JUDGMENT OF THE COURT (FIRST CHAMBER)
13 JULY 1971[1]

Alo Heinemann
v Commission of the European Communities

Case 79/71

Summary

1. Measure adopted by an institution — Validity — Suspension — Conditions

2. Officials — Action for damages — Nature — Subject-matter (Staff Regulations of Officials, Article 91)

3. Officials — Wrong information supplied by the administration — No wrongful act or omission

4. Officials — Wrong information from the administration — Belated correction — Wrongful act or omission

1. The administration can only suspend the validity of a measure which it has adopted by means of a statement which shows clearly and unequivocally its intention to do so.

2. As an application for compensation constitutes an independent legal remedy, which is subject to certain conditions adapted to its purpose, it does not seek to have a specific decision set aside but to make good the damage caused by an institution in the exercise of its functions. For such an application to be well-founded it must be established that the defendant is liable for a wrongful act or omission which caused the application a still subsisting injury.

3. The adoption of an inaccurate interpretation of a provision of the law governing officials does not constitute in itself a wrongful act. Even where the authorities request those concerned to obtain information from the competent departments, they are not necessarily bound to guarantee the correctness of the information supplied.

4. Delay on the part of the appointing authority in correcting wrong information until after the time when those concerned have to make a decision in the matter constitutes a wrongful act or omission which renders the Community liable for the consequences of the wrong information.

In Case 79/71

ALO HEINEMANN, qualified architect, 29 avenue Octave-Michot, 1640 Rhode-Saint-Genèse, Brussels, represented by H. J. Rüber, Advocate of the Cologne Bar,

1 — Language of the Case: German.

with an address for service in Luxembourg at the Chambers of Nicolas Decker, 34b IV rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its legal adviser, Jürgen Utermann, acting as Agent, with an address for service in Luxembourg at the Chamber of Emile Reuter, Legal Adviser of the Commission, 4 boulevard Royal,

defendant,

Application for the annulment of the decision of the Commission of 13 January 1969 and, in the alternative, for the payment of damages to the applicant by this institution and his reinstatement;

THE COURT (First Chamber)

composed of J. Mertens de Wilmars, President, A. M. Donner (Rapporteur) and R. Monaco, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

The applicant entered the service of the Commission of the European Communities on 1 September 1959. When his service terminated on 30 September 1968 he was employed in Grade A 4, step 6, as head of the surface building section in the technical department of the European Investment Fund.

On 5 March 1968 the President of the Commission of the European Communities sent a communication to the staff indicating that requests for the application of Article 4 of Regulation No 259/68 of the Council of 29 February 1968 (OJ, English Special Edition 1968 (I), p. 30) had to be addressed to the Director-General for Administration before 6 April 1968 and stated that 'for information concerning financial rights arising out of the implementation of these special provisions they (could) refer to the competent administrative departments'. The time-limit for submitting these applications was extended until 18 April 1968 by a subsequent communication from the Commission.

At the end of March 1968 the applicant had an approximate statement of his financial rights drawn up by the competent

department. The calculation made by this department was based chiefly upon an interpretation of the fourth subparagraph of Article 5(7) of Regulation No 259/68, according to which the right to a full pension was acquired at the age of 55.

On 13 April 1968 the applicant submitted an application under Article 4 of Regulation No 259/68. On 21 June 1968 the Director-General for Personnel and Administration informed him of the Commission's decision to terminate his employment as from 1 October 1968, which was adopted at the meeting of 20 June 1968, and informed him that he could obtain additional information about his financial rights from certain named officials. As he did not feel it necessary, the applicant sought no further information regarding his financial rights.

By a telegram dated 20 December 1968 the applicant was informed that his right to a full pension would only come into existence when he attained the age of 60 and not as from the age of 55.

The applicant replied in a letter dated the same day that in submitting his request for voluntary termination of service he had relied in good faith on the accuracy of the information concerning his financial rights given by the relevant departments of the Commission and that, therefore, he did not accept the communication from the Commission.

On 13 January 1969 the administration sent him a notice of settlement according to which the right to a full pension was acquired when he reached the age of 60 years.

Between 13 January and 4 February 1969 the applicant sought information concerning his rights in the matter of sickness insurance, as well as the time-limit with which the notice of settlement might be contested.

