JUDGMENT OF THE COURT (FIRST CHAMBER)
2 JULY 1969[1]

Giulio Pasetti-Bombardella
v Commission of the European Communities
supported by the Council of the European Communities

Case 20/68

Summary

1. *Officials — Administrative measure adopted at the request of an official — Illegality of the measure — Remedy of the person concerned — Admissibility*

2. *Officials — Rationalization of departments following the Merger Treaty — Scheme for removal of officials — Such scheme cannot be equated with the other methods of termination of service provided for by the Staff Regulations — Those methods may not be relied upon against the system specially provided for*

1. If a disputed measure contains a defect of such a nature as to render it illegal, it must be possible to make an application against it even though the measure is adopted at the request of the official concerned.

2. Regulation No 259/68 set up a system for the removal of officials which has no equivalent amongst the methods of leaving the service provided for in the Staff Regulations and which may be explained by the temporary and exceptional requirements which had to be met following the merging of the administrations. It is not permissible therefore to have recourse to those other methods of leaving the service to deduce rights therefrom.

In Case 20/68

GIULIO PASETTI-BOMBARDELLA, professor, residing at Venice, Italy, represented and assisted by Professor Feliciano Benvenuti, Advocate of the Venice Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Advocate, 34 b rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Armando Toledano-Laredo, acting as Agent, with an address for service in Luxembourg at the offices of Emile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

1 — Language of the Case: Italian.

Supported by

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Raffaello Fornasier,

intervener,

Application for the partial annulment of the decision of 21 May 1968, which became definitive on 20 June 1968, to the extent to which that decision precludes the calculation of the applicant's pecuniary rights, as a result of the termination of his service under Regulation No 259/68, on the basis of Article 42 of the Staff Regulations of Officials of the ECSC of 1956,

THE COURT (First Chamber)

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

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts and procedure

The applicant entered the service of the High Authority of the ECSC in 1956 and was established in Grade A3 on 1 July 1956 when the Staff Regulations of Officials of the ECSC entered into force.

In addition to a general system for conferring non-active status, governed by Article 34 of the said Staff Regulations, Article 42 thereof provided that officials holding posts in Grades A1, A2 and A3 could be retired in the interests of the service and in such case received an allowance and retirement, terms defined in the same article, which were more favourable than those granted to persons on whom non-active status was conferred.

New Staff Regulations, which entered into force on 1 January 1962, amend Article 50 of the foregoing Regulations to the effect that in future only officials holding posts in Grades A1 or A2 may be retired in the interests of the service —officials holding a post in Grade A3 are not covered—and the pecuniary consequences of this retirement were in future to be comparable with those resulting from non-active status.

Nevertheless under Article 99(2) of the new Staff Regulations, officials in Grades A1 and A2 who were established before 1 January 1962 and who were retired in the course of their employment con-

tinued to benefit from the more advantageous system of the former Article 42.

In the context of the merger of the administrations and the concomitant rationalization, Articles 4 to 8 of Regulation No 259/68 of the Council of 29 February 1968 authorizes the Commission for a limited period until 30 June 1968 to take measures to terminate the service of officials either compulsorily or at the request of the officials; in that case the allowance and pension terms, based on the system of termination of service of the Staff Regulations of 1962, are generally more advantageous but, pursuant to Article 7, involve various options in the event of the Staff Regulations proving nevertheless to be more advantageous.

On 14 March 1968, the applicant, under Article 4(3) of Regulation No 259/68, requested that his service be terminated (Schedule I to the statement of defence); this request was granted by decision of 21 May 1968 (Schedule I to the application), confirmed by the decision of 20 June 1968.

By letter of 21 June 1968 (Schedule 3 to the application), the applicant was requested to intimate whether he wished to exercise the option provided for in Article 7 of Regulation No 259/68. According to the defendant, as the applicant held at 1 January 1962 a post in Grade A3, this option only allowed a choice between the scheme under Article 34 of the Staff Regulations of 1956, supplemented by Article 50 of the general Staff Regulations, and that of Article 5 of Regulation No 259/68.

In his application, on 30 August 1968, the applicant takes the view that he is entitled to the benefit of the system under Article 42 of the Staff Regulations of 1956, and requests the annulment of the decisions of 21 May and 20 June 1968 to the extent to which they preclude this right, and requests a ruling that Article 7 of Regulation No 259/68 is inapplicable to his case.

