JUDGMENT OF THE COURT (SECOND CHAMBER)
24 NOVEMBER 1983 [1]

Hartog Cohen
v Commission of the European Communities

(Officials — Invalidity — Public-spirited act)

Case 342/82

Officials — Invalidity pension — Rate at which pension is to be paid — Public-spirited act — Concept — Act performed by the person concerned prior to his entry into the service of the Communities — Exclusion

The second paragraph of Article 78 of the Staff Regulations must be interpreted as not conferring on an official an entitlement to an invalidity pension at the maximum rate where his total permanent invalidity arises from a public-spirited act performed prior to his entry into the service of the Communities.

In Case 342/82,

HARTOG COHEN, a former official of the Commission of the European Communities, of 51 Avenue des Nerviens, Brussels 1040, assisted and represented by Edmund Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, Advocate, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by John Forman, a member of the Legal Department, acting as Agent, assisted by Claude Verbraeken, of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

APPLICATION for:

The annulment of the decision of 27 November 1981, inasmuch as the Invalidity Committee held that the applicant's invalidity did not arise from a public-spirited act;

The annulment of the Commission's decision of 11 December 1981 whereby the applicant was awarded an invalidity pension under the third paragraph of Article 78 of the Staff Regulations and not under the second paragraph thereof;

The annulment of the decision rejecting the complaint thereon lodged on 10 March 1982;

An order that the Commission should pay the applicant the invalidity pension with retroactive effect to 1 January 1982, at the rate laid down by the second paragraph of Article 78 of the Staff Regulations,

THE COURT (Second Chamber),

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the submissions and arguments of the parties may be summarized as follows:

I — The relevant provisions of the Staff Regulations

1. Article 53 of the Staff Regulations of Officials provides that an official to whom the Invalidity Committee finds that the provisions of Article 78 of those regulations apply is to cease to perform his duties and to be retired.

2. The first paragraph of Article 78 provides that under certain conditions an official is entitled to an invalidity pension in the case of total permanent invalidity; the second and third paragraph thereof stipulate that:

"Where the invalidity arises from an accident in the course of or in connection with the performance of his duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity pension shall be 70% of the basic salary of the official.

Where the invalidity is due to some other cause, the invalidity pension shall be equal to the retirement pension to which the official would have been entitled at the age of 65 years if he had remained in the service until that age."

3. According to Article 9 of the Staff Regulations, the composition and the procedure of the Invalidity Committee is to be determined in accordance with the provisions of Annex II to the Staff Regulations.

3.1. Under Article 7 of Annex II to the Staff Regulations, the Invalidity Committee is to consist of three doctors, one appointed by the institution to which the official belongs, one appointed by the official concerned and one appointed by agreement between the first two doctors.

3.2. In addition, Article 9 of Annex II provides:

"The official may submit to the Invalidity Committee any reports or certificates from his regular doctor or from any medical practitioners whom he may have consulted.

The Invalidity Committee's conclusions shall be communicated to the appointing authority and to the official concerned.

The proceedings of the Committee shall be secret."

II — Facts and written procedure

1. The applicant, Hartog Cohen, who is a Netherlands national, was born on 17 December 1917. He was an official of the Commission from 1 June 1970 and his last post was in Grade L/A 4 at the Directorate General for Personnel and Administration.

2. In 1981, in view of the applicant's health, the Commission applied Articles 53 and 78 of the Staff Regulations, which have been quoted above. An Invalidity Committee was constituted consisting of three doctors appointed under the above-mentioned Article 7 of Annex II to the Staff Regulations. In accordance with that provision, one of the doctors was chosen by the applicant, who appointed Dr Gohdes, his own doctor since May 1980.

3. By letter of 30 September 1981 addressed to Dr Gohdes, the Commission explained the task of the Invalidity Committee and expressly referred to the wording of the second paragraph of Article 78 of the Staff Regulations. Moreover, the Commission emphasized that the applicant's medical file would be passed to Dr Gohdes and that the staff of the Commission would be at his disposal "to provide any additional information considered necessary for the completion of the task defined above".