In a letter dated 4 February 1969 the applicant requested the Director-General for Personnel and Administration to confirm certain oral information, according to which 'no time-limit existed for "contesting" the notice of settlement.'

In a letter dated 6 February 1969 he requested the President of the Commission to 'take action to amend the notice of settlement'.

In a letter dated 12 March 1969 the Director-General for Personnel and Administration replied to the letter of 4 February 1969 by setting out the conditions under which the notice of settlement had to be contested.

By a letter dated the same day the Director-General for Personnel and Administration also replied to the applicant's letter to the President of the Commission of 6 February 1969 by informing him for the relevant departments of the Commission would closely study the problems which he was raising.

On 19 November 1969 the applicant wrote to the President of the Commission to inform him of his concern that no decision had been taken since his letter of 6 February 1969 and to request him once again to take the measures necessary to obtain a favourable decision.

A letter dated 18 December 1969 from the Office of the President of the Commission replied that all the information necessary for a final decision had not yet been obtained but that he would be informed as soon as this was the case.

After 18 December 1969 the applicant contacted the relevant departments of the Commission on several occasions to ask whether a decision had already been taken. He was told that he would be informed as soon as this was the case. Finally, he was told that he had to await the outcome of certain proceedings pending before the Court of Justice as the decision of the Court would also apply to his case. Having remained without any news until the end of 1970 the applicant learned that the judgment in Case 23/69 (*Anneliese Fiehn* v *Commission* [1970] ECR 547) had been delivered on 9 July 1970 and that the applicant had been held to be entitled to damages.

By a letter dated 6 January 1971 the applicant drew the attention of the Director-General for Personnel and Administration to the judgments of the Court of Justice (judgments of 28 May 1970 in Joined Cases 19, 20, 25 and 30/69, *Richez-Parise and Others* v *Commission*, [1970] ECR 325, and 9 July in Case 23/69, *Anneliese Fiehn* v *Commission*). He considered that these judgments enabled his

case to be settled. He received no reply to this letter.

Finally, by letter dated 7 May 1971, the applicant lodged a complaint under Article 90 of the Staff Regulations. He received no reply to this complaint.

By application lodged at the Court Registry on 25 August 1971, the applicant brought the present action.

In a statement lodged on 10 October 1971 under Article 91 of the Rules of Procedure the defendant raised an objection of inadmissibility.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) decided, by order of 15 December 1971, to reserve its decision on the objection for the final judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) made the following order on 27 April 1972:

At the request of the applicant Mr Gaetano Sorge, residing in Rome, via Venti Settembre 4 shall be heard on the following question:

> Did the fact that the applicant believed that he would receive a full pension from the age of 55 play such an important part in his decision to seek resignation under the provisions concerning voluntary termination of service contained in Article 4 of Regulation No 259/68 of the Council that he would have made a different decision if he had been aware that he would only receive a full pension from the age of 60?

In the same order the Court (First Chamber) decided that the witness should be heard on the day of the oral procedure.

The parties presented oral argument at the hearing on 24 May 1972.

The Advocate-General delivered his opinion at the hearing on 29 June 1972.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. annul the notice of settlement issued by the Commission of the European Communities on 13 January 1969 and fix his rights to the monthly allowance provided for in Article 5 of Regulation No 259/68 of the Council in accordance with the particulars provisionally set out in Document No 3476/IX/68-F-M-Heinemann, No 1538;

2. in the alternative, order the Commission of the European Communities to pay to the applicant from the time when he attains the age of 55 until he attains the age of 60 a monthly allowance equal to the retirement pension to which he would be regarded as entitled if the fourth subparagraph of Article 5(7) were applicable to him;

3. in the further alternative, reinstate the applicant in a post corresponding to his earlier employment;

4. order the Commission of the European Communities to pay the costs even if the applicant should be unsuccessful.

The *defendant* claims that the Court should:

1. dismiss the appeal as inadmissible;

2. in the alternative, dismiss the appeal as unfounded;

3. order the applicant to pay the costs.