By an application lodged on 8 January 1969, the Council applied to intervene in the dispute in support of the defendant's conclusions.

By an order of 29 January 1969, the Court (First Chamber) allowed this intervention.

The statements of the parties and of the intervener were lodged within the prescribed time-limits and the written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur, and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiries.

The parties delivered oral argument at the hearing on 10 June 1969.

The Advocate-General delivered his opinion at the hearing on 18 June 1969.

II — Conclusions of the parties and of the intervener

A — The *applicant* claims that the Court should:

— declare Article 7 of Regulation No 259/68 inapplicable owing to the abovementioned defects and partially annul the decision following the deliberations which have been considered above to the extent to which that decision denies to the applicant, who was established in Grade A3 before 1 January 1962, a vested right to opt for the system provided for by Article 42 of the Staff Regulations of 1956 which particularly differs from that provided for officials in Grades A1 and A2 established before 1 January 1962;

— order the defendant to pay the costs.

B — The *defendant* contends that the Court should:

— declare the application inadmissible;

— in any event dismiss it as unfounded;

— order the applicant to pay the costs of the proceedings in accordance with the provisions of Article 70 of the Rules of Procedure.

C — The *intervener* contends that the Court should:

— dismiss as unfounded the applicant's application to have the provisions of Article 7 of Regulation No 259/68 declared inapplicable.

III — Submissions and arguments of the parties

A — *Admissibility*

The *defendant* maintains that the application is inadmissible because the contested measure cannot adversely affect the applicant. Since the applicant himself requested the unconditional termination of his service, the request refers to the entire application of the system established by Articles 4 to 8 of Regulation No 259/68, including its financial provisions. If the applicant had wished to express reservations concerning the financial provisions to be applied to him, he could have done so, but did not.

The defendant further considers the application inadmissible because the system applied to the applicant is not that of retirement but a different and particular system set up by Regulation No 259/68 in order to meet temporary exceptional circumstances. It concludes from this that the applicant consequently was not entitled to the advantages provided for by Article 42 of the Staff Regulations of 1956 on retirement. The defendant nevertheless admits that the application would only be inadmissible on this basis if a clear difference between the two systems were apparent.

The *applicant* replies that although he signed the request for the termination of his service he did not seek the financial injury arising from an illegal system and that he had never renounced his right to make an application by acquiescence in the measure complained of. According to the applicant there can be no question of renunciation of the right to appeal from the fact that the voluntary request had to be written on a form printed by the defendant on which it was impossible to add reservations. Finally, since the actual measure terminating his duties had not been taken at the moment of signing the said form, the administration could not guard itself against an application to the Court by the anticipated accession of the person concerned to a future measure.

The applicant then states that the argument based on the difference between the system of termination of service provided for in Regulation No 259/68 and that of retirement relates to the substance of the dispute. He observes at all events that the two systems have common effects, aims and criteria as to the proportion of the allowance and display only marginal differences in connexion with the extent of the various periods of the allowances.

The *intervener* considers that the application is inadmissible because the applicant has no interest in demanding that Article 7 should be declared inapplicable. According to the intervener, in this case the applicant loses the benefit of the provisions relating to non-active status in force before 1962 without being granted the benefit, which he claims of the provisions as to retirement provided for in the Staff Regulations of 1956.

The *applicant* replies that he does not ask the Court to apply to him certain provisions relating to officials in Grades A1 and A2 but only to annul the contested decisions. The Administration would then have to conform to the judgment and recognize the applicant's vested rights by granting him certain rights in accordance with Article 42 of the Staff Regulations of 1956 or by giving him a corresponding allowance.

B — *Substance*

1 — Infringement of rights acquired on the basis of Article 42 of the Staff Regulations

(a) The *applicant* alleges that the con-

tested measure is based on Article 7 of Regulation No 259/68 in order to preclude him from opting for the financial system laid down in Article 42 of the Staff Regulations of 1956 for retirement, since the said Article 7 reserves this choice exclusively for officials in Grades A1 and A2 established before 1 January 1962. According to him, Article 7 is illegal because, as well as those in Grades A1 and A2, the officials in the Grade A3 established, like the applicant, before 1 January 1962 have a vested right to have the pecuniary consequences of their retirement calculated on the basis of Article 42 of the Staff Regulations of 1956. No matter what theory is relied upon to justify the vested rights, it is established that the Community legislature has recognized those rights inasmuch as it had respected them with regard to certain officials.