4. On 27 November 1981, the Invalidity Committee concluded that

"After examination of Hartog Cohen, . . ., an official of the Commission of the European Communities, his case is one of total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket and that, on that ground, he is required to cease to perform his duties at the Commission.

The Invalidity Committee declares that Hartog Cohen's invalidity does not arise from an accident in the course of the performance of his duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being."

5. On the same day, Dr Gohdes supplied a medical certificate emphasizing that none of the applicant's disabilities "is due to his age. Neither the patient's occupation nor his family background reveals any factors which explain their origin. There is a strong probability that there is a connection between all his disabilities and the years which he spent in the ranks of the Netherlands resistance during the last war".

6. On 11 December 1981, the Commission decided, having regard to the conclusions of the Invalidity Committee, to retire the applicant with effect from 1 January 1982 and to grant him an invalidity pension in accordance with the third paragraph of Article 78 of the Staff Regulations.

7. By a medical certificate dated 2 February 1982, Dr S. Langie, a neurosurgeon, certified, at the applicant's request, that he had "regularly followed his neurological case-history" since November 1970. Dr Langie concluded that it was "likely" that the seriousness of the applicant's lesions "is connected with the life which he led during the last war as a member of the resistance in the Netherlands".

8. On 10 March 1982, the applicant lodged a complaint under Article 90 (2) of the Staff Regulations against the above-mentioned decisions of the Invalidity Committee and the Commission of 27 November and 11 December 1981. In his complaint the applicant maintained that his present invalidity was the direct result of his activities in the Netherlands resistance during the Second World War and, accordingly, in his view resulted from "a public-spirited act or from risking life to save another human being", thus entitling him to an invalidity pension under the second paragraph of Article 78 of the Staff Regulations. In support of his view, the applicant drew attention to the two medical certificates mentioned above and stated that he had submitted an application to the Netherlands authorities for a special pension "in view of the fact that there is a causal connection between the invalidity in question and his activities in the Netherlands resistance". Subsequently, in December 1982, the Netherlands authorities gave a "favourable decision" in respect of the application for that special pension.

9. The complaint was expressly rejected by a letter from the Commission dated 5 October 1982. In that letter, the Commission emphasized that the main question raised in the complaint was whether, in order to give rise to entitlement to a pension under the second paragraph of Article 78 of the Staff Regulations, the public-spirited act

". . . must have been performed when the person concerned was in the service of the Community or whether that act may have taken place before his entry into service with the Communities.

Although the wording of the second paragraph of Article 78 is not explicit on that point, the Commission takes the view that the act in question must have taken place during the period in which the person concerned was in the service of the Communities. It may perhaps be

said that the increase in the rate of pension as a result of such an act represents a type of 'bonus' or 'reward' whereby the Communities as employer acknowledge a moral obligation in respect of officials or servants provided that, however, they were its officials or servants at the material time. Recognition of or reward for acts completed before entry into the service must therefore, where appropriate, be sought elsewhere.

In those circumstances it is not necessary to refer the case back to the Invalidity Committee for re-examination."

10. This action was brought on 24 December 1982.

11. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Second Chamber) decided to open the oral procedure without any preparatory inquiry. However, it decided to request the parties to concentrate their arguments on the interpretation of the second paragraph of Article 78 of the Staff Regulations and, in particular, on the question whether the public-spirited act envisaged in that provision must have been performed after the person concerned had entered the service of the Communities.

III — Conclusions of the parties

The *applicant* claims that the Court should:

Primarily:

Declare the action admissible and well-founded;

Annul the Invalidity Committee's decision of 27 November 1981 inasmuch as it states that the invalidity does not arise from a public-spirited act or from the applicant's risking his life to save another human being;

Annul the defendant's decision of 11 November 1981 inasmuch as it states that the applicant is entitled to receive an invalidity pension pursuant to the third paragraph of Article 78 of the Staff Regulations and not pursuant to the second paragraph thereof;

Annul the decision, notified by letter dated 5 October 1982, rejecting the complaint on the matter, lodged on 10 March 1982;

Order the defendant to pay the applicant the invalidity pension with retroactive effect to 1 January 1982, at the rate laid down by the second paragraph of Article 78 of the Staff Regulations, the additional instalments of pension payable on the day when the judgment takes effect bearing default interest at 12.5% calculated from the date of their falling due until payment;

Order the defendant to pay the costs.

