realism on the basis that a position of independence and responsibility is sufficient to confer a capacity to be a party to proceedings.

Again, it should be noted as of more direct interest to us that, as part of this realistic approach, acceptance as having a legal personality of bodies representing collective interests and which have not obtained formal recognition in law, is more readily accorded in terms of being a party to proceedings than of possessing substantive rights. In any case it can be stated that, just as recognition, on the basis of the law of the State in which it is accorded, of the legal personality of a trade union organization would not necessarily mean acknowledgement of its right of action under Articles 90 and 91 of the Staff Regulations (which, unlike Article 173 of the EEC Treaty, create, in the context of the Community, a special type of action as regards both subject-matter and those entitled to make use of it), so conversely, the absence of express attribution of legal personality to the union is not such as in itself to prevent it from ever being recognized as having a right of action of this kind. The Court has, moreover, already had occasion to demonstrate the breadth of the view it takes on this point in an order of 24 October 1962 (Case 16 and 17/72, Rec. 1962, p. 192) and in the order of 14 November 1963 in case 15/63 *(Lassalle v European Parliament,* Rec. 1964, p. 97). This latter order, while rejecting the Staff Committee's application to intervene, made it clear that this right is not restricted to bodies having a legal personality, as it is enough for this purpose that at least the elements constituting its basis, in particular independence and responsibility, exist, even if only to a limited extent. Recently, on another occasion and in more explicit terms, the Court expressed itself in the same sense in the order of 11 December 1973 in Case 41/73 *(SA Générale Sucrière and others v Commission),* in accordance with the whole trend of precedents in this Court, whose general line is not to be content with a purely formalistic approach. If, therefore, it can be established that the applicant union possesses, in sufficient degree, the qualities of independence and responsibility, it would be in accordance with this trend to grant it a capacity to be a party to proceedings. This appears also to be in accordance with the spirit and the objects of Convention 87 of the I.L.O. on trade union freedom and the protection of trade union rights.

On the basis of and subject to the provisions of Article 173 of the EEC Treaty, which are completed, of course, by the provision in Article 175, the trade unions may, against injurious acts by the Community authorities which fall within the categories provided for under this Article, accordingly defend their own organizational interests by using the machinery made available to them under the general system of appeal, but these must be intrinsic interests exclusively involving the union itself as a separate entity within a legal order and not as representative of its members' interests.

In this case, however, consideration must be given to the question whether there exists any specific right to institute proceedings; in other words, whether there is, in principle, a right of action regarding the service relationship governed by the Staff Regulations of the Community and, therefore based on Article 91 of the Regulations, for the protection of a collective interest of the staff, an interest which the union must be regarded as entitled to uphold.

3. As we get to grips with the nub of the problem, we must pause and compare two factors: the legal system of the Community and the importance of the contemporary recognition of the role of the trade union movement in day-to-day labour relations developments.

It should first of all be said that the question cannot be answered solely on

the basis of the law in the various countries and the different ways in which these countries approach the subject of trade union organization and the privileges and rights with which they are by their nature endowed. A solution must be found which can be applied exclusively in terms of Community law for the sake not only of uniformity of treatment but also of consistency within the structure of that law, because the problem is to secure for organizations operating to all intents and purposes at Community level the right to use the legal processes of the Community.

In order to establish whether a trade union specifically organizing European officials and whose purpose is to defend their interests in their service relationship with the Community can be regarded as among the persons referred to in Article 91 of the Regulations, the first thing to be taken into account is the role which, under the Staff Regulations, is played by the machinery for appeals to the Court; then account must be taken of the status to be accorded to professional organizations regarding the service relationship which, with all its ramifications, is governed by the Regulations.

I trust that I may be allowed to repeat what is so well known but needs to be recalled in the clearest possible terms. The legal system of the Communitites, which seeks to ensure that the law is observed within the areas under their control, is firmly based on powers which have been expressly conferred.

In this case, as far as appeals by private parties are concerned, we must bear in mind the settled precedents established by the Court against associations of categories of interested persons being recognized as having the right to bring an action in their own name and on their own behalf, even when these organizations comprise the entire group of individuals who may be personally and directly affected by the provision which is being challenged.

