Having regard to Article 96 of the Staff Regulations of the ECSC which entered into force on 1 January 1962;
Having regard to the Staff Regulations of Officials of the European Communities, especially Article 91;
Having regard to the last paragraph of Article 2 of Regulation No 259/68;

THE COURT

hereby :

1. **Dismisses the application as inadmissible for lack of purpose;**
2. **Orders the Commission of the European Communities to pay the costs of the proceedings.**

Moncao Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 30 October 1969.

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber of the Court

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 14 OCTOBER 1969[1]

Mr President,
Members of the Court,

In 1953 Miss Rittweger the applicant in the case in which I am today delivering my opinion entered the service of the High Authority of the European Coal and Steel Community. She was first of all employed as a secretary and since 1 November 1957, following a competition in which she took part, has been a translator. On a submission by the applicant the administration agreed that her mother, who is at present aged 84 years and lives with her, was sick and without means; accordingly as from 1 July 1953 it treated her mother as if she were a dependent child, with all the attendant consequences, by a decision of 16 September 1954 of the Director of Personnel taken upon the basis of the Règlement provisoire de la Communauté Européene du Charbon et de l'Acier (Provisional Regulations of the European Coal and Steel Community) in force at that time. Later, the personal and official position of Miss Rittweger, which changed on various occasions (in 1961 and in 1963) following promotions, was regularly examined each year to decide whether the benefit of the allowance for a dependent person thus granted to her could be continued. After the entry into force of the Staff Regulations of the Coal and Steel Community, the situation was governed by its Règlement général (General Regulations) and afterwards by the special transitional provisions. These re-examin-

1 — Translated from the German.

ations led the administration on 7 June 1962 to the conclusion that Miss Rittweger's increased income did not justify the continued payment of the allowance in respect of her mother, and consequently to decide to withdraw it as from 1 June 1962. On 11 June 1962 the applicant contested this decision by a complaint in which she claimed essentially that the decisive criterion for the payment of the disputed allowance was not the level of her own income, but her mother's state of destitution. She was successful: a decision of 10 December 1964 of the President of the High Authority accepted that the expenses which Miss Rittweger had to meet for the maintenance of her mother constituted a heavy burden on her and that the allowance should therefore be continued. Following later periodical checks, that decision was several times renewed (on 13 December 1965 and 21 April 1966 to be exact).

On 9 August 1968, the Deputy Director-General for Personnel and Administration of the Single Commission, the institution which meanwhile had become Miss Rittweger's employer following the merger of the Executives, informed her that the question of the continuation of the allowance had been put before the Director-General for Personnel and Administration and that pending his decision, the allowance would continue provisionally.

The decision was taken on 3 October 1968 that having regard to the increase in the applicant's income the expenditure on maintaining her mother could no longer be regarded as a heavy burden and the allowance would cease as from 1 September 1968. Following objections which she made orally on 14 October 1968 to the Deputy Director-General for Personnel and Administration, he informed her in a further note of 11 November 1968, that the Director-General stood by his decision not to continue the allowance and that in so doing he had treated the provisions of Article 96 of the Staff Regulations of the European Coal and Steel Community and those of the former Règlement général as being applicable to her.

That is what led the applicant on 24 December 1968 to make an application to the Court in which she claimed the annulment of the decision of 3 October 1968 and 11 November 1968 and a declaration that the benefit of the allowance for a dependent person should continue.

After the lodging of the application a note of 13 March 1969 from the Directorate-General for Personnel and Administration informed the applicant that on the basis of a fresh examination of her personal and official position it had been decided to continue the allowance for a year as from 1 September 1968. In the statement in defence which the Commission lodged with the Court on 20 March 1969, it therefore maintained that the proceedings had become purposeless, adding that it was ready to defray the costs incurred by the applicant until the lodging of the statement of defence.

The applicant nevertheless considered this unacceptable and in the reply which she lodged on 15 April 1969 she has persisted in asking that the Court should rule on her application. Thus the procedure took the normal course. On 5 May 1969, during the procedure, the applicant also received an official copy dated 17 April of the decision which had been communicated to her on 13 March 1969. Further, before lodging of the rejoinder, on 10 June 1969 to be exact, she received a note from the Director-General for Personnel and Administration of 6 June 1969 containing 'explanations' on the scope of the decision of 13 March 1969.

Legal discussion

I can be relatively brief in giving my opinion on the facts and the issues involved. It is essentially a question whether, as the Commission thinks, there

is no reason for the case to proceed to judgment or whether on the contrary (and this is the argument of the applicant) it is still necessary that you should decide the matter. It is on the basis of the main conclusion in the application that this question must be decided. According to this, as I have already mentioned, the applicant asks for two things: first of all the annulment of the decision to withdraw the grant of the allowance for a dependent person and to terminate payment of it, and in the second place the annulment of the decision confirming these measures. The decisive factor in considering this conclusion is the decision of 13 March 1969, the measure providing for the continued payment of the allowance. That decision comes from the appointing authority, the body competent to grant these allowances. In consequence, notwithstanding the fact that the formal notification of the relevant decision was not given until later, this note of 13 March 1969 amounts legally to nothing more than a measure substituting the decisions which the applicant is asking to have annulled. That could in fact mean consequently that there is no longer any reason to proceed to judgment because it is generally accepted that an application for annulment becomes purposeless as soon as the disputed administrative act is superseded or withdrawn and that the adverse effect which that act had on the person concerned has disappeared.