In the alternative:

Declare the action admissible;

Declare that the second paragraph of Article 78 of the Staff Regulations is applicable also where an official's public-spirited act or the risking of his life to save another human being has occurred prior to entry into the service of the Communities;

Before deciding on the substance of the case:

Order that a new Invalidity Committee be convened for the purposes of determining whether the applicant's total permanent invalidity arises from a

public-spirited act or from his risking his life to save another human being;

Reserve the costs.

In the further alternative:

Declare the action admissible;

Before deciding on the substance:

Order all measures of inquiry necessary to establish whether the Invalidity Committee considered the question to the causal connection between the applicant's total permanent invalidity and his activities in the Netherlands resistance during the war of 1940 to 1945;

Reserve the costs.

The *Commission* contends that the Court should:

Dismiss the action as unfounded;

Order the applicant to pay the costs.

IV — Submissions and arguments of the parties

(a) Introduction

The *applicant* relies on two submissions which may essentially be summarized as follows:

1. Infringement of the second paragraph of Article 25 of the Staff Regulations and of procedural rules;

2. In the alternative, infringement of the second and third paragraphs of Article 78 of the Staff Regulations and breach of general rules and principles of law, in particular the principle according to which any administrative measure must be accompanied by a statement of legally permissible grounds, that is to say, relevant and consistent grounds not vitiated by mistakes of law or of fact or both.

(b) The arguments of the parties

The applicant's first question

1. The *applicant* claims that according to the second paragraph of Article 25 of the Staff Regulations, any decision adversely affecting an official must state the reasons on which it is based. The first two measures in dispute, namely the decisions of the Invalidity Committee and of the Commission of 27 November and 11 December 1981, which incontestably affect the applicant adversely, contain no statement of grounds on the essential point, namely whether or not the second paragraph of Article 78 of the Staff Regulations was to be applied.

The applicant contests the Commission's view that the Invalidity Committee could not have stated its reasons in different terms without exposing itself to the complaint that it had infringed the third paragraph of Article 9 of Annex II to the Staff Regulations concerning the secret nature of its proceedings. That provision must be reconciled with that of the second paragraph of Article 25 of the Staff Regulations which is more general.

1.1. In the second place, the applicant alleges that the Invalidity Committee failed to consider the causes of his invalidity. In any event, he was not questioned on that subject although the Committee's ignorance of the facts as regards his activities in the Netherlands resistance means that his disability cannot have been assessed from the documents. Consequently, there was a clear procedural defect.

1.2. In the alternative, the applicant claims that there remains, at the very least, a serious question as to whether the issue was considered at all.

The applicant emphasizes that it is not necessarily clear from the conclusions of the Invalidity Committee, to the effect

that the applicant's invalidity does not arise from a public-spirited act, whether or not that Committee considered the question of the causal connection between the public-spirited act and the invalidity. The Committee might quite simply have been unaware of the act or it might have considered that it was not to be taken into account because it took place prior to the official's entry into the service of the Communities. Moreover the fact that Dr Gohdes's attention was drawn to the second paragraph of Article 78 of the Staff Regulations and that he was aware of the applicant's state of health and his past history as a member of the resistance does not in itself mean that the Commission considered the above-mentioned causal connection. Dr Gohdes might have been absentminded or negligent or, as the applicant considers to have been the case, he might not have connected the applicant's past as a member of the resistance with the concept of "public-spirited act" in the Staff Regulations.

2. The *Commission* observes that the applicant's submission is not supported by the facts.

2.1. Thus, the Commission contends that there was no infringement of the second paragraph of Article 25 of the Staff Regulations.

