JUDGMENT OF THE COURT
OF 18 MARCH 1975 [1]

Marie-Louise Acton and others
v Commission of the European Communities

Joined Cases 44, 46 and 49/74

Summary

1. *Officials — Appeals — Legislative measure — Implementation by individual decisions — Admissibility*
   (Staff Regulations, Article 91)

2. *Officials — Strikes — Non-payment for days covered by stoppage of work — Legality*

1. In the context of the right of action made available by Article 91 of the Staff Regulations and in the case of a measure of a general nature designed to be implemented by means of a series of individual decisions affecting all or a large proportion of the officials of an institution, an official taken individually cannot be deprived of his right to invoke the illegality of that measure in order to attack the individual decision which alone allows him certain knowledge of the manner in which and the extent to which his individual interests are affected.

2. According to a principle recognized in the labour law of the Member States, wages and other benefits pertaining to days on strike are not due to persons who have taken part in that strike.

   This principle is applicable to relations between the institutions of the Communities and their officials.

   That statement in no way implies any decision in relation to the existence of an official's right to strike or in relation to the detailed rules which may govern the exercise of such a right.

   An institution's decision not to pay for days on strike cannot be invalidated by the fact that the other institutions have chosen not to take measures which they could lawfully have adopted.

In Joined Cases 44, 46 and 49/74

MARIE-LOUISE ACTON AND OTHERS, all officials of the Commission of the European Communities, represented by Marc-Antoine Pierson, Advocate at

1 — Language of the Case: French.

the Cour d'Appel, Brussels, with an address for service in Luxembourg at the chambers of J. Welter, 11 B, avenue de la Porte-Neuve,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, J. Griesmar, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, P. Lamoureux, 4 boulevard Royal,

defendant,

Application for annulment of the Commission's decisions to make deductions from the applicants' salaries on the ground of strike action,

THE COURT

Composed of: R. Lecourt, President, J. Mertens de Wilmars and A. J. Mackenzie Stuart, Presidents of Chambers, A. M. Donner, R. Monaco, P. Pescatore, H. Kutscher, M. Sørensen (Rapporteur) and A. O'Keeffe, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and the arguments adduced by the parties during the written procedure may be summarized as follows:

I — Facts and procedure

Following strike action in 1970 the Commission decided on 16 December 1970 that 'it stands to reason that there can be no payment for days on strike and it is the Commission's sole responsibility to apply this principle' and 'that non-payment will take effect in any event as from' 11 January 1971. This decision was notified to the staff. The Director-General for Personnel and Administration issued three circulars, namely during 1971, on 20 March 1972 and on 29 November 1972, in which he reminded the staff of the Commission's decision of 16 December 1970.

A so-called 'warning' strike of staff of the institutions of the European Communities took place during the afternoon of 30 November and on 1 December 1972. It was followed by a strike lasting from 11 to 15 December 1972. These strikes were prompted by the attitude adopted by the Council during negotiations and the adoption of a regulation of 12 December 1972 concerning a salary increase to compensate for the rise in the cost of living.

The Commission, having first indicated, on 11 December, its support for the staff, and having later, on 13 December, called upon the latter to return to work on the next day, brought an action before the Court of Justice on 15 December 1972 for the purpose of obtaining the annulment of the Council regulation of 12 December 1972 [1].

During its meeting on 20 December 1972 the Commission decided to collaborate with the other institutions in elaborating a common attitude regarding such portions of the salaries of the officials as corresponded to the days on strike. For its part, the Commission was of the opinion that remuneration should be withheld for each day of the strike, with the reservation however that, if the Commission should win the action brought before the Court, 'payment would be made in respect of Monday 11, Tuesday 12 and Wednesday 13 December'.

At its meeting on 28 February 1973 the Commission, on being informed of the results of the collaboration with the other institutions, decided to make deductions from the salaries of officials who had gone on strike, making an exception in respect of three days of the strike, regardless of date.

During its meeting on 21 March 1973, following meetings on 1 and 7 March 1973 between members of the Commission and representatives of the trade unions and staff associations, the Commission re-affirmed its decision and instructed the Directorate-General for Personnel and Administration to arrange for the deductions to be made.

This decision was communicated to the representatives of the trade unions and staff associations. On 26 March 1973, the liaison committee for these organizations distributed to the staff an information sheet announcing the Commission's decision and the fact that the committee had agreed in principle to bring an action before the Court of Justice against this decision'.