The defendant and the intervener are wrong in stating that the right conferred on officials established in Grades A1 and A2 before 1962 is merely the recognition of a simple expectation and not a vested right.

The Council and the Commission justify the maintenance of vested rights by considerations of expediency and this attitude fails to observe the specific recognition by the provision of the inviolability of those rights deriving from the Regulations of 1956.

Consequently, if it were unreasonable that the Staff Regulations of 1962 should maintain for the officials in Grade A3 the pecuniary consequences of retirement (since the administration was no longer empowered to take such a measure with regard to them), Regulation No 259/68, by affirming with regard to officials in Grade A3 the power to pronounce in the context of 'termination of service' a measure identical to retirement, should again have made Article 42 of the Staff Regulations of 1956 applicable to officials established in Grade 3 before 1962 who had a vested right in the system pertaining to that article.

The *defendant* replies that, even if it were admitted that the contested measure constitutes retirement, the applicant cannot rely on vested rights for the *following reasons:*

(i) For there to be a vested right with regard to the maintenance of the advantages laid down in Article 42 of the Staff Regulations of 1956, all the facts creating the right must have taken place during the currency of that legislation. The right to pecuniary benefits, which is based on the termination of employment, only comes into effect when the termination takes place. It is clear from this that the applicant is not entitled until the termination of his service to have the amount of the benefits payable calculated on the basis of the Regulations of 1956 which are no longer in force.

(ii) Even if it were to be admitted that there is a vested right, it is still necessary to consider whether the legislature may challenge rights of this nature. Propounding a negative view of this, the defendant (Schedule 3 to the statement of defence) quotes legal opinion and case-law of the Member States of the Community. It states, for the sake of argument, that if in the present case there had been an infringement of vested rights, this would result from the amendments made to the Staff Regulations of 1956 by the Community authorities who, under the Treaty establishing the ECSC and the Treaty merging the administrations, had powers with regard to the Staff Regulations of Officials comparable to those enjoyed by the legislature in all Member States with regard to national officials.

According to the defendant, the applicant is mistaken in considering the power granted to officials in Grades A1 and A2 to opt for the system of calculation provided for by Article 42 of the Staff Regulations of 1956 as recog-

nizing a vested right for those officials. In the present case, the authority drawing up Staff Regulations limited itself for reasons of good administration, to maintaining for the officials established in Grades A1 and A2 before 1 January 1962, as it had done with regard to all other categories of officials, the right to avail themselves of the system of allowances and of pensions guaranteed them before the entry into force of Regulation No 259/68 if this earlier system appears to be more advantageous than that set up by the said regulation.

According to the *intervenor* the applicant cannot invoke vested rights on the basis of Article 42 of the Staff Regulations of 1956. In fact it is clear from legal opinion and case-law of the Member States that a right can only be regarded as vested when all the facts giving rise to it have occurred while the rules according the right were still in force; this is not so in the present case as the regulations were revoked in 1962. When it drew up Article 7 of Regulation No 259/68 the Community legislature, by virtue of its discretionary power, took account of the legitimate hopes of officials in this sphere, and to the extent to which it considered it expedient, of their mere expectations.

The Council in particular considered it equitable to reserve the benefits of Article 42 of the Staff Regulations of 1956 exclusively for officials in Grades A1 and A2 whilst refusing them to the officials in Grade A3 who, since the Staff Regulations of 1962, enjoyed increased stability of employment.

(b) The *applicant* considers that he has acquired a right under the system provided for by Article 42 of the Staff Regulations of 1956 on retirement, and is of the opinion that the measure adopted with regard to him under Article 4 of Regulation No 259/68 is in every way identical with retirement as provided for in Article 42 of the Staff Regulations of 1956.

The two measures have in common:

— Their effects, since they all involve the immediate termination of the master and servant relationship; this termination is immediate in the case of Regulation No 259/68, since the regulation lays down a clear distinction between non-active status and termination of service as provided for in Article 4;

— Their aim, since both are adopted in the interests of the service;

— Their criteria as to the proportion of the allowance.