It emphasizes that in this instance the Invalidity Committee concluded that the "invalidity ... does not arise from ... a public-spirited act". In the Commission's view, the Invalidity Committee could not have stated its reasons in different terms without exposing itself to the complaint that it had infringed the provisions of the second and third paragraphs of Article 9 of Annex II to the Staff Regulations, which are intended to safeguard medical confidentiality for the benefit of officials themselves and which stipulate that only "the conclusions" of the Invalidity Committee are to be communicated to the official and his institution. Those provisions in no way prevent the official from ascertaining the reasons on which the Invalidity Committee has based its decision (and, in consequence, from being in a position to assess whether the decision is in conformity with the rules of the Staff Regulations). Indeed the official need only question the doctor selected by him to represent him on the Invalidity Committee, who can provide him with all the appropriate information without infringing medical confidentiality.

Finally, the Commission emphasizes the connection between its decision of 11 December 1981 and the conclusions of the Invalidity Committee which it was not possible to challenge. The statement of the reasons on which that decision was based, referring to the conclusions of the Invalidity Committee, therefore conforms to the second paragraph of Article 25 of the Staff Regulations.

2.2.1. In the second place, the Commission notes that the Invalidity Committee expressly concluded, in its decision of 27 November 1981 that there was no causal connection between the applicant's participation in the Netherlands resistance and his invalidity. The Commission considers that there is no provision requiring the Invalidity Committee to question the applicant since the origin, the existence and the consequences of most aspects of his disability could be assessed in the light of the documents. The Commission refers to the Court's judgment of 14 December 1966 (Case 3/66, *Alfieri* v. *Parliament*, [1966] ECR 437).

The Commission emphasizes, moreover, that it had instructed the Invalidity Committee to consider the above-mentioned causal connection. It draws attention to its letter of 30 September 1981 to Dr Gohdes, who represented the applicant on the Invalidity Committee and who was perfectly familiar with his past history and the state of his health.

The Commission adds that whilst nothing prevented it from requesting the Invalidity Committee to re-examine the causal connection, it did not do so because it took the view that, in any event, the applicant's request was unfounded in law.

The applicant's second submission.

1. The *applicant* claims that the Invalidity Committee's conclusions of 27 November 1981 and the Commission's decision of 11 December 1981 are vitiated either by a *mistake of fact,* inasmuch as they considered that the applicant's activities in the Netherlands resistance or the causal connection between those activities and the invalidity were not established, or by a *mistake of law* inasmuch as they considered that the public-spirited act referred to in the second paragraph of Article 78 of the Staff Regulations must be subsequent to entry into the service of the Communities. Moreover, the Commission's decision of 5 October 1982, rejecting the applicant's complaint, is vitiated by the same mistake of law.

1.1. As far as the *mistake of fact* is concerned, the applicant declares that the Netherlands authorities have now recognized that he was a member of the resistance and that his present invalidity is the direct consequence of his activities in the Netherlands resistance. In addition, Doctors Gohdes and Langie have certified as much. The applicant emphasizes that the question whether or not there is a causal connection between those facts and his disability does not depend on legislative provisions, since it is a medical question.

1.2. As regards the *mistake of law,* the applicant claims that the second paragraph of Article 78 of the Staff Regulations is of general application, and that it does not state that the public-spirited act must have occurred when the official concerned was already in the service of the Communities.

Indeed such a restrictive interpretation of the provision must be rejected. In the first place and in particular, the wording of the provision is clear and it should not therefore be subjected to interpretation. In the second place, the same provision specifies, as regards accidents, that they must have occurred in the course of or in connection with the performance of an official's duties. Therefore, where the legislature intended to restrict the application of the provision, it did so expressly. As regards the public-spirited act, there is no such restriction.

In addition the applicant states that a restrictive interpretation would be contrary to the spirit of the provision and unjust. The intention is to reward conduct demonstrating admirable human qualities. The merits of such conduct clearly do not vary according to the date at which it occurred. Moreover, the Commission disregarded the fact that the harmful consequences of the act in question came to light whilst the applicant was in the service of the Communities.