On 28 March 1973 Mr Borschette, a member of the Commission, published a message by informaphone, addressed to the staff, recalling the decisions of 16 December 1970, 20 December 1972, 28 February and 21 March 1973, and explaining the reasons for those decisions. This announcement was reproduced in the Staff Courier of 12 April 1973.

On 21 September 1973 the following announcement from the Directorate-General for Personnel and Administration appeared in the Staff Courier:

'Following the strikes which took place in December of last year, the Commission, at its meeting on 21 March 1973, confirmed its decision to arrange for a deduction to be made from the salaries of officials and other servants who took part, and the Directorate-General for Personnel and Administration was made responsible for putting the decision into effect.

However, the Commission made an "exception" in respect of three days of the strike regardless of date.

As everyone will be aware, the Commission's decision was brought to the general notice of staff by Mr Borschette's message of 28 March 1973.

Arrangements for implementation of the decision have now been completed and staff are informed that the deduction will be made from salary for the month

1 — By judgment of 5 June 1972 the Court found in favour of the Commission and ruled that Articles 1 to 4 of that regulation should be annulled (Case 81/72, [1973] ECR 575).

of October 1973 in the case of staff working in Brussels and, at latest, from salary for November in the case of staff working in Luxembourg.

The deduction will consist of 1/30 of remuneration for each day on strike and will be itemized as follows on pay slips:
.....'

Individual action for the purpose of making these deductions was indeed taken during October in respect of a large number of officials of the Commission who had taken part in the strikes.

2. The applicants all submitted complaints pursuant to Article 90 (2) of the Staff Regulations, for the purpose of obtaining repayment of the deductions made against their salary.

The Commission expressly rejected these complaints, and the present actions were brought on 20 June, 26 June and 5 July 1974 and registered at the Court on 25 June, 27 June and 8 July 1974 respectively.

By order of 22 July 1974 the Court (Second Chamber) joined the three actions for the purposes of the procedure and judgment.

The written procedure followed the normal course.

By order of 22 January 1975, the Court (Second Chamber) decided, in pursuance of Article 95 of the Rules of Procedure, to refer the case to a plenary session of the Court.

The Court, sitting in plenary session, decided, on hearing the report of the Judge-Rapporteur and the views of the Advocate-General, to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicants* claim that the Court should:

— annul the decision of 21 September 1973 and the individual decisions making the deductions adopted by the Commission on 15 October 1973, which resulted in the reduction in their salaries for the month of October, paid on 15 October, as well as of the decisions rejecting their complaints;

— accordingly, order the Commission to pay the applicants the sums deducted, with interest at 6·5%;

— order the Commission to pay the costs of the proceedings.

The *Commission* contends that the Court should:

— principally, reject the actions as inadmissible;

— in the alternative, reject them as unfounded;

— order the applicants to pay the costs of the proceedings.

III — Submissions and arguments of the parties

Admissibility of the actions

1. In its *defence,* the *Commission* makes the following points in particular as to the admissibility of the actions:

(a) Regarding the conclusions concerning the annulment of *the 'decision' of 21 September 1973*

On this point the actions were not preceded by an extra-judicial complaint under Article 90 (2) of the Staff Regulations. The complaints made referred only to the individual decisions making the deductions. They do not contain even the merest hint of criticism regarding the legality of the alleged 'decision' of 21 September 1973. An action against a measure in respect of which no extra-judicial complaint has been made is inadmissible.

Moreover, this alleged 'decision' was not a measure of such a kind as to affect the persons concerned adversely in such circumstances as to cause the period within which an action for annulment must be brought to start to run, since it merely constituted publication of the detailed rules for the future execution of a prior decision.

Strictly speaking, this measure was in fact superfluous, since its adoption was not essential to render the individual deductions legal. The measure which was at the basis of the action and which constituted the necessary and sufficient justification for the individual decisions making the deductions was the decision of 21 March 1973. This decision, which, following its publication on 28 March 1973 (by way of informaphone) and 12 April 1973 (by way of the Staff Courier), was not contested by anyone within the period prescribed, became unassailable on 21 September 1973. According to the case-law of the Court a measure which merely confirms a previous measure does not cause the period for lodging an appeal to start to run afresh.