Furthermore, the reference in Article 4(1) of Regulation No 259/68 to Article 47 indicates that the regulation establishes the system of retirement for all officials after the merger. Finally, the power granted by Article 7(2) of Regulation No 259/68 to officials in Grades A1 and A2 to avail themselves of the Staff Regulations of 1956 when 'termination' has been applied to them proves that 'termination' is not a measure totally different from retirement.

The defendant replies that the system of Article 4 of Regulation No 259/68 is a new system different from that of retirement. It observes the following differences:

— With regard to the *effects*, it observes that the termination of the relationship of service is a necessary and immediate consequence independent of the will of the person concerned in the retirement, whilst in the system of Regulation No 259/68 the termination of the relationship of service depends, at least for the officials in Grade A3 and below, on the will of the person concerned who may initially volunteer for retirement and above all may choose between termination of service and a measure granting non-active status (the second subparagraph of Article 4(2)). Then, under the system of Regulation No 259/68, the termination of the master and servant relationship is only contingent because the person concerned may be reintegrated if non-active

status is chosen with the possibility of transfer to a post corresponding to the career bracket immediately below that applicable to his grade (Article 8). Finally, the termination of the master and servant relationship under the system of Regulation No 259/68 is not immediate if the person has opted for non-active status.

— With regard to the aim, the defendant notes that the interest of the service is a characteristic, not only of measures taken under the abovementioned systems, but of any other measure of the administration.

— The defendant points out that the resemblance *between the criteria for the allowance* under the two systems cannot prevail over the abovementioned distinctions. It notes in this connexion that even in the Staff Regulations of 1956 and of 1962 two systems as different as those of non-active status and retirement nevertheless contain a completely identical system for calculating the allowances.

— According to the defendant, the system set up by Regulation No 259/68 may more readily be treated as equivalent to the system of non-active status than to retirement.

This new system in fact retains all the factors differentiating non-active status from retirement, that is, it requires a preliminary measure reducing the number of posts available in the detailed list of posts, the intervention of the Joint Committee, the requirement that the administration shall have specific criteria of assessment and the possibility of re-integration, merely adding certain advantages to the system of non-active status, in particular a choice for the official between non-active status and termination of service and making it possible to avoid both by accepting transfer to a post corresponding to the career bracket immediately below that applicable to his grade and the grant of increased allowances.

The *intervener* states that Regulation No 259/68 maintains the former systems of termination of service and of non-active status, but replaces them, for a limited period and only with regard to the officials of the Commission, by a termination of service with particular characteristics.

2. Disparity of treatment violating the principle of impartial administration

The *applicant* maintains that Article 7 of Regulation No 259/68 on which the contested measure is based is further illegal because it discriminates between the various officials established before 1 January 1962, in particular by allowing the officials in Grades A1 and A2 to opt for the system of Article 42 of the Staff Regulations of 1956 whilst refusing the same right to the officials in Grade A3 who were nevertheless formerly covered by the said Article 42.

The obligation of impartiality, applicable not only to the administration but to the legislature, must be observed in modern legal systems, such as the European Communities, for which the prohibition of discrimination constitutes a fundamental principle; it is of no avail to endeavour to ascribe to the legislature the inequality created by the administration since it is not only the individual measure but also the preceding legislative provision the legality of which is disputed.

The *defendant* observes first of all that the inequality of treatment complained of is not caused by the administration but originates in the new rules adopted by the Community authority under a power comparable to that possessed by the legislature in the Member States. In the defendant's view it is doubtful whether the problem of impartiality presents itself in the same terms as regards the adoption of legal rules by the legislature and the implementation of those rules. It adds that the fact of having accorded only to officials established before 1962 in Grades A1 and A2 the power to avail themselves of Article 42

of the Staff Regulations of 1956 'is justified if account is taken of the fact that, in the absence of that power, the Staff Regulations of 1962 would have brought only the officials established before 1962 in Grades A1 and A2, to the exclusion of those in Grades A3, under a less favourable system than that which they enjoyed previously under the Staff Regulations of 1956 and they would have continued under this less favourable system under Regulation No 259/68'.