III — Submission and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *Admissibility*

1. The principle head of the applicant's conclusions

The *defendant* maintains that this head is inadmissible on two grounds: (a) First, it is inconsistent with the force of *res judicata* of the Court's judgments in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69. As the Court found that under the fourth

subparagraph of Article 5(7) of Regulation No 259/68 a former official is only entitled to a 'full' pension if he has reached the age of 55 at the end of the period giving rise to a right to the allowance, the Commission did not have the power to amend the notice of settlement of 13 January 1969 in accordance with the applicant's conclusions, nor is it empowered to take such action in the future. (b) It also also inadmissible on the ground of failure to observe the relevant time-limits. Under Article 91 of the Staff Regulations, the notice of settlement should have been contested within a period of three months either by means of an appeal or by lodgin a complaint under Article 90 of the Staff Regulations which extends the time-limit for lodging an appeal. As the complaint preceding this appeal was lodged on 7 May 1971, that is, almost two and a half years after notification of the notice of settlement of 13 January 1969, this head of the conclusions is clearly inadmissible.

The *applicant* replies that the force of *res judicata* can only apply to the facts and the parties referred to in the decisions of the Court of Justice in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69 and not to the present case. Even if the facts in this case were identical, the fact that the parties are different prevents the argument based on the force of *res judicata* being put forward to demonstrate the inadmissibility of the conclusion.

The applicant states that he accepts the case-law of the Court which lays down that the parties cannot conclude agreements extending the timelimits for bringing appeals set out in the Staff Regulations of Officials, and maintains that it is reasonable to conclude from the two letters of 12 March 1969 from the Director-General for Personnel and Administration that the administration had wished to suspend the the validity of the notice of settlement until the Court of Justice had given judgment in the above-mentioned cases. Such an interpretation of the two letters of 12 March 1969 was confirmed by the officials of the Commission involved. The only reasonable conclusion to be drawn from the Commission's conduct is that the notice of settlement would remain a dead letter for so long as the Court of Justice had not ruled on the appeals which were pending.

For these reasons the notice of settlement could only be regarded as a decision as from publication of the judgments of the Court of Justice in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69. As the applicant only became aware of these judgments at the end of February 1971—by means of unofficial communications from officials of the Commission—the principle conclusion cannot be regarded as inadmissible on the ground of failure to observe the time-limits laid down.

The *defendant* observes that the two letters of 12 March 1969 cannot be interpreted in conjunction, since each one has its own distinct subject-matter and is drafted in quite clear terms. The letter concerning the conditions for contesting the notice of settlement relates to questions concerning the procedure to be followed which were raised by the applicant in his letter of 4 February 1969, whereas the letter in reply to the applicant's letter of 6 February 1969 set out the Commission's views on the substance of the case. It expressly denies the statement that officials of the Commission affirmed that the notice of settlement would remain a dead letter until the Court had given judgment.

The *applicant* rejects the defendant's attempt to draw an artificial distinction between the two letters of 12 March 1969. Both were signed by Mr Lamverto Lambert, carried the same heading, were written on the same day and bore consecutive reference numbers, that is, 2290 and 2291. A careful examination shows that they supplement each other and lead to the result that if the Court of Justice considers in Joined Cases 19, 20, 25 and 30/69 and Case 23/69 that the notice of settlement constitutes an act adversely affecting an official, Articles 90 and 91 of the Staff Regulations are applicable and that until the judgments are given the effect of the notice must be regarded as suspended.

2. The first head of the applicant's alternative conclusions

The *defendant* observes that the applicant is attempting to obtain, by means of a

claim for damages, the same result as in the first head of his conclusions, which is inadmissible on the ground of failure to observe the relevant time-limits. The defendant refers to the judgment of 15 December 1966 in Case 59/65, *Heinrich Schreckenberg* v *Commission of the EAEC* ([1966) ECR 550 *et seq.*) and considers that such a method must be regarded as inadmissible. The present case is analogous to the above-mentioned case in that the notice of settlement of 13 January 1969 can no longer be contested and the applicant is seeking to obtain, by means of the allowance, the same financial result as he would obtain if he were successful in his main head of conclusions. The applicant's argument that actions for damages are not subject to the time-limits laid down in Article 91 of the Staff Regulations is not relevant to the question.