Finally the applicant denies that the background of the provision implies a restrictive interpretation according to which in the event of a case which is expressly referred to — in this instance the public-spirited act — it is permissible

to make a distinction where the text makes none, depending on when the act in question was performed.

2. The *Commission* disputes the applicant's argument concerning the alleged mistakes of fact or of law.

2.1. As regards the alleged *mistake of fact*, the Commission states that there is no evidence that the Invalidity Committee made any such mistake. When the Committee has arrived at a valid decision on a question which has been referred to it, the decision is definitive unless a new factor emerges. The opinions expressed by other doctors, however eminent, declaring that the Invalidity Committee has made a mistake or may have made a mistake, do not constitute such a factor. The Commission refers to the Court's judgments of 9 July 1975 (Joined Cases 42 and 62/74 *Vellozzi* v *Commission*, [1975] ECR 871) and of 12 June 1980 (Case 107/79, *Schuerer* v *Commission*, [1980] ECR 1845).

2.2. As regards the alleged *mistake of law*, the Commission points out in the first place that the applicant is wrong in considering that the Invalidity Committee made such a mistake in interpreting the second paragraph of Article 78 of the Staff Regulations. Authority to make such an interpretation lies exclusively with the Commission and the Invalidity Committee's conclusions in no way support the allegation that that Committee assumed such authority.

In addition, the Commission considers that the complaint directed against its decision of 5 October 1982 is inadmissible. The Invalidity Committee duly found that the invalidity did not arise from a public-spirited act and the Commission's decision of 11 December 1981 was taken in accordance with those conclusions. In consequence, it is futile to consider whether the legal position adopted in the decision rejecting the complaint is well founded or not.

In any case, the Commission takes the view that the complaint is unfounded.

One of the fundamental principles governing the pension scheme operated by the Commission is that, except where there are express provisions to the contrary, it covers officials only for events which occur after their entry into the service. The Commission refers *inter alia* to Article 3 (a) of Annex VIII to the Staff Regulations (concerning the retirement pension). Application of that general principle demonstrates that the public-spirited act referred to in the second paragraph of Article 78 of the Staff Regulations must necessarily have been performed after the applicant's entry into the service of the Communities.

The applicant's interpretation, based on a conclusion *a contrario* extracted from the second paragraph of Article 78, concerning accidents, is mistaken. In that article the legislature merely excluded accidents occurring in private life from the benefit of the invalidity pension at the rate of 70%; the restriction in no way relates to the period during which the accident must have occurred.

Finally it follows from the history of the second and third paragraphs of Article 78 that they must be restrictively interpreted. Prior to their adoption there was a single rate for the invalidity pension amounting to the maximum rate of the retirement pension. In order to avoid abuses, the Commission proposed in 1969 (Official Journal, C 83, p. 4) to separate the two pensions and to retain the maximum rate of the retirement pension as the rate for the invalidity pension only in clearly specified cases.

That proposal was adopted by the Council in 1972 (Official Journal, English Special Edition 1972 (III), p. 703) by the insertion of the present second and third paragraphs. In consequence the second paragraph must be regarded as an exception and, therefore, interpreted strictly. To extend the effect of the second paragraph to cover events occurring before entry into the service would amount to a remarkably wide interpretation which would be contrary to "the philosophy of the Staff Regulations".

2.3. The Commission takes the view that the measures of inquiry requested by the applicant in his conclusions in the further alternative cannot be ordered. The Commission contends that the Invalidity Committee was charged with considering the causal connection and that it concluded expressly that there was no such connection.

V — Oral procedure

At the sitting on 27 October 1983, the applicant, represented by E. Lebrun, and the Commission, represented by C. Verbraeken, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on the same day.

Decision

1 By application lodged at the Court Registry on 24 December 1982, Hartog Cohen, a former official of the Commission of the European Communities, brought an action essentially for the annulment of the Invalidity Committee's decision of 27 November 1981 and the Commission's decision of 11 December 1981 refusing him an invalidity pension under the second paragraph of Article 78 of the Staff Regulations of Officials, but granting him such a pension under the third paragraph of that article.