One may however accept that, at least for some time, doubts whether the decision of 13 March 1969 really had such an effect have existed. In fact, taking account of its wording—and the same applies to the official copy of 17 April—that decision granted the allowance for a dependent person only for one year as from 1 September 1968; in other words for a limited period. It thus appeared to deal with the situation differently from the earlier decisions which had granted the allowance and which had ceased to be effective as a result of the decisions at present in dispute. Previously the allowance had in fact been granted for an unlimited period. Leaving aside the obligation on the applicant to inform the administration of changes which might occur in her personal and official position, there was simply provision for an automatic periodical examination and on the result of this a confirmatory or amending measure was to be adopted (the decisions of 1954, 1964, 1965 and 1966 show this clearly). Thus the decision of 13 March 1969 really did nothing to introduce a different system: this is clear from the note of 6 June 1969 which the Directorate-General for Personnel and Administration sent to the applicant on 10 June 1969. In this document the appointing authority which is competent in the matter explains the scope of the measure adopted in March. It points out in particular that the limitation on the period amounts simply to fixing the time for the re-examination of the situation (which had already been done in the decision of 1966) and it explains that the continuation of the payment of the allowance is not dependent on a fresh request. It is consequently at the latest from the time when the applicant knew of the declaration of 6 June that it becomes clear that the disputed decisions have been entirely superseded and that there has been a restoration of the *status quo*, in which the grant of the allowance was continued without further request from the applicant if the annual re-examinations justified it.

In these circumstances, that is to say, since there has been a complete substitution of the disputed decisions by a positive administrative act restoring the *status quo*, the application has no further purpose and there is no necessity legally to annul the decisions complained of. In other words so far as the conclusions seeking annulment are concerned the issue has been settled by the action of the Commission.

It is necessary further, to accept that the same applies to the submissions in which

the applicant asks you for a declaration that the allowance for a dependent person must be continued. That declaration too, is already contained in the decision of 13 March 1969. It is based upon the reference to a re-examination of the 'personal and official position' of the applicant. As it appears that this situation has not been altered since the adoption of the disputed decisions, the only significance in the statement by the Directorate-General for Personnel and Administration can be that, contrary to what it had previously maintained, the increase in the applicant's income does not present any obstacle to the payment of the allowance for a dependent person. It follows from this that at least in respect of the present circumstances, the administration has 'admitted by implication' the validity of the point of view of the applicant (to quote from judgment given in Joined Cases 15/64 and 60/65 [1966] E.C.R. 468. Consequently she no longer has any interest in asking that her rights should be judicially established the less so since there is no danger of the Commission's changing its attitude. It is irrelevant that the issues might come up again in the event of a substantial change in the applicant's income, because our procedural system does not provide for an abstract declaration on legal problems which may arise in the future.

In consequence there is no reason to decide upon the submissions made.

When an action ends in this way the Court has only to decide upon the costs. Under Article 69(5) of the Rules of Procedure they are in the discretion of the Court, that is to say, the Court takes account of the state of the proceedings in fact and in law at the moment when it is decided that there is no longer any necessity to proceed to judgment.

In the present case the Commission considers that an equitable settlement of the costs would result if it were ordered to bear the costs which have been incurred up to the lodging of its statement in defence, that is to say, until the moment when it asserted that the proceedings had become purposeless following the notification of the decision of 13 March 1969. In its statement of defence it has already expressed its willingness to do this. It appears to me however doubtful whether we can act in this way. I have already mentioned, that the wording, both of the decision of 13 March 1969 and of the official copy thereof of 17 April, could give the impression that the administration had not the intention of completely restoring the *status quo,* in other words of totally replacing the disputed decisions, because according to these decisions, the allowance for a dependent person was granted only *for a limited period.* The situation did not become perfectly clear until after the note of 6 June 1969, which provided explanations on the scope of the decision of 13 March, that is to say, at a time when the applicant had already lodged her reply. It was only as from 6 June 1969 that it became clear that the proceedings had become purposeless; but until that date the applicant had good reason to continue the proceedings.

Consequently, contrary to what was decided on costs in the judgment given in Joined Cases 15/64 and 60/65 [1966] E.C.R. 468, I think that there is reason in the present case to order the Commission to pay not only the costs incurred up to the time when the decision of 13 March 1969 was communicated to the applicant, but also those which relate to the lodging of the reply. On the other hand as it is impossible to accept that the applicant had reason to continue the proceedings after 6 June 1969, she herself should bear the costs which she incurred after that date, in particular those of the oral phase of the procedure, in accordance with the judgment in Case 15/67 [1967] E.C.R. 403. Furthermore it is even arguable that the applicant unreasonably caused the Commission to incur any costs after that date and that if she did so she should bear them.

I summarize my opinion as follows:

In the circumstances the Court must declare that there is no reason to proceed to judgment. The submissions which the applicant made in her reply must be rejected as inadmissible. As to the costs of the proceedings the Commission should bear those which were incurred until the lodging of the reply, the remainder being borne by the applicant.