The defendant again refers to the concept underlying Article 839(3) of the German Civil Code. If it were transposed into the context of the law governing the European public service it would have to be concluded that an official who had had an opportunity of bringing an application for the annulment of certain legal consequences and has allowed that opportunity to pass can no longer pursue the same aim by means of an action for damages.

The *applicant* replies that even if the main head of the conclusions were inadmissible the defendant's arguments would be bound to fail. A distinction must be drawn between the principle and the alternative heads of the conclusions, since in the former the applicant seeks a new statement of account drawn up on the basis of a binding promise, whereas the latter arise out of incorrect information and its belated rectification. The claims exist independently of each other. Even if the principle conclusions were successful, the alternative claim would continue to exist, although in such a case there would be no loss.

The defendant's attempt to introduce the basic concept of Article 839(3) of the German Civil Code cannot be successful in the present case. This concept is inapplicable in cases in which it cannot be claimed that the applicants have allowed the time-limit for bringing an appeal to pass. Moreover if, as the defendant maintains, the judgments of the Court in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69 show that an action for the annulment of the notice of 13 January 1969 must be dismissed by the Court as unfounded, the action for damages in the only remedy open to the applicant. Therefore, the defendant's argument that the applicant is attempting to obtain the same result by means of an action for damages as by an application for annulment conflicts with its own statements on whether the application for annulment is well-founded.

3. The second head of the applicant's alternative conclusions

The *defendant* considers that this head is also inadmissible for the following reasons: The applicant refers to an absence of consent in relation to his request of 13 April 1968 for voluntary termination of service. This absence of consent applies to such essential factors as his belief that he was entitled to a full pension as from the age of 55 years, and not just from the age of 60 years. However, the principle of bringing an action for annulment on grounds of absence of consent, which is known to German law in particular, cannot be applied in this instance because the applicant's reinstatement in the departments of the Commission necessarily presupposes the annulment of the Commission's decision of 21 June 1968 which accepted the applicant's request for voluntary termination of his service and brought his service to an end. Even if it is accepted that an action for annulment may be brought to contest the decision of 21 June 1968 on grounds of absence of consent, under Article 91 of the Staff Regulations the applicant had to appeal against this decision within the period of three months. If it is considered that it was only possible to appeal against the decision of 21 June 1968 from the moment when the applicant became aware of the grounds justifying the annulment of his request for voluntary termination of his service, even the most favourable interpretation leads to the

inevitable conclusion that he has not observed the prescribed time-limit.
The *applicant* rejects the Commission's arguments and emphasizes that the consequence of the revocation of a statement of intention made in error is that the decision to dismiss the applicant is void, with the result that he is still an official of the Commission of the European Communities. Therefore, the question whether the claim for the revocation of his request was made in good time concerns the issue whether the appeal is well-founded and not its admissibility.

B — *The substance of the case*

1. The principle head of the applicant's conclusions

The *applicant* puts forward two objections to the case-law of the Court of Justice established in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69:

(a) the Court's interpretation in the above-mentioned cases of the fourth subparagraph of Article 5(7) of Regulation No 259/68 infringes the principle '*interpretatio contra stipulatorem*': such an obscurely-drafted provision cannot be put forward as the basis of the notice of settlement.

(b) the Court's decision that the information given by the Commission constituted statements provided for the purposes of guidance and did not establish any rights cannot be accepted since, in the corpus of information and promises concerned the preponderant element was that of a binding promise. A causal link exists between the information given, the request for voluntary termination of service and acceptance of the request; as regards the applicant, the Commission undertook to issue a subsequent statement of financial rights corresponding to the information supplied. The promises were made by the competent authority, expressly designated by the appointing authority. No objections may be raised to form and content.

Since, however, according to the case-law of the Court these binding promises are also unlawful, it is important to know whether the fact that they were unlawful prevented them being binding. The applicant maintains that after weighting up the legitimate expectations of the persons concerned and the requirement that administrative action should be lawful, the Court ought to have declared the promises to be binding. Such a solution would be consistent with its earlier case-law concerning the revocation of administrative measures.

The *defendant* considers that the applicant's arguments add no new element to the legal concepts already submitted by the applicants in the above-mentioned cases and maintains that the principle head of the conclusions must be dismissed as unfounded.