According to the *intervener,* when the Council drew up Article 7 of Regulation No 259/68 it took into account not the vested rights claimed but certain expectations; how this was done falls within the discretion of the legislature. The inequality of treatment resides in the different system set up by the Staff Regulations of 1962 and is justified by the difference in treatment accorded to the officials regarding guarantees under Regulation No 259/68. Those guarantees are not illusory as the applicant has benefited from them.

The *applicant* replies that if the administration decided to respect expectations, which it was not bound to do, it must respect them for all who had the same expectations. He adds that although it is theoretically possible to find differences between the guarantees given to officials in the various grades, which in the view of the Council explain the differentiation established between officials in Grades A1 and A2 and the others, officials who left the service voluntarily under Regulation No 259/68 did not, however, benefit from these guarantees. In fact, the request to leave voluntarily is incompatible both with the guarantees provided for in Article 4(2) of the regulation and with the option offered between non-active status and termination of service; this is clear from the wording of Article 4(3) of the said regulation which does not provide for notification to the 'volunteer' of the period within which the option must be declared; this assumes that such an option is not open to him. It is therefore proved that at least the volunters in Grade A3 have the same expectation as the officials in Grades A1 and A2; identical treatment must therefore correspond to an identical situation.

The *applicant* concludes in general that the contested decisions must be annulled because they are automatically defective by reason of the illegality of Article 7 of Regulation No 259/68, against which he has raised the objection of illegality in the conclusions set forth above.

Grounds of judgment

I — Admissibility

1 The defendant contends that the application is inadmissible, pointing out that the contested measure does not adversely affect the applicant, who himself requested the measure terminating his services and the application of the system which is the corollary thereof. This request deprives him of all right to make an application against the contested decision.

2 If the disputed measure contains a defect of such a nature as to render it illegal, it must be possible to make an application against it even though the measure is adopted at the request of the official concerned. This objection cannot therefore be sustained.

3 Furthermore, the defendant considers the application to be inadmissible because the termination of service was 'clearly' different from retirement, and consequently the applicant may not rely on Article 42 of the Staff Regulations of 1956 to determine the rights which he derives from a measure terminating his services adopted in accordance with Article 4 of Regulation No 259/68.

4 This argument, which derives from a comparison of the two systems, pertains to the substance of the dispute.

5 Finally, according to the intervener, the application is inadmissible because the applicant has no interest in having Article 7 of Regulation No 259/68 declared inapplicable to the present case, since he has lost the benefit of the provisions concerning non-active status without, however, obtaining the benefit of those relating to retirement.

6 If Article 7(2) of Regulation No 259/68 were declared illegal and inapplicable to the applicant, the execution of the judgment would oblige the administration to take a new decision taking into account the rights which the illegal provisions had failed to observe. The applicant has consequently an interest in his action.

7 From all these factors it is clear that the application is admissible in its entirety.

II — Substance

8 The applicant alleges that Article 7 of Regulation No 259/68 on which the contested measure is based is illegal because it infringes the right of officials in Grade A3 established before 1 January 1962 to have the pecuniary consequences of the termination of their services calculated on the basis of Article 42 of the Staff Regulations of 1956.

9 In his view the measure terminating his services in fact constitutes a retirement within the meaning of Article 42 of the Staff Regulations of 1956 and of Article 50 of the Staff Regulations of 1962. He deduces from this that officials in Grade A3 are again subject to the system of retirement which had ceased to be applicable to them in 1962 and that consequently those who were established before 1 January 1962 have obtained a renewal of the legal basis for the calculation of the pecuniary consequences of that measure in accordance with Article 42 which must operate in their favour.

10 If this point of view is presumed to be correct, it requires in any event that the termination of service governed by Articles 4 et seq. of Regulation No 259/68 should constitute retirement or that it may be treated as entirely equivalent to retirement.

11 This is not so. First of all the new system is temporary and, under the terms of Article 4(5) of the said regulation, as long as it is applicable it precludes the Commission from taking decisions as to non-active status or retirement on the conditions laid down in the Staff Regulations. Secondly, termination of service concerns officials in all grades, although the conditions under which it may be adopted may differ.