(b) The conclusions concerning the annulment of the *individual decisions making the deductions*

In the Commission's view, the admissibility of these conclusions appears equally questionable because those decisions were merely measures implementing the decisions of a general nature taken on 16 December 1970 and 21 March 1973, against which no objection of illegality was made, either expressly or by implication. It is an accepted fact that in order to obtain the annulment of an individual measure adopted pursuant to a general measure the applicant must have put forward such an objection regarding the illegality of the general measure, adducing arguments relating to that same measure. Without going beyond the scope of the application, the Court cannot of its own motion declare the general measure to be illegal if it has not been submitted to its scrutiny by the applicant himself, by means of the objection of illegality. The Commission submits that since no such objection was put forward, it would appear that none of the submissions of illegality which have been advanced against the individual decisions taken in October can be admissible, since they are identical to the submissions which could and should have been entered against the basic general decisions.

If, on the other hand, the decision of 21 March 1973 is not taken to be general in character but to have 'individual-collective' force, since it was directed to those on strike during December 1972, that is to say a limited and ascertainable number of officials, the decision would have been open to appeal by the officials concerned. In this case, however, the actions are out of time, since they question the legality of the decision of March 1973 which was rendered unassailable by the expiry of the period set out in the Staff Regulations for the lodging of an appeal.

(c) The conclusions concerning the annulment of the *express decisions rejecting the complaints*

These decisions merely confirm the individual measures adopted in October 1973. It therefore follows that the actions, to the extent to which they are directed against them, are inadmissible in consequence of the inadmissibility of the conclusions directed against the initial measures.

2. The *applicants* adduce the following arguments in their *reply* to these submissions of inadmissibility:

The present actions have been brought before the Court of Justice by reason of the latter's unlimited jurisdiction in any dispute between the Community and its servants. This is in fact principally a dispute of a financial character between an institution of the Communities and persons to whom the Staff Regulations apply. The Court may therefore review the legality of all the measures referred

to by the Commission without its being necessary for the applicants to request the annulment of those measures.

Furthermore, it is not necessary for the applicants to seek the annulment of the general decision of 16 December 1970, any more than it is necessary for them to seek the annulment of the decisions of 28 February and 21 March 1973. This is so, first, because the Commission was not competent to take those decisions. According to Article 212 of the EEC Treaty it is incumbent upon the Council to lay down the Staff Regulations, in consultation with the Commission. The Staff Regulations laid down by the Council contain no mention of strikes and cannot therefore authorize the Commission to lay down precise rules for their conduct. Secondly, regulation of the exercise of the right to strike is an essential element of the terms of employment of all workers. It is therefore unthinkable that the Commission should have the power to regulate the right to strike without being bound to undertake prior consultation with representatives of the staff, as provided by Article 110 of the Staff Regulations. No such consultation has taken place.

It follows that the decisions of 16 December 1970, 28 February and 21 March 1973 invoked by the Commission should be deemed to be non-existent within the meaning of that word in French administrative law.

Apart from these submissions as to the non-existence of the decisions, the applicants expressly adduce against the three prior decisions the same arguments as to unlawfulness upon which they relied with regard to the individual decisions.

In this connexion the applicants cite the equivocal attitude of the Commission. On the one hand, on 16 December 1970, it took a decision by which it purported to withhold payment of salaries for days on strike, and yet on the other hand, in its decision of 28 February 1973, it nevertheless decided to pay salaries for the first three days of the strike. The Commission's attitude, as evidenced by this latter decision, reflects its agreement, albeit tacit, with the strike action taken against the Council's decision. The atmosphere thus created induced the staff to take strike action, believing themselves to be supported by the weight of the Commission's opinion. It appears however that the strike exceeded the duration desired by the Commission, which would account for the decision not to pay for more than the first three days of the strike.

Moreover, the course of action adopted by the Commission in taking these decisions was curious. It took a first decision on 28 February 1973, without prior consultation with the unions. Subsequently it consulted the unions and then took a confirmatory decision on 21 March 1973. This course of action resulted in the creation of legal uncertainty as to which decision must be taken to be determinative. The applicants emphasize that apart from the two decisions of 28 February and 21 March 1973, the Commission took a decision on 20 December 1972; including the communication of 21 September 1973, this amounts to four decisions relating to a single event.

3. In its *rejoinder,* the *Commission* emphasizes that the applicants have in no way challenged its submissions of inadmissibility with regard to the 'decision' of 21 September 1973.