In addition to the general rule in Article 173 of the EEC Treaty, Article 179 of the Treaty has provided for the special jurisdiction of the Court to settle any dispute 'between the Community and its servants', with the clear intention of taking away this type of case from the Courts of the individual nations.

Article 179 states that the specific conditions and methods of appeal by officials are defined in the Staff Regulations, and Articles 90 and 91 set out in detail the way in which an appeal may be made. There can be no doubt that, as is clearly indicated by the wording of Article 179, the situation which those who drew up the Treaty had in mind was that of an appeal by individuals. The Community legislators have dutifully maintained this restriction, for it is only in respect of individuals that the measures laid down in the Regulations concerning a current, future or past service relationship, have expressly created rights and obligations or at any rate have accorded a place to individual interests which coincide with the public interest in the legality of the administratition's actions and, therefore, justify the right to lodge a complaint through administrative channels and, for their own protection, to follow this up with an appeal to the Court. That this was, historically speaking, the underlying consideration of Community legislation is also clear from the terms employed in the Regulation: at the point where it designates the authority empowered to receive a complaint, Article 90 refers to the 'appointing authority', clearly a reference to the concept of the applicant's present, past or potential status as an employee. These, then, are the persons 'to whom these Staff Regulations apply' within the meaning of Articles 90 and 91.

Looked at literally, it is precisely this last expression which presents a difficulty: doubts may arise because in the new edition of the Regulations, Article 24 a for the first time formally recognizes the right of officials to join trade union

organzisations. This formal recognition of trade union status may, in terms of the right to submit complaints within the meaning of Article 90 and, consequently, of the right to be a party to proceedings under Article 91, qualify the meaning of the expression 'persons to whom these Staff Regulations apply'.

We should not lose sight of the fact that in the revised Regulations and also in the previous Regulations, provision is made for the Staff Committees, and for them to be legally recognized as representing the interests of the staff serving in the various institutions. Nevertheless, the Court has denied these organizations the right to be a party to proceedings, even as mere interveners, because they do not posses the independence and responsibility which, as we have seen, is the required basis for recognition of a separate and self-contained position in law for a body which is a focus of collective rights and interests (order cited above in Case 15/63, *Lassalle v European Parliament*, Rec. 1964, p. 97).

The mere fact an organization is referred to in the Regulations is therefore insufficient to secure it a position in the group of those entitled to make use of the machinery provided for under Articles 90 and 91.

The Regulations mention other entities: natural and legal persons such as, for example, in addition to the Member States (Article 28), certain international organizations (the International Monetary, Fund, in Article 63), the doctors who carry out the annual medical check-up (Article 59 (4)), the removal firms who move officials (Annex VII, Article 9), but they do not thereby acquire the right to make use of Article 91 of the Regulations.

The general reference in the French version of Article 91 to 'l'une des personnes visées au présent statut' is therefore insufficient to extend the range of those entitled to take advantage of the process for which it provides to regulate the relationship between employer and employee; this can happen only if there exists in the Regulations a rule to this effect referring to the applicant. This is clearly expressed in the German and English versions of Articles 90 and 91. ('jede Person, auf die dieses Statut Anwendung findet', 'any person, to whom these Staff Regulations apply'), and in the Italian version of Article 90 ('qualsiasi persona cui si applica il presente Statuto'), all of which are much more precise than the other versions which correspond to the French one.

Nor is breach of an interest, regarded objectively as an 'acte faisant grief' ('ground of complaint'), sufficient. As this case is concerned with a decision of general application on the subject of the financial consequences of the strike for the group of officials who took part in it, it is not difficult to assume that, for a repersentative union organization, a ground of complaint exists. Care must, however, be taken not to confuse the various standpoints from which, at the present stage of proceedings, the question must be reviewed and resolved. Even though, as a feature of our social life, a strike can in its nature be regarded solely as a collective act, the right to strike, where it exists, is still the right of individual officials. A trade union which serves to coordinate the actions of these individuals certainly has an interest which is capable of being harmed but this does not necessarily imply that this interest can be protected by the machinery of law, still less by virtue of Article 91 of the Regulations which, as we have seen, was mainly designed to cater for actions between officials and appointing authorities.

