OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 4 MARCH 1971[1]

Mr President,
Members of the Court,

Mr Landra entered the service of the ECSC in Luxembourg on 4 October 1965 as a member of the auxiliary staff.
In accordance with one of the options provided for in Article 70 of the text governing auxiliary staff, he was affiliated to a Luxembourg social security organization: The Caisse de pension des employés privés (Pension fund for employees in the private sector).
On 1 October 1968 he became an official in the service of the Commission.
As from that date, therefore, he was governed by the provisions of the general Community retirement scheme.
However, the question remained in what way the pension rights which the applicant was able to acquire before his appointment as an official were to be taken into account.
In this respect the pension scheme of the Communities provides for two different systems:

— that provided for by Article 3 (c) of the retirement scheme referred to in Annex VIII to the Staff Regulations is the simplest and the most favourable to officials. It is a system of validation which is recognized by all the national legislatures and which consists in regarding, for the purposes of the calculation of an official's pension rights, certain of the services rendered by him—which do not normally give rise to a right to a pension—as services which do give rise to such a right;

— the second, which is in general less favourable to officials, is provided for by Article 11 of the same regulation on pensions. It is a system of co-ordination of the various social security schemes with the retirement schemes. It consists in requesting the official to require the fund to which he was previously affiliated to pay either the actuarial equivalent of his pension rights or the sums which could be repaid to him, and then converting this sum into years of pensionable service on the basis of the actuarial equivalent under the Community retirement scheme.

In order to understand this scheme better let me take an example which is arbitrary but which I consider to be fully capable of showing its scope.
Let us suppose that the actuarial equivalent or the sums repaid in respect of *ten years* of contribution to a social security fund is 100 000 francs.
A newly-recruited official will pay this 100 000 francs to the Community but, if in the retirement scheme of the Community 100 000 francs only represents the actuarial equivalent of *six years* of service, he will only be credited with six years of pensionable service although he has previously contributed for ten years to the social security fund.
The applicant maintains that the system of validation provided for in Article 3 (c) of the retirement scheme alone is applicable to him.
For this, he puts forward three submissions:

(1) The text itself of the provision referred to;
(2) the parallel between this provision and Article 11 of the pension rules;
(3) finally, the parallel between this provision and Article 48 of the same rules, as well as its compatibility with the general principles of the law governing the public service.

In my opinion, members of the Court, none of these submissions is founded,

1 — Translated from the French.

although this action reveals certain imperfections in the present retirement pensions scheme.

1. The wording of Article 3(c) does not entitle the applicant to have taken into account his previous periods of service.

Although this article provides for the taking into account of periods of service accomplished for the benefit of the Community 'in any other capacity' than that of established official, the same provision specifies that this taking into account can only take place in accordance with the Conditions of Employment of Other Servants of the Communities.

However, if we refer to the text which follows Annex VIII to the Staff Regulations of Officials and which fixes the Conditions of Employment of the various servants who are not officials, in particular, the auxiliary staff, we can see that the taking into account of periods of service is only provided for in relation to temporary staff and is excluded as regards the other categories of servants referred to by this text, that is, auxiliary staff, local staff, etc.

The least that can be said is, therefore, that when compared with the texts applying to the auxiliary staff, it is clear that not only does the text of Article 3 not entitle Mr Landra to have his periods of service as an auxiliary servant taken into account but it also appears to be intended to prohibit this being done.

2. However, and this is his second submission, Mr Landra maintains that the provisions of Article 3 must be interpreted by comparing them with the provisions of Article 11 on the coordination of the Community and national social security schemes: it is this Article 11 that the administration wishes to apply to him.

Mr Landra maintains that his case does not fall within the scope of Article 11 of the provisions on pensions and that therefore he is entitled to have the provisions of Article 3 (c) applied in his favour.

I consider the premises of this argument to be fully justified.

Article 11, which is very badly drafted, only provides *'expressis verbis'* for its application to established officials who, before they took up their duties as such officials, were in the service of a natural or legal person other than the Community.

However, even if such a restrictive interpretation of the text were accepted, it would not have the consequences which Mr Landra wishes to impute to it. Its effect would only be to render applicable to his case the even more unfavourable provisions of the regulation on the social security of migrant workers in general, rather than the provisions of Article 11 of the regulation on pensions.

The fact that, as it seems to me on an *ex gratia* basis, the administration has declared its readiness to apply Article 11 to the case of Mr Landra, cannot give him any right to benefit, contrary to the provisions of this text, from Article 3 (c) of the provisions on pensions.

3. Finally, in a third group of submissions, Mr Landra maintains before you that by refusing to allow him to benefit from the validation which he seeks, the administration is infringing a general principle contained both in Article 48 of the provisions on pensions and in the general principles of Community law: that of the equal treatment of all the servants of the Communities.

I can be quite brief as regards my consideration of the argument based on Article 48 of the regulation on pensions.

It is true that this Article provided that 'If an official so requests, his pension rights shall, notwithstanding any provisions to the contrary in the Staff Regulations, be computed from the date on which he entered the service of an institution of one of the three European Communities in any capacity whatever'.

However, this is a transitional provision of the pension scheme which can only benefit those servants to whom the Staff Regulations of Officials apply by virtue

of the provisions, which are also transitional, of those Regulations.

This does not apply to the applicant who, as I have just said, entered the service of the Communities on 4 October 1965, that is, on a date when the transitional provisions of the Staff Regulations had already been inapplicable for a long time.

The argument even rebounds upon the applicant, as, if the authors of the provisions on pensions had wished to indicate that, as regards servants who became officials in accordance with the transitional provisions of the Staff Regulations all their periods of service in any capacity whatever would be taken into account, notwithstanding *any provisions to the contrary,* it was precisely because as a general rule this was not the case.

There remains the applicant's final argument which is based upon an infringement of a principle which the applicant considers to be a general principle of Community law, that is, the equal treatment of all the servants of the Communities.

The applicant considers that by only providing for the taking into account of periods of service by temporary staff and not by the other categories of non-established servants, the authors of the pension scheme and of the Conditions of Employment of non-established staff infringed this principle of equal treatment.

I shall not propose that you follow the applicant in this argument.

It is true that certain national laws, such as, for example, the French law governing the public service, have recognized a certain principle of equal treatment of public servants, although they have been careful to attach reservations thereto. However, they have only ever accepted such a principle in relation to servants of a single unit or service, that is, in relation to servants who are subject to the same rules of recruitment and advancement and eligible for the same posts or employment.

However, if it is accepted that this principle is also applicable in the law governing the Community public service (which in my opinion is far from obvious), it is in any case inapplicable in this instance.

This principle would in fact prohibit the different treatment of two categories of auxiliary staff but in no way the provision for the auxiliary staff of a different scheme from that applying to temporary staff or established officials.

Moreover, the methods of recruitment of the temporary staff are different from those applying to auxiliaries, they do not compete for advancement with the auxiliaries and are not eligible for the same posts or employment.

Thus, by providing that auxiliary servants who, unlike the temporary servants, do not contribute to the Community pension scheme will be treated differently, on establishment, from temporary servants, I consider that the Community authorities have in no way infringed any general principle of Community law.

I am therefore of the opinion that none of the submissions in the application is justified, that the application should be dismissed and that the applicant should bear his own costs.