For its part, the Commission challenges the contention that the Court's unlimited jurisdiction empowers it to review the legality of measures, the illegality of which has not been claimed in the application. The duty not to give a ruling beyond the scope of the application is incumbent upon the Court just as much in a case in which the Court has unlimited jurisdiction as in that of an application for annulment.

The Commission next refutes the applicants' arguments relating to the alleged non-existence of its general decisions. It claims that the defect of

non-existence has never had the effect of freeing persons concerned thereby from the obligation to bring the matter before the courts, either by means of an action, or by means of an objection of illegality, for the purpose of obtaining a finding that the measure concerned is null and void. Moreover, the objection of non-existence as well as the objection of illegality regarding the general decisions were put forward in the reply. They therefore constitute fresh issues and as such are inadmissible in accordance with Article 42 (2) of the Rules of Procedure.

In this connexion the Commission contests the statement that it was not empowered to take the decisions of December 1970 and of February and March 1973. In fact, relying upon the general legal principle which is expressed in the rule of service rendered, and which prompted it to take its general decisions of December 1970 and March 1973, far from encroaching upon the powers of the Council, it properly exercised the powers conferred by Article 85 of the Staff Regulations on the competent authority. The Commission recalls that the applicants themselves maintain that the measures making the deductions were adopted on the basis of Article 85. The decisions in dispute had no other object than to declare that payment of remuneration made under given circumstances was undue and the Commission therefore concludes that the allegation that they are defective by reason of non-existence owing to its lack of competence is baseless.

As regards the fresh submission to the effect that these general decisions, contrary to the requirement of Article 110 of the Staff Regulations, were not preceded by consultations with representatives of the staff, the Commission points out particularly that before the decision of 16 December 1970 was adopted consultations did take place. The same is true of the decision of 21 March 1973.

Regarding its allegedly 'equivocal attitude', claimed by the applicants, the Commission fails to understand how these remarks can have any relevance to the problem of the admissibility of the applications. Moreover, these allegations are entirely new and unconnected with the submissions made in support of the actions. Finally, the Commission denies that these allegations are well founded.

The substance of the case

1. The *applicants* first recall that the strikes of November and December 1972 were undertaken in protest against a Council decision which the staff took to be illegal, and that the Commission shared this view, which was held to be well founded by the Court of Justice.

They further claim that the decision to make a deduction was taken not only in the absence of any legal basis, but was also contrary to principles enshrined in the Staff Regulations.

The deductions were thus contrary to Article 85 of the Staff Regulations on the recovery of undue payment, since there is no evidence whatever that the salaries relating to days on strike were paid unduly.

Account should also be taken of the very long period which elapsed between the strikes and the date on which the deductions were made.

The deductions were also contrary to the principles reiterated in Title VI of the Staff Regulations, since none of the disciplinary measures listed in Article 86 authorizes the automatic withholding of salary.

The principles of civil law do not allow debts to be set off against sums owed unless the debts are liquid, due and certain. In the present case, these last two conditions were not fulfilled.

The deductions infringe Article 60 of the Staff Regulations which lays down that any unauthorized absence by an official shall first be deducted from his annual leave. Since any exception to Article 62 of the Staff Regulations relating to entitlement to remuneration must be

express and, accordingly, strictly interpreted, the provisions of Article 60 cannot be waived by the application of an alleged general legal principle.

In particular because the procedure outlined in Article 110 of the Staff Regulations was not implemented, the measure adopted by the Commission amounts to discrimination against its own officials in relation to officials of the other institutions, which did not make deductions.

Finally, the applicants claim that the 'exception' in respect of 11, 12 and 13 December 1972 laid down by the decision of 20 December was intended to penalize those officials who did not obey the Commission's call to return to work on 14 December. Accordingly, far from being a normal administrative consequence of the strike, the deductions constituted unfair pressure upon the free exercise of the right to strike.

2. In its *defence,* the *Commission* replies, on the basis of a detailed comparative analysis of the law of the Member States, that the deductions are justified — in addition to the immediate justification provided by the decision of 21 March 1973 — by the general legal principle according to which no remuneration is due to officials in the absence of service rendered, in particular as a consequence of participation in an organized stoppage of work. This principle is accepted without exception in the Member States, and is of very general application, whether it flows from the law, from case-law or simply from accepted administrative practice. The implementation of this principle, in the case of absence by reason of strike action, is recognized by case-law to be legitimate, even though the principle itself is not expressly formulated in the law in relation to the actual case of strikes. In the Commission's view it is permissible to take account of national solutions in resolving problems of principle regarding which the Staff Regulations are silent.