Moreover, even though there are cases where, in view of the union's direct interest in the way the right to strike is interpreted and in the consequences when it is exercised, the national courts have seen fit to grant these organizations the right to pursue that interest in the courts, it must be borne in mind that this has occurred in connexion with the

right to strike or the union's representative capacity in the field of private employment, whereas the present case is concerned with a relationship in public employment which is subject to regulation by statute and to special jurisdictional safeguards.

As already indicated, we must not confuse the question of the relevance of the interest and the logically prior one of the right to make use of a special kind of legal action which, by definition, is available only to specified categories of applicant.

This right must, in turn, be distinguished from the general capacity to bring an action, which is a required qualification for it and which we have already conceded to trade unions for the purpose of, for example, enabling them, within the prescribed limits and in order to defend their own organizational interests, to avail themselves of the rule in Article 173 which, in general terms, deals with the subject-matter of actions against the Community executive, as well the provisions of Article 215 on the subject of non-contractual liability which, as we shall see, also deals in some respects with contractual liability.

4. Coming now to trade unionism against its historical background, in order to understand the precise signifiance of Article 24 a of the revised Staff Regulations of Officials, it is important to remember that the pattern of trade union law developed from the situation when, in earlier times, a trade union was regarded as something extra-legal and sometimes as illegal as well, until more modern attitudes brought recognition of the value of union activities. If Article 24 a is to have any practical significance, this cannot be confined to explicit recognition of the legality of union organization among the European officials but must also provide a definition of union activities. Without doubt, the unions are beginning to be partners in the formation of collective legal relationships and a union can undoubtedly be recognized as having responsibilities which include assisting individual officials who wish to take legal action and which, given a specific mandate, may go so far as to enable them to represent individuals who have a right of action: this applies both as regards the complaints procedure, involving the administrative authorities, provided for under Article 90, and as regards the action which can be initiated at a later stage pursuant to Article 91.

We now come to the crux of the matter. We must determine what standing a union has in an action which at a given moment directly concerns the interests of clearly identified officials or the interests of a certain, possibly large, number of them, though the number does not affect the nature of the problem. And, if the answer we get in the present case can be applied as a general principle, we must also ascertain whether this has any consequential effects favouring recognition of the right of trade unions to act under the special procedural machinery which, for precise purposes and in respect of well-defined categories of applicant, is governed by Article 90 and 91 of the Staff Regulations. The difficulty is to establish a connexion between the powers conferred on the Court of Justice and the action which, within those limits, the union can be left free to take. For this we must look closely at Article 179, which confers those powers and sets out the conditions under which they are to be exercised, and even more closely at Article 91, which, in conjunction with Article 90, establishes a special channel of appeal for officials.

To return to the reference made above to the possibility of a representative capacity which also embraces the right to be a party to preceedings, on the basis, of course, of a specific mandate from the individuals concerned, it should be noted that, although our Rules of Procedure do not allow for it, there is, given the type of service which unions exist to provide, nothing to prevent them

from being from time to time granted powers of attorney. This would be of practical value, especially when the number of individuals with a right of action was large.

In that case, however, the sole purpose would be to protect the interests of individuals, though only through a representative in the proceedings. The problem for us at this moment is to establish whether, apart from a mandate from an individual, the union, acting on its own behalf and in its own name, can, in proceedings before the Court on the basis of Article 91 of the Staff Regulations, demonstrate an interest which can be described as a general or at least a collective interest and which also embraces the interest of the indiviudal.

When the problem is viewed from this standpoint, very serious and as far as I am concerned, insurmountable difficulties arise. Let me first recall what I said above about the jurisdiction of the Court, which, in addition to ensuring the protection of public interests, which within the limits we have noted, can be effected through the medium of interested parties, provides a special protection for officials against acts of the administration which adversely affect them. When the aid of the Court is invoked with the specific object of setting to rights deserving individual cases and not for the object of introducing new social rules, the union's function is its natural one of sustaining and not taking over the right of action of those immediately concerned, who retain in full their indivudal right to bring proceedings. The fact that a union may have an interest in obtaining judicial ruling on a question of principle and, to this end, may wish to defend its position in court is, in the absence of legislative action, insufficient to extend the field of jurisdiction conferred on the Court by the Treaty and by the Staff Regulations of Officials.