2. The first head of the applicant's alternative conclusions

The *applicant* does not consider it necessary to deal in great detail with the question whether the Commission was guilty of a wrongful act or omission by giving incorrect information and by rectifying it only seven months after its inaccuracy became evident. On this point the judgments of the Court in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69 are quite clear.
The question remains whether the applicants has suffered damage and whether a causal link exists between the wrongful act or omission of the Commission and the damage suffered. The damage cannot be disputed since between the ages of 55 and 60 years the applicant is deprived of the pension which is the reason why he applied for the early termination of his service. It is for this reason that he asks to be treated as if the fourth subparagraph of Article 5(7) of Regulation No 259/68 were applicable to him, that is, that he be awarded an allowance.
As regards the causal link, the applicant maintains that he would not have sought the early termination of his service if he

had been aware that he would only receive a full pension from the age of 60 years. In support of this argument he refers to:

(a) The evidence of persons with whom he discussed the advantages and disadvantages of the early termination of his service under the terms and conditions notified to him by the Commission.
When he requested the early termination of his service the applicant had weighed in the balance the following two factors: first, the fact that Regulation No 259/68 offered him the possibility of working as an independent architect, so that he would have the opportunity of engaging in creative activity (no such opportunity would be available to him in the defendant's service) and, secondly, the fact that he had six dependent children when made it important for him to limit as far as possible the risks he would take in working independently. It was in particular the prospect of being entitled to a full pension from the age of 55 years which led him to decide to seek the early termination of his service, since, when he reaches the age of 55, his children will be studying. It will be very important for him to have a sufficient regular income at that time. His decision would have been different if he had understood that he would only receive a full pension as from the age of 60 years.

(b) His letter to the President of the Commission of 6 February 1969 in which he reacted against the notice of settlement sent to him on 13 January 1969. His desire to be reinstated in the departments of the defendant institution is clearly shown in the terms of this letter: 'this substantially changes the conditions of my departure and I consider that the conditions which had led me to terminate my service prematurely are no longer satisfied'.

(c) The evidence of Mr Sorge, with whom in February and at the beginning of March 1969 the applicant discussed the change in his position brought about by the notice of settlement. During these various discussions he expressed his intention to apply again for the post which he previously held and which, at that time, was still vacant.

(d) His letter of 19 November 1969 to the President of the Commission which again shows the importance which the applicant attached to a right to a full pension as from the age of 55 years: 'as I have six small dependent children the possibility of being entitled to the retirement pension as from the age of 55 was an important factor in my decision to seek the termination of my service under Regulation No 259/68 of the Council'.

(e) His discussion with Mr Dieter Rogalla, Head of Division, at the end of the spring of 1970, in which he asked when he might be reinstated into the administration.

The *defendant* observes that the application in question corresponds to the claims for damages made in the alternative is Joined Cases 19, 20, 25 and 30/69 and in Case 23/69. The facts on which the applicant relies to support his conclusions are also the same as relied on in the above-mentioned cases. The defendant maintains that the applicant must show a causal link to exist between the wrongful act or omission on the part of the Commission and the damage suffered. By comparing the facts in the present case with those in Case 23/69 in which the Court considered that such a causal link existed the Commission concludes that, for the following reasons, the applicant has not shown that there is such a link between the wrongful act or omission and the damage.:

(a) The applicant did not clearly express his desire to be reinstated in the departments of the defendant institution in either his letter of 20 December 1968 or that of 4 February 1969, unlike Mrs Fiehn (the applicant in Case 23/69) who, immediately after the

rectification of the information given by the Commission, clearly showed her intention to go back on her request for voluntary termination of service.

(b) Unlike Mrs Fiehn, Mr Heinemann, who was eight years younger, terminated his service with the intention of taking up other activities. The applicant's statements show that his wish to work as an independent architect was the determining factor in his decision to seek the early termination of his service.