The Commission's right to invoke the rule of service rendered is reinforced by various examples taken from the Staff Regulations or the case-law of the Court which show that the entitlement to remuneration is founded exclusively on the actual discharge of duties. The Commission cites in particular Article 3, cf. Article 62, Article 55a and Article 3 of Annex IVa, and the order of the Court of 30 November 1972 in Case 75/72 (Rec. 1972, p. 1201).

Regarding the various provisions of the Staff Regulations which it is alleged to have ignored, the Commission first expresses reservations as to the method adopted by the applicants who, faced with a factual situation not covered by the Staff Regulations, wish to apply to that situation legal consequences flowing from formal provisions of the Staff Regulations which, by definition, can correspond only to situations provided for by those Regulations.

This is true of the submission based upon the text of Article 62 of the Staff Regulations. In addition to this remark the Commission claims that the express provision to the contrary referred to in the first paragraph of Article 62 authorizing deductions to be made from remuneration is to be found in Article 85 of the Staff Regulations.

Similarly, the submission to the effect that Article 60 of the Staff Regulations has been infringed is irrelevant. This article deals with 'unauthorized absence'. The Commission is not wholly unaware of general trends in the law of the Member States relating to the civil service, and it was not its intention to outlaw strikes by its officials as a matter of principle. Nor was it its intention, faced with the present lack of indication in the Staff Regulations, to fill this gap by proposing an interpretation which would imply that any absence by reason of strike action must necessarily be forbidden by the Staff Regulations.

Concerning the submission based upon Article 85 of the Staff Regulations, the Commission claims that the payment

was clearly undue, pointing to the general applicability of the rule of service rendered and to the equally universal rule that workers on strike are not entitled to remuneration for days lost through strike action. It also refers to the fact that it had frequently brought the rule regarding non-payment for days lost through strike action to the attention of its staff.

Regarding the applicants' criticism concerning the delay between the strike and the date when the deductions were made — a criticism which the Commission finds too perfunctory and lacking in substance — it points out that Article 85 lays down no time-limit for the recovery of undue payment and further states that the facts of the case (expected delivery of the judgment of the Court in Case 81/72, complex accounting procedures, holiday period) justified the date chosen for making the deductions.

In the Commission's opinion the submission relating to the conditions for the setting-off of debts is frivolous. There can be no doubt that the conditions for such setting-off were fulfilled. This procedure is moreover employed for all budgetary adjustments. The Commission refers here to Article 22 of the Financial Regulation of 25 April 1973, applicable to the general budget of the European Communities (Official Journal L 116/73).

Regarding the submission relating to Article 86 of the Staff Regulations the Commission claims that it did not intend the deductions to be taken as a punishment, but as the normal consequence of a strike, as was stated in the communication to the staff on 28 March 1973.

Regarding the submission alleging discrimination as between officials of the Commission and those of the other institutions, the Commission claims that this is a matter of discretion for each institution and the fact that the other institutions saw fit not to make the deductions cannot render its own decision discriminatory. The legality of its action was self-evident and cannot be said to be illegal on the sole ground that other institutions, in particular for reasons of expediency, did not feel bound to follow its example. Moreover, the Commission reiterates in this connexion that it is not competent under Article 110 of the Staff Regulations to lay down provisions of a general nature in the matter of strikes since the latter are nowhere touched upon in the Staff Regulations.

Regarding the applicants' allegation that the 'exception' in respect of 11, 12 and 13 December was intended to penalize officials who did not go back to work on 14 December, the Commission merely recalls that the initial decision was amended by the decision of 21 March 1973 to the effect that an 'exception' was to be made in respect of the first three days, whatever their date.

Regarding the applicants' request for interest on the sums deducted, the Commission claims, first, that such interest could be payable only from the time the action was brought, and, further, that in any case the request should be dismissed for the sufficient reason that Community law contains no indication of the existence, permissibility or rate of such interest.

3. In their *reply*, the *applicants* claim to expose contradictions in the Commission's argument.

In their opinion, if the Commission's action were based upon the rule of service rendered, its decision to pay for three days of strike was unjustifiable.