To grant unions the right to ensure, through the Court, the protection of general or collective interests, as distinct from the interests of individual officials, means extending the range not only of possible applicants but also of the rights and interests which the Court exists to protect, thus lending a sort of authority for an actio popularis. It would be a subjective and objective extension of the jurisdiction of this Court beyond that conferred on it by legislation. Article 91 of the Staff Regulations brought within the Court's jurisdiction matters which are not comparable to those in Article 177 of the EEC Treaty. The Court has to find immediate solutions for specific disputes, not give an abstract ruling of general application. The fact that a suit over a specific, current dispute may involve questions of principle of general interest for the future, a familiar occurrence in the courts everywhere, could not, therefore, of itself provide a legal basis for recognition of the union's right to bring action in its own name.

As the Commission's representative pointed out, it is not clear what purpose would have been served by a complaint from the union (as essential preliminary under the procedure laid down under Article 91) concerning a decision adopted by the institution which, in the ordinary course of events, would have been the subject of joint discussion which in this case proved fruitless. In answer to a complaint, in which the union can do nothing but repeat the arguments used in the previous discussions, the institution can only reaffirm its decision. If, every time an issue arose involving collective interests, the unions were able to lodge a complaint (a process intended as a remedy for individuals, enabling them, without loss, to avoid unnecessary recourse to the courts), it would become an empty formality, a useless continuation of an argument already closed as far as the administration was concerned.

Moreover, although it is true that it would be pointless to recognize the right of officials to be members of trade

unions without substantially accepting the unions' *raison d'être* in our times and in our society, viz., the responsibility of representing the collective demands and interests of this category, nevertheless it remains true that, because of the limitative way in which its jurisdiction has been conferred on the Court, the procedural position cannot remain unaffected by the fact that, in substance and in form, the decisions taken by the administration after negotiations with the union, which, since the introduction of Article 24 a, it is no longer able to avoid, are by and large concerned with the officials and not with the union as such.

Again, to accept that, when officials are entitled to bring an action against the administration, the union may regardless of any specific mandate given it by the individuals, on its own account bring proceedings in respect of the same decision and on the same grounds, would be to open up a duplicate channel for the defence of the individuals' interests, with all the consequences — including undesirable ones — which would follow. One has only to imagine the uncertainty which would be produced, for example, on the question of the procedural time-limits, and the difficulties of applying the Court's ruling. It is unnecessary to add that proceedings in the field of employment always have a bearing on the specific interests of individual officials, each of whom has nevertheless the right to take what steps he deems best to protect his interests, in proceedings or otherwise; nor, conversely, to add that the most trivial issue personally affecting an individual official often has a bearing on problems of general concern.

The collective or group interest which it is the duty of the union to represent can, moreover, be defended in the course of precedings through the procedural device of intervention, for which there is ample provision in Article 37 of the Statute of the Court, and in the decisions of this Court, and which, given the approach described above, should not be hedged in by formalistic restrictions when it comes to recognizing the trade unions as having distinct legal personality.

It would, however, be wrong to use this admitted right to intervene on which to build a case for an independent right of action. Though, because an intervention remains within the ambit of an existing action, generous recognition of the right to intervene does not produce an extension of the Court's jurisdicition, an increase in the number of those who have the right to bring an action before the Court and in the variety of interests regarded as deserving of the Court's protection has, on the other hand, a direct bearing on the range of the jurisdiction conferred on it, and raises a much more delicate issue. This is largely due to the fact that, whereas the admissibility or otherwise of an intervention is determined in accordance with a general rule embodied in the Statute of the Court, expressed in general terms, the right to bring an action direct under the Staff Regulations of Officials is determined on the basis of the special rules provided therein and which are more restrictive in their application than the general rule.