3. The second head of the applicant's alternative conclusions

The *applicant* observes that the subject of this head of the conclusions is a claim for damages in the form of restitution in kind, based upon an alternative application for annulment on the grounds of absence of consent. He bases this conclusion on the following arguments: he sought early retirement from his duties on the basis of the information provided by the defendant. As became apparent later, this information was incorrect. The decisive factor in his decision was thus removed; if, when he took his decision, the applicant had been aware of the correct interpretation of the fourth subparagraph of Article 5(7) of Regulation No 259/68 he would never have submitted his application. As he was misled over essential factors by a wrongful act or omission on the part of the Commission he was entitled to seek the annulment of his declaration of intention. He refers to German and French administrative law which accept the concept of the action for annulment on grounds of mistake, that is, where consent is lacking.
The *defendant* considers that such an action is only accepted in German administrative law. In French law actions for the annulment of applications to resign are limited to cases in which, for reasons of mental deficiency or coercion, the decision has not been taken freely. To support this argument the defendant refers to French juridical writings. The Commission concludes that it is not possible to accept a right to bring an action for annulment on the ground of absence of consent into the law governing the European public service.

4. The claim for costs

The *applicant* maintains that as the Commission is responsible for the failure to apply to the present case the judgments of the Court in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69 it must bear the costs of the action even if the application is unsuccessful.

Grounds of judgment

1 By an application received at the Registry on 25 August 1971 the applicant brought an action, first, for the annulment of the decision of 13 January 1969 relating to a 'notice concerning the settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68', and in the alternative, an order that the Commission of the European Communities shall pay him from his fifty-fifth year until he reaches the age of 60 a monthly allowance equal to the retirement pension which would be awarded to him if the fourth subparagraph of Article 5(7) were applicable to him, and, in the further alternative, his reinstatement in a post comparable to his former post.

On the application for the annulment

Admissibility

2 The defendant has raised an objection of inadmissibility based on the force of *res judicata* of the Court's judgments in Joined Cases 19, 20, 25 and 30/69 and in Case 23/69 and the failure to observe the time-limits laid down in Article 91 of the Staff Regulations of Officials.

3 The notice of settlement of 13 January 1969 is a measure capable of adversely affecting the applicant and may therefore be contested under the conditions laid down in Articles 90 and 91 of the Staff Regulations. The applicant only filed a complaint within the meaning of Article 90 of the Staff Regulations on 7 May 1971, that is, almost two and a half years after notification of the notice of 13 January 1969.

4 The applicant maintains that by the two letters dated 12 March 1969 the defendant intended to suspend the validity of the notice in question until the Court gave judgment in the above-mentioned cases. Therefore the time-limit laid down in Article 91 of the Staff Regulations only began to run, according to the applicant, from the moment the applicant became aware of these judgments, that is, from the end of February 1971.

5 The applicant's argument cannot be accepted. The administration can only suspend the validity of a measure which it has adopted by means of a statement which clearly and unequivocally shows its intention to do so. No such statement was made in the present case. Therefore, as the application for the annulment of the notice of 13 January 1969 was not lodged within the time-limits laid down in Article 91 of the Staff Regulations it is inadmissible.

The claim for damages

On admissibility

6 The defendant maintains that the application for damages is inadmissible on the ground that the applicant is attempting to obtain by this means the same result as that sought by the inadmissible application for annulment.

7 The application for damages in an independent legal remedy, which is subject to certain conditions adapted to its purpose. It does not seek to have a specific decision set aside but to make good the damage caused by an institution in the exercise of its functions. The claim for damages is based not on the unlawful nature of the notice of settlement but on the wrong information provided by the

defendant on 5 March 1968 and its belated correction. It cannot therefore be equated with the application for annulment, even though, as far as the applicant is concerned, the financial result of the two actions is the same.

8 Therefore, as the claim for damages is not subject to the time-limits laid down in Article 91 of the Staff Regulations, it must be regarded as admissible.

On the substance of the case

9 For the application to be well-founded it must be established that the defendant is liable for a wrongful act or omission which caused the applicant a still subsisting injury.

10 It is not contested that the appropriate departments supplied the applicant with incorrect information concerning the rights which he would be able to assert in the event of termination of his service. Nor is it contested that this information was supplied as a consequence of the request by the Commission to the officials concerned to contact the relevant departments in order to obtain information on the rights which they would have should Article 4 of Regulation No 259/68 be applied. It is also not contested that the departments concerned discovered early in April 1968 that their interpretation of the disputed provision in Article 5 on which they had acted was, if not incorrect, at least very much open to question. This discovery was in fact the main reason for the publication on 16 April 1968 of a communication from the Commission reminding staff that the information given was supplied only as a guide and without commitment.