Moreover, an examination of the Member States' legislation concerning strike action by public servants reveals that such legislation is practically unformulated, and that in such cases the principles applicable to unauthorized absence are applied. In the interests of consistency therefore the Commission must apply the same principles to its own staff. It refuses to do so on the pretext that it is faced with a factual

situation not covered by the provisions of the Staff Regulations.

It is however the applicants' view that the authors of the Staff Regulations intended that days on strike should be treated as unauthorized absences. It is inconceivable that they should not have imagined the possibility of a strike by officials. The steps to be taken in such an event can only therefore be those laid down by the Staff Regulations. In the absence of other provisions a strike must be treated in the same way as absence without prior permission from an immediate superior. Any other interpretation would lead to legal uncertainty. This principle should not lead to the conclusion that strikes in themselves are completely unlawful and must be prohibited. This would be neither a direct nor a necessary consequence of the applicants' arguments.

If, as the Commission states, the deductions constitute recovery of undue payment, it must be borne in mind that the absences took place during December 1972. The deductions should therefore have been made in respect of remuneration for December 1972, or, at the latest, in respect of that for January 1973. The fact that the deductions were made in respect of remuneration for October 1973 left the Commission's intentions very much in doubt. This doubt renders the Commission's right to recover undue payment questionable.

The lack of consultation with the Staff Committee, expressly provided for by Article 110 of the Staff Regulations, necessarily amounted to discrimination against officials of the Commission as compared with those of the other institutions.

Finally, the applicants claim that in fact the amendment to the decision of 20 December 1972 regarding the exception' made in relation to three days merely modified the situation for those few officials who went on strike after the others. It may therefore be supposed that the amendment was made for no other reason than to furnish the Commission with a defence against an accusation of misuse of powers, while not in fact removing the grounds for such an accusation. The Commission should not be permitted to exercise an alleged power to regulate the right to strike for the purpose of reaching the arbitary decision that the only legal strikes are those by which it can put pressure upon the Council.

4. In its *rejoinder,* the *Commission* first claims that the exception' in respect of three days which the applicants believe they can turn to their own account in a somewhat remarkable manner, can in no way be interpreted as being in contradiction with the prevailing rule regarding service rendered. Waiver of part of a debt has never entitled the person benefiting from the waiver to total exemption from the debt. In the Commission's view the exception', which was a matter of expediency, is irrelevant to a dispute regarding the matter of legality.

The Commission next emphasizes that it is a common tendency in the domestic law of the Member States to view strikes as being untainted by illegality and free of disciplinary consequences. The Commission finds it difficult to conceive how the applicants can maintain, contrary to this general trend, that their strike action should be interpreted as an illegal and unauthorized absence, and therefore prohibited by the Staff Regulations. In fact, the Staff Regulations are totally silent on this point. It would be wholly unreasonable, in filling this gap, to adopt a solution which ran counter to generally accepted practices of national law.

Moreover, the Commission recalls, in relation to the allegation concerning the delay between the strike and the date when the deductions were made, that the staff were in fact aware, from the end of March, that an enforceable decision had been taken which would be enforced at such time as the long and complicated

implementing procedures in relation to that decision had been completed.

The Commission is at a loss to explain the meaning and legal significance of the applicants' observations regarding the two decisions to make an 'exception' for three days of strike. It cannot discern, in the form of the wording of either decision, the punitive effect or misuse of powers alleged. It concludes that these remarks are merely polemical and are without relevance in a legal discussion.

During the hearing on 18 February 1975 the applicants, represented by J. Hirsch, Advocate of the Brussels Bar, and the Commission, represented by its Agent, J. Griesmar, submitted their oral observations.

The Advocate-General delivered his opinion on 26 February 1975.

Law

1 The present actions, brought by a number of officials of the Commission of the European Communities, seek the annulment of the Commission's decisions of 21 September and 15 October 1973, in implementation of which a deduction was made from their salary for the month of October 1973 by reason of their participation in strike action during December 1972.

2 The deduction was made at a rate of one-thirtieth of the monthly remuneration per day on strike, although an 'exception' was made for three days of the strike.

Admissibility

3 It is the Commission's major contention that the actions are inadmissible.

4 Regarding the measure adopted on 21 September 1973, which the applicants consider to be a decision, the Commission claims that it was intended merely to publicize the detailed rules for the implementation of its decision of 21 March 1973 concerning deductions to be made in respect of days on strike, and that in any event that measure was not the subject of a complaint pursuant to Article 90 (2) of the Staff Regulations.