Apart from the objections I have described, other no less serious considerations argue against recognition of a trade union as having an independent right to bring an action. I refer to the extent to which the trade union is representative and to the lack of any standards whereby even a minimum representative capacity can be established. Legislation is, of course, silent on this subject although, let us remember, Article 9 of the Staff Regulations confers representative capacity on the Staff Committee, which, however, is regarded as being more in the nature of part of the structure of the individual institutions. Clearly, the question does not arise when the trade union is acting on a specific mandate from the individuals concerned. However that may be, it would

be inconceivable to recognize a trade union or staff association of any kind as having the right to bring an action on its own account to defend collective or general interests regardless of its actual following among the members of staff concerned. One can well imagine the practical problems which would require solution in the event of more than one union being involved, each of them insisting on following its own different course of action in the proceedings. Again, on what basis would it be possible to establish sufficient representative capacity? Whould it be enough for the institution concerned to have agreed to maintain contact with the organization, for example by informing it of the decision involved in this case, or would it be necessary to take into account more tangible but not always easily indentificable factors such as the number of actual members shown in the annual return of subscriptions or perhaps factors not necessarily of any significance such as the percentage of votes obtained by the union candidates in the Staff Committee elections? And to what extend would a ruling given in a trade union action be applicable?

5. The conclusion I have reached against the recognition of trade unions as having an independent right of action for the defence of a collective interest of the officials and the reasons I have given in reaching it hold good in a situation such as that in the present case, where a union claims to have an interest in the settlement of an issue which in fact directly concerns certain individuals who, for this purpose, have the right to make use of the methods of appeal provided for under Articles 90 and 91 of the Regulations.

Nor, in such circumstances, could recognition of the unions as having a right of action which, because of the overlapping of different groups of those recognized as having the right to bring an action in respect of the same decision, would give rise to the problems I have indicated, be justified on the basis of ensuring that justice was done, or simply on grounds of expediency. The need to protect rights and interests is met by the right of appeal accorded to the individuals against an act adversely affecting them; the union's practical interest in making its submission to the Court can be satisfied by generous recognition of its right to intervene.

As I have said, this conclusion is without prejudice to the admissibility or otherwise of an action brought by the union on an express mandate from and as the representative of individuals directly concerned and possessing a personal right of action. One could go further and ask whether the same conclusions would hold good in the converse case of a union moving in pursuance not only of an interest in ensuring observance of the obligations laid on the institutions for the benefit of individual officials but its own legal rights existing independently of the rights and interests, which the Court exists to protect, of individuals in a service relationship and which is wholly unconnected with the individual rights of officials.

If, from the legal standpoint, circumstances were to arise in which the union could be said to have a right of its own, based on its particular function and recognized under the Community system of law, the system would also have to provide the means of enforcing it through the Court. Once the right is recognized under the system, it is not for the Court to withhold any available protection within its power.

One example of this can arise directly from the Staff Regulations. In Article 24 a it is possible to identify a meaning which goes beyond mere recognition of the officials' right of association and implies acceptance by the institutions of the Communities that organizations representing the officials may participate in determining a staff policy based on a modern concept of the role of the law and covering for the most part conditions of work and a variety of

situations arising out of the service relationship with the Communities.

When, in line with these possibilities, circumstances arise in which there may be an infringement of a right which the Community system recognizes the union as possessing on its own account, there seems to be no reason why the officials' union should not be recognized as having a right to originate proceedings within the framework of the protection provided against the acts of the institutions.

As a natural part of the working relationship which must be developed between unions and administrative authorities, situations may arise where negotiations between them result in an agreement setting out the points accepted on each side of the table. Apparently, relevant precedents are already available. This being so and provided the wording of the agreement so permits, the trade unions who are parties to the agreement will have the right to bring proceedings against a party which has failed to fulfil its obligations. The first paragraph of Article 215 of the EEC Treaty provides as follows: 'The contractual liability of the Community shall be governed by the law applicable to the contract in question'. In a case involving the relationship of employer and employee, the Staff Regulations would constitute the law to be applied, so this provision, which makes an implied reference to this relationship and removes it from consideration by courts other than the Court of Justice, could literally authorize the unions to make use of the channels of appeal under Articles 90 and 91, which represent the only means provided under the Staff Regulations and, in the circumstances described, could accordingly be invoked in cases involving the contractual liability of the institutions.

These are possibilities which I mention here only to demonstrate that, in the context of the more general problem which the present case compels us to solve, I do not claim that the advice I have given in the present case has dealt exhaustively with all the complex aspects of the problem of recognizing the unions as having a right to bring an action.

For the reasons given, I conclude by endorsing the plea of inadmissibility raised by the defendant, first because of the lack of a right of action and, secondly, because the application is out of time; and, consequently, by advising that the applicant pay the costs of the action.