12 Although the termination of the service of officials in Grades A1 and A2 at first sight resembles retirement, it is none the less different in that it may only be adopted in the context of a reduction of the number of posts available in the detailed list of posts. With regard to other officials and particularly those in Grade A3, the system established by Regulation No 259/68 further differs from retirement by giving guarantees such as that of the intervention of the Joint Committee and by establishing criteria of assessment in the selection of servants to whom the said measure is applied.

13 Moreover officials in Grade A3 and below affected by such a measure may request non-active status, which leaves open the possibility of returning to the service. Finally officials are authorized to request on their own initiative a measure terminating their service, which is precisely what the applicant did.

14 It is clear from these factors that Regulation No 259/68 set up a system for the removal of officials which has no equivalent amongst the methods of leaving the service provided for in the Staff Regulations and which may be explained by the temporary and exceptional requirements which had to be met. For this very reason the applicant cannot have recourse to those other methods of leaving the service to deduce from them rights in his own case.

15 The applicant states alternatively that even if Article 7 of Regulation No 259/68 does not infringe vested rights it is none the less illegal in that it creates a discrimination between the various officials established before 1 January 1962, in particular by allowing officials in Grades A1 and A2 to opt for the financial scheme of Article 42 of the Staff Regulations of 1956, whilst refusing the same right to officials in Grade A3 who were nevertheless initially covered by the said Article 42.

16 The financial scheme following termination of service was governed by Article 5 of Regulation No 259/68, but Article 7 of that regulation mitigates the position by allowing officials in all categories who were established before 1 January 1962 and who are affected by that measure to opt on leaving the service for the scheme of allowances and pensions secured for them by the Staff Regulations of 1962 if that scheme were to seem to them preferable to that of Article 5.

17 Far from being discriminatory, this option gives equally to all officials the same choice between the scheme of allowances provided for them by Regulation No 259/68 and the scheme which they might choose if they left the service pursuant to the Staff Regulations of 1962. It grants this particularly to officials of the ECSC holding Grades A1 and A2 who were established before 1962 and who under Article 99 of the Staff Regulations of 1962 were entitled on retirement to rely on the scheme of Article 42 of the Staff Regulations of 1956. It also grants this to officials of the ECSC in Grades A3 and below who were established before 1962 and who, under Article 99 of the Staff Regulations of 1962, were entitled to rely on the scheme of Article 34 in the event of being assigned non-active status.

18 Those latter officials nevertheless could not hope to have the same right as that granted to officials in Grades A1 and A2 since the Staff Regulations of 1962 no longer provided with regard to them either for retirement or for the financial scheme following thereon. In according different treatment to situations which are not comparable the regulation has not introduced a discrimination. On the contrary, if the regulation had accorded to officials in Grade A3 the right claimed by the applicant it would have discriminated against officials in Grades A1 and A2 who, whilst having the same financial treatment, would have had reduced guarantees, and against other officials below Grade A3 in service before 1962 who, whilst having the same guarantees, would have had a less favourable financial scheme.

19 It is clear from all these factors that the Council has not introduced discrimination but has only taken into account the different positions under the Staff Regulations of different categories of officials. The submission is therefore unfounded.

Costs

20/21 The applicant has failed in his application. Under Article 69(2) of the Rules of Procedure the unsucessful party shall be ordered to pay the costs. Nevertheless, under Article 70 of the said Rules, in proceedings commenced by servants of the Communities, institutions shall bear their own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Staff Regulations of Officials of the European Communities;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses the application as unfounded;**

2. **Orders both parties to bear their own costs.**

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 2 July 1969.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 18 JUNE 1969[1]

Mr President,
Members of the Court,

The matter on which you have today to give judgment relates to the extent of the financial rights available to Mr Pasetti following the decision to terminate his services on the conditions laid down by Article 4 of Regulation No 259/68 of the Council.

In January 1956 the applicant entered the Legal Department of the High Authority. In the same year the Staff Regulations of the ECSC became applicable to him and he was established in Grade A3. Because of this, as in the case of holders of posts in Grades A1 and A2, he could at any moment be retired in the interests of the service (Article 42 of the Staff Regulations); in that event he was entitled to a temporary allowance, then to a pension calculated under more advantageous conditions than those conferred by Article 34 on officials accorded non-active status following a reduction in personnel involving the abolition of posts.

This system was amended by Article 50

1 — Translated from the French.