5 In so far as the actions are directed against the individual decisions of October 1973 the Commission contends that they are inadmissible on the ground that those decisions were merely taken in implementation of the decision of 21 March 1973 and of a general decision of 16 December 1970, against which the applicants did not enter any formal objection of illegality.

6 The essential purpose of the actions is to obtain the annulment of the individual decisions taken with respect to the applicants.

7 In the context of the right of action made available by Article 91 of the Staff Regulations and in the case of a measure of a general nature designed to be implemented by means of a series of individual decisions affecting all or a large proportion of the officials of an institution, an official taken individually cannot be deprived of his right to invoke the illegality of that measure in order to attack the individual decision which alone allows him certain knowledge of the manner in which and the extent to which his individual interests are affected.

8 Therefore the objection of inadmissibility put forward by the Commission seeks unjustifiably to put an obstacle in the way of the exercise, by officials, of their entitlement to enforce their rights before the Court.

9 The objection must therefore be dismissed.

The substance of the case

10 The applicants are challenging the legality of deductions made from their salary as a result of their participation in the strike of December 1972.

11 It must first be ascertained whether, as a general rule, an official who has taken part in a general stoppage of work described as a strike is entitled to receive salary in the absence of service rendered.

12 On this point, according to a principle recognized in the labour law of the Member States, wages and other benefits pertaining to days on strike are not due to persons who have taken part in that strike.

13 This principle may be applied to relations between the institutions of the Communities and their officials, as the Commission has already stated on a previous occasion, in its decision of 16 December 1970, according to which 'it stands to reason that there can be no payment for days on strike'.

14 That statement in no way implies any decision in relation to the existence of an official's right to strike or in relation to the detailed rules which may govern the exercise of such a right.

15 Although certain Member States deny their public servants or certain categories of public servants the right to strike, whereas other Member States allow it, the Staff Regulations of Officials of the European Communities remain silent on the subject.

16 In the present case it is sufficient to note that the collective stoppage of work in relation to which the decisions in dispute were taken was considered by all concerned to be a method of defending collective interests of the staff and was therefore described as strike action.

17 However, the applicants maintain that the deductions are contrary to Article 60 of the Staff Regulations, according to which any unauthorized absence shall be deducted from the annual leave of the official concerned.

18 As has already been noted, it is common ground that the stoppage in December 1972 was a collective action undertaken by the officials concerned for the defence of their interests.

19 It follows that participation in the strike falls outside the scope of Article 60.

20 The applicants further claim that the deductions are incompatible with the provisions of Title VI of the Staff Regulations concerning disciplinary measures.

21 However, the deductions were made not as a punishment for a disciplinary offence but merely as the consequence of failure to perform duties; accordingly, the provisions of Title VI are inapplicable in this case.

22 The fact that the Commission made an exception for three days of the strike in respect of which no deduction was made does not alter this fact.

23 This measure, which was adopted in favour of all officials who took part in the stoppage, whatever the date on which they were absent, was not in fact intended merely to apply to those who did not answer the Commission's call to its staff to return to work after the first three days of the strike.

24 It cannot therefore be considered a disciplinary measure, albeit disguised, directed against them.

25 Finally, the applicants maintain that they are the victims of discrimination on the part of the Commission, since no deductions were made from the salaries of officials of other institutions of the Communities who took part in the strike.

26 The contested decisions cannot be invalidated by the fact that the other institutions chose not to take measures which they could lawfully have adopted.

27 Pursuant to Article 85 of the Staff Regulations any sum overpaid to an official shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.

28 It is clear from the foregoing that the absence of entitlement to payment for days on strike was so evident that the conditions of Article 85 have been fulfilled in this case.

29 Since that article does not fix a time-limit for recovery of the undue payment, the delay which occurred between the strike and the making of the deductions is not so excessive as to invalidate the decisions in dispute.

30 The actions must therefore be dismissed.

Costs

31 The applicants have failed in their actions.

32 According to Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

33 However, according to Article 70 of the Rules of Procedure, in proceedings brought by officials of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the actions;**
2. **Orders the parties to bear their own costs.**

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco
Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 18 March 1975.

A. Van Houtte
Registrar

R. Lecourt
President