2 The first paragraph of Article 78 of the Staff Regulations provides that officials are entitled to an invalidity pension in the case of total permanent invalidity; the second and third paragraphs thereof stipulate as follows:

"Where the invalidity arises from an accident in the course of or in connection with the performance of his duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity pension shall be 70% of the basic salary of the official.

Where the invalidity is due to some other cause, the invalidity pension shall be equal to the retirement pension to which the official would have been entitled at the age of 65 years if he had remained in the service until that age".

3 It appears from the papers before the Court that the applicant, who is a Netherlands national born on 17 December 1917, was an official at the Commission from 1 June 1970 and that his last post was in Grade L/A 4 at the Directorate General for Personnel and Administration.

4 On 27 November 1981, an Invalidity Committee, constituted at the Commission's instigation, concluded that the applicant's invalidity amounted to "total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket and that, on that ground, he is required to cease to perform his duties at the Commission". In addition, the Invalidity Committee declared that the applicant's invalidity "does not arise from an accident in the course of the performance of his duties, from an occupational disease, from a public-spirited act or from his risking his life to save another human being".

5 On 11 December 1981, the Commission decided, having regard to the Invalidity Committee's conclusions, to grant the applicant an invalidity pension awarded under the third paragraph of Article 78 of the Staff Regulations.

6 On 10 March 1982, the applicant lodged a complaint under Article 90 (2) of the Staff Regulations against the decisions of the Invalidity Committee and the Commission of 27 November and 11 December 1981 respectively. In his complaint the applicant claimed that his invalidity was the direct consequence of his activities in the Netherlands resistance in the Second World War and, accordingly, of a public-spirited act entitling him to an invalidity pension awarded under the second paragraph of Article 78 of the Staff Regulations.

7 The applicant's complaint was expressly rejected by a letter from the Commission dated 5 October 1982. In that letter, the Commission emphasized that the main question raised in the complaint was whether, in

order to confer entitlement to a pension under the second paragraph of Article 78 of the Staff Regulations, the public-spirited act must have been performed when the person concerned was in the service of the Communities. The Commission answered that question in the affirmative and then stated that, in those circumstances, it was not necessary to refer the case back to the Invalidity Committee for re-examination.

8 The applicant then brought this action, primarily for the annulment of the decisions of the Invalidity Committee and the Commission of 27 November and 11 December 1981 respectively and for an order requiring the Commission to pay, with retroactive effect to 1 January 1982, the invalidity pension at the rate fixed in the second paragraph of Article 78 of the Staff Regulations. In the alternative, the applicant requests the Court to declare that that paragraph also applies where a public-spirited act has been performed prior to entry into the service of the Communities. He also asks the Court to order that a fresh Invalidity Committee be convened. Finally, in the further alternative, the applicant requests the Court, before deciding on the substance of the case, to order all measures of inquiry necessary to establish whether the Invalidity Committee considered the question of the causal connection between the applicant's invalidity and his activities in the Netherlands resistance during the war of 1940 to 1945.

9 In support of his conclusions, the applicant maintains that the disputed decisions do not contain an adequate statement of the reasons on which they are based and that they are vitiated either by a mistake of fact or by a mistake of law. The applicant emphasizes in particular that it is not clear from the Invalidity Committee's decision that it considered the question of the causal connection between the public-spirited act and the applicant's invalidity.

10 For the purposes of a decision in these proceedings, it is first necessary to settle the initial question raised by the Commission in its reply to the applicant's complaint, concerning the interpretation of the second paragraph of Article 78 of the Staff Regulations. If it must be concluded that, in order to confer entitlement to a pension under that paragraph, the public-spirited act must have been performed after the official has entered the service of the Communities, the applicant's action will, in any event, be unfounded.