11 Apart from the exceptional instance, the adoption of an incorrect interpretation does not in itself constitute a wrongful act. Even the fact that the authorities request those concerned to obtain information from the competent departments does not necessarily involve those authorities in an obligation to guarantee the correctness of information supplied and therefore make them liable for any injury which may be occasioned by incorrect information.

12 However, while it may be possible to doubt the existence of a wrongful act or omission concerning the supply of incorrect information, the same cannot be said of the departments' delay in rectifying the information. Although such rectification was possible as early as April 1968 it was deferred without any justification until the end of 1968. An express correction made shortly after 16 April, that is to say, before the time when those concerned had to make their decision, would certainly have enabled the defendant to avoid all liability for the consequences of the wrong information. The failure to issue such a correction is, on the other hand, a matter of such a nature as to render the Communities liable.

13 The applicant has maintained that his belief that he would receive a full pension from the age of 55 years had played such an important part in his decision to seek retirement within the context of the voluntary termination of service provided for by Article 4 of Regulation No 259/68 of the Council that he would have decided otherwise had he known that he would only receive a full pension as from the age of 60.

In particular, as he had six dependent children whose studies by the time he reached the age of 55 years impose a considerable burden on him, the prospect of having a regular income available at that time was a decisive factor for him.

14 It emerges from the applicant's letter of 6 February 1969 to the President of the Commission and, in particular, from the evidence of Mr Sorge, the applicant's immediate superior at the time when he decided to seek premature retirement, that the prospect of a full pension tipped the scales when he took his decision. The fact that the applicant did not expressly seek reinstatement in his letter of 6 February 1969 cannot upset this conclusion. As the causal link between the Commission's wrongful act or omission and the damage suffered by the applicant has been established, his claim for damages must be regarded as well-founded. In these circumstances, the Commission must be ordered to pay to the applicant as from the time when he attains the age of 55 years until he attains the age of 60 years a monthly allowance equal to the pension payments to which he would have been entitled if the fourth subparagraph of Article 5(7) of Regulation No 259/68 had been applicable to him.

15 As the claim for damages succeeds it is unnecessary to consider the application for reinstatement.

Costs

16 The applicant has failed in a part of his application. However, it is clear from the foregoing that the appeal was brought as the result of a wrongful act or omission on the part of the defendant. This being so, in accordance with Article 69 of the Rules of Procedure, the defendant must be ordered to pay the costs of the action.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Staff Regulations of Officials, especially Article 91;
Having regard to Regulation No 259/68 of the Council, especially Article 5;
Having regard to Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses the application for the annulment of the decision of 13 January 1969 relating to a 'notice concerning the settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68';**

2. **Orders the Commission of the European Communities to pay to the applicant, as from the time when he attains the age of 55 years until he attains the age of 60 years, a monthly allowance equal to the pension payments to which he would have been entitled if the fourth subparagraph of Article 5(7) of Regulation No 259/68 had been applicable to him;**

3. **Orders the Commission of the European Communities to pay the costs of the action.**

Mertens de Wilmars Donner Monaco

Given in open court in Luxembourg on 13 July 1972.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 29 JUNE 1972[1]

Mr President,
Members of the Court,

Like other proceedings brought before the Court in 1969, the case in which I have to give my opinion today concerns the application of Regulation No 259/68 of the Council of 29 February 1968 (OJ, English Special Edition 1968(I), p. 30). As you know, the special temporary provisions contained in Chapter II of this regulation were intended to enable the Commission to rationalize its departments and reduce the number of posts. To this end officials of the Commission were entitled to submit requests for the premature termination of their service on especially favourable terms. Before this regulation was implemented the President of the Commission had requested the officials concerned on 5 March 1968 to seek information about the financial consequences of termination of service from certain clearly designated officials.
This opportunity was used by the applicant in the present case, who entered the service of the Commission on 1 September 1959 and was finally classified in Grade 4/6. In answer to his request for information he received in April 1968 a document stating the periods during which the temporary

1 — Translated from the German.