11 In that respect the applicant emphasizes that the second paragraph of Article 78 of the Staff Regulations does not specify that the public-spirited act must have been performed when the official was in the service of the Communities and he considers that a restrictive interpretation of that nature must be rejected. In the first place, he claims, the wording of the provision is clear and should not therefore be subjected to interpretation. Secondly, the same provision specifies, in respect of accidents, that they must occur in the course of or in connection with the performance of an official's duties. Thus, where the legislature intended to limit the application of the provision it did so expressly, but made no such provision in respect of the public-spirited act. In addition a restrictive interpretation would be contrary to the spirit of the provision and unjust. The provision is intended to reward conduct demonstrating admirable human qualities and the merits of such conduct do not vary according to the date at which the act in question is performed. Finally the harmful consequences of the act in question came to light whilst the applicant was in the service of the Communities.

12 It should be recalled that, until 1 July 1972, the Staff Regulations made no distinction between the various circumstances resulting in the total invalidity of an official. Until that date, the invalidity pension was awarded at a single rate amounting to the maximum rate of the retirement pension. It was only by Regulation (Euratom, ECSC, EEC) No 1473/72 of the Council of 30 June 1972, which amended the Staff Regulations of Officials of the European Communities (Official Journal, English Special Edition 1972 (III), p. 703), that that rate was reduced for the normal situation to that of the retirement pension to which the official in question would have been entitled at the age of 65 if he had remained in the service until that age; the maximum rate was then reserved for exceptional cases in which the invalidity resulted from specified circumstances.

13 It is therefore necessary to regard the second paragraph of Article 78 of the Staff Regulations as an exceptional provision, which suggests that any extensive interpretation must be undertaken only with caution. In those circumstances, it is impossible to accept the applicant's view that the absence in that paragraph of an indication as to the date at which the public-spirited act must be performed is a sufficient answer to the question of interpretation raised.

14 Moreover the applicant's argument based on a conclusion *a contrario* drawn from the provision concerning accidents at work cannot be accepted. Although the provision stipulates that the accident must have occurred in the

course of or in connection with the perfomance of an official's duties, that stipulation is solely intended to exclude accidents occurring in private life.

15 It is therefore necessary to examine the background to the disputed decision and, in particular, the objectives pursued by the amendment adopted in 1972.

16 In that respect, it is a matter of regret that the recitals in the preamble to the above-mentioned Regulation No 1473/72 do not provide any information on the specific reasons for the various amendments adopted, but merely refer in general terms to experience gained. In the course of the proceedings, the Commission stated that the amendment of the provisions relating to the invalidity pension was intended to prevent the award of unjustified benefits and that statement was not contradicted by the applicant.

17 It is consonant with that objective to interpret the new provisions as excluding from the field of application of the second paragraph events which occurred exclusively prior to the official's entry into the service. Moreover, such an interpretation in no way conflicts with the interest of the Communities in ensuring that officials shall not refrain from performing such acts through fear of the economic consequences for them and for their families.

18 Nor is it possible to accept the applicant's argument to the effect that that interpretation would be unjust as regards an official who has performed such an act prior to his entry into the service. Compensation for invalidity resulting from public-spirited acts and, in particular, in time of war is, as a general rule, governed by the legislation of Member States. In this instance, it appears from the papers before the Court that since the Netherlands authorities have acknowledged that there is a causal connection between the applicant's invalidity and his activities in the Netherlands resistance they have in fact granted him a special pension on that ground. It would be difficult to justify awarding him a benefit to be added to the reward granted under the national legislation solely on the basis of his entry into the service of the Communities 25 years after the activities in question.

19 It follows from all those considerations that the second paragraph of Article 78 of the Staff Regulations must be interpreted as not conferring on an official an entitlement to an invalidity pension at the maximum rate where, as in the applicant's case, his total permanent invalidity arises from a public-spirited act performed prior to his entry into the service of the Communities.

20 It follows that the application must be dismissed and that it is therefore not necessary to arrive at a decision on the applicant's other submissions.

Costs

21 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules costs incurred by the institutions in proceeedings by servants of the Communities are to be borne by the institutions.

On those grounds,

THE COURT (Second Chamber)

hereby

1. **Dismisses the application;**

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

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 24 November 1983.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber