3. Orders the Commission to pay the costs.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 16 October 1980.

J. A. Pompe
Deputy Registrar,
for the Registrar

T. Koopmans
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 10 JULY 1980

My Lords,

The applicants in these two cases, which have been joined by order of the Court, are Mrs Liselotte Boizard (*née* Herber) and Miss Martine Boizard, who are respectively the widow and the daughter of the late Mr Georges Boizard, who was a Commission official. Their claim, essentially, is that a decision adopted on behalf of the Commission on 1 June 1978 by the head of the "Individual rights and privileges" Division in the Commission's Directorate-General of Personnel and Administration was unlawful. That decision instituted monthly deductions from the survivor's pension and the orphan's pension awarded to Mrs Boizard and Miss Boizard respectively under Articles 79 and 80 of the Staff Regulations. The Decision was purportedly based on Articles 41 and 47 of Annex VIII to those Regulations, which provide as follows:

"*Article 41*

The amount of pension may at any time be calculated afresh if there has been error or omission of any kind.

They shall be liable to modification or withdrawal if the award was contrary to the provisions of the Staff Regulations or of this Annex.

Article 47

Where the invalidity or death of an official is caused by a third party, the rights of action of the official or of those

entitled under him against the third party shall vest in the Communities within the limits of their obligations under this pension scheme."

We were referred also, during the course of the argument, to Article 85 of the Staff Regulations, which provides:

"Any sum overpaid 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."

Having regard to the nature of the arguments presented to us, I must rehearse the facts in some detail.

On 21 November 1972, there was a collision in Brussels between a car driven by Mr Boizard and one driven by a Mr Teugels. It was not a violent collision. Little damage was caused to the vehicles and no apparent injury was caused to Mr Boizard. Yet, shortly after the accident, he collapsed. He was taken to hospital and was put in intensive care, but he died three days later, on 24 November 1972. The cause of his death was ascertained to be a heart attack brought on by the shock induced by the collision. Although apparently he was not aware of it, Mr Boizard had for some time been suffering from a serious heart condition which could at any time have resulted in his death. He was, at the time of his death, 48.

After his death, the Commission continued for three months to pay his salary to his widow pursuant to Article 70 of the Staff Regulations. On 27 February 1973 the Commission awarded the applicants, with effect from 1 March 1973, the pensions here in question.

At a date which we do not know but which appears to have been prior to 27 March 1973 the Belgian "ministère public" instituted criminal proceedings against Mr Teugels in the Tribunal de Première Instance of Brussels, the charge against him being that he had infringed a rule of the Belgian Highway Code, the rule about "la priorité à droite".

In April 1973 Mrs Boizard consulted a Belgian lawyer, Maître Paul Humblet. He advised that the applicants should seek to be joined as "parties civiles" to the criminal proceedings against Mr Teugels, as should also a son of Mr Boizard who, although he had no longer been dependent on him, was concerned as one of his next-of-kin. Maître Humblet was, however, so he told us at the hearing, aware that there might be difficulties in the course he proposed because of the possible existence of rights of subrogation or the like under some relevant insurance policy or pension scheme, though he was not familiar with the Staff Regulations and did not know of Article 47.

Maître Humblet accordingly wrote on 19 April 1973 to the Directorate-General of Personnel and Administration of the Commission a letter in which he said that he was acting for the next-of-kin of Mr Boizard and continued:

"Je vous serais obligé de bien vouloir me faire savoir si feu Monsieur Georges Boizard bénéficiait auprès des communautés européennes d'une police d'assurance collective contre les accidents corporels ou d'un statut contractuel donnant droit à ses héritiers à une intervention financière du chef de son décès."
(Annex 2 to the Reply)

At the same time, Maître Humblet advised Mrs Boizard that she should obtain from the Commission certificates as to the amount of Mr Boizard's remuneration at the time of his death and as to the amounts of the pensions payable to her and to her daughter. Mrs Boizard asked a Mr Derveaux, who was a family friend and also a Commission official, to get these. We were told on behalf of the Commission that Mr Derveaux had no clear idea as to why they were needed except that it was in connection with "the judicial inquiry" ("l'enquête judiciaire"), and that that was all the information he conveyed to the "Salaries, pensions and allowances" Division of the Directorate-General of Personnel and Administration, to which he passed on the request. At all events, on 10 May 1973, the certificates were duly produced by that division and sent to Mr Derveaux (Annexes 3, 4 and 5 to the defence, and Annexes 5 and 6 to the reply). Each of them states: "La présente attestation est établie pour être remise aux autorités judiciaires". It was suggested on behalf of the Commission that the Directorate-General of Personnel and Administration could not have gathered, from Mr Derveaux's request, that the applicants intended to apply to be joined as "parties civiles" in the proceedings against Mr Teugels. I find it, however, difficult to believe that the officials in that Directorate-General who dealt with the request can have imagined that the certificates were wanted merely in order to establish that Mr Teugels had been guilty of a criminal offence.

On 14 May 1973, Mr Blenkers, the Head of the Division comprising the "Accidents and occupational diseases" Section of the Directorate-General of Personnel and Administration replied to Maître Humblet's letter of 19 April, informing him of the existence of a group accident policy effected by the Commission for its officials, a claim under which he said had been lodged, and also of a life insurance scheme covering "heads of households" (Annex 3 to the reply). Mr. Blenkers said nothing about the Staff Regulations and in particular nothing about Article 47 of Annex VIII.

On 17 May 1973 Maître Humblet wrote acknowledging Mr Blenkers's letter and asking for the name of the insurance company with which the accident policy had been effected and its reference (Annex 4 to the reply). To that Mr Blenkers replied on 22 May 1973 giving the information and adding:

"De mon côté, je vous saurais gré, vu le caractère délicat de ce dossier dont j'assume la gestion, de vouloir bien me communiquer tous renseignements utiles et en particulier le jugement rendu par le Tribunal, lequel vous sera signifié, je crois, dans les prochains jours."
(Annex 7 to the reply).

In that Mr Blenkers was ill-informed. The case was not heard by the Tribunal until 7 November 1973 and the judgment was not delivered until 29 November 1973.

The Tribunal found Mr Teugels guilty and solely responsible for occasioning Mr Boizard's death. It awarded damages to the "parties civiles" under three main heads.

The first comprised funeral expenses and the damage to Mr Boizard's car, amounting in all to BFR 41 370.

The second covered the "préjudice matériel" suffered by the applicants, consisting in their loss of Mr Boizard's financial support. As to that, the Tribunal assessed Mr Boizard's expectation of life at the time of the accident, as being, in view of his heart condition, five years. It quantified his financial support of his wife and daughter on the basis of percentages of his net monthly remuneration as stated in the relevant certificate supplied by the Commission: 40% in the case of the wife, 20% in the case of the daughter. To the amounts thus obtained the Tribunal applied an actuarial multiplier appropriate to a man aged 60 and, in the result, awarded the applicants damages of BFR 1 066 256 and of BFR 574 671 respectively. In so doing the Tribunal took no account of the pensions awarded to the applicants under the Staff Regulations. That, it seems, was in accordance with Belgian law, which treats pensions payable by a public authority to the widow and orphans of any of its servants as having been earned by his service and his contributions during his lifetime, and not as advantages accruing to them from his death.

The third head of damage was "préjudice moral" — compensation for the sorrow suffered by Mr Boizard's wife and children. Under this head the Tribunal awarded BFR 75 000 to Mrs Boizard and BFR 25 000 to each of the children.

The judgment was not appealed from and the "parties civiles" in due course received the sums thereby awarded to them.

On 14 March 1974 Maître Humblet addressed a letter to the Commission, marked for Mr Blenkers's attention, referring to his letter of 22 May 1973, enclosing a copy of the judgment, saying that it had not been appealed from so that it was now "coulé en force de chose jugée", and asking that it should be sent to the insurers with whom the Commission's group accident policy had been effected for their consideration (Annex 11 to the reply).

We were told on behalf of the Commission that it was upon the receipt of that copy of the judgment that it discovered that the "parties civiles" had made claims before the Tribunal which, by virtue of Article 47 of Annex VIII to the Staff Regulations, only the Commission itself was entitled to make. One would, if that was so, have expected the Commission to react promptly and vigorously, even indignantly. In fact it did not. On 18 April 1974, Maître Humblet wrote again to the Commission pressing for a reply to his letter of 14 March (Annex 12 to the reply). On 30 April 1974 his letters of 14 March and 18 April were acknowledged by Mr Giraudon, the head of the "Accidents and occupational diseases" Section, who said, putting it shortly, that Maître Humblet's enquiry had been referred to the Commission's insurers and that he would be informed of their answer (Annex 13 to the reply). The correspondence about the insurance claim (which was being resisted by the Commission's insurers) continued at a

leisurely pace during the remaining months of 1974 and during 1975 (Annexes 14 to 21 to the reply).

Article 47 was first mentioned by the Commission in a letter dated 10 November 1975 addressed to Mr Teugels' insurers (Annex 1 to the rejoinder). By that letter the Commission asked to be informed of those insurers' intentions "pour nous dédommager en partie des sommes que nous avons été amenés à assurer aux ayants droit de feu M Boizard suite à l'accident du 21 novembre 1972". The insurers replied by a letter dated 20 November 1975 which began, significantly:

"Nous tenons tout d'abord à souligner que c'est la première fois que vous manifestez et, votre présence et, vos intentions".

The letter went on to reject the Commission's claim on the grounds that its rights of subrogation could only extend to the damages awarded by the Tribunal and that, since they had been paid, the Commission's remedy, if any, lay against the "ayants-droit" of Mr Boizard who had received them (Annex 2 to the rejoinder).

There appears to have been no further mention of Article 47 for some 18 months, although during that period correspondence and meetings continued between Maître Humblet and members of the Commission's staff about the claim against the Commission's insurers.

Then, on 25 May 1977, the Director-General of Personnel and Administration himself wrote to Mrs Boizard a letter which began:

"J'ai l'honneur de vous informer que suite au recensement des cas donnant lieu ou ayant donné lieu à versement de pensions pour cause d'accidents mortels occasionnés par des tiers, l'administration a été amenée, en collaboration avec le service juridique, à reprendre l'examen du dossier qu'elle a constitué suite au décès accidentel de feu votre époux."

The letter went on to refer to Article 47 and to the exchange of letters in November 1975 between the Commission and Mr Teugels' insurers, and concluded by inviting Mrs Boizard to make proposals for the settlement of the Commission's claim to receive the sums of BFR 1 066 256 and BFR 574 671 awarded by the Tribunal to her and to her daughter under the head of "dommage matériel" as well as a sum of BFR 15 360 disbursed by the Commission in respect of Mr Boizard's funeral expenses (Annex 23 to the reply).

There followed several months of negotiations between Maître Humblet (on behalf of the applicants) and the Commission. During those negotiations Maître Humblet told the Commission, *inter alia,* that Mrs Boizard had spent the money received under the judgment in the purchase, with the help of loans, of the flat where she and her children lived (Annex 28 *bis* to the reply). He also said that, if the Commission now wished to assert its rights, its correct remedy was to "faire tierce opposition au jugement", i.e., as I understand it, to apply to the Belgian courts to set aside the judgment in so far as it was in favour of the applicants rather than of the Commission

(Annex 31 to the reply). That seems to me a fair point for him to have taken, since it was repeatedly emphasized on behalf of the Commission that Article 47 was, by virtue of Article 189 of the EEC Treaty, "directly applicable in all Member States."

At all events no agreement was reached as a result of the negotiations and, on 1 June 1978, the head of the "Individual rights and privileges" Division, under powers delegated to him by the Commission, adopted the decision the validity of which the applicants challenge in these proceedings (Annex 6 to the defence). The decision is founded, as I mentioned at the outset, on Articles 41 and 47 of Annex VIII to the Staff Regulations. It has a rather long preamble, which I do not think I need read. Article 1 of the decision is in these terms:

"A compter du 1er juin 1978 et jusqu'à reconstitution d'un montant de 1 066 256 FB devant être ainsi apuré, l'arrérage mensuel de la pension revenant en net à M^me^ V^ve^ Georges Boizard et s'élevant jusqu'à ce jour à 29 604 FB subit une retenue de 8 000 FB. Cette retenue, soumise à indexation, varie automatiquement selon le même pourcentage de majoration pouvant affecter le montant principal de l'arrérage soumis à retenue."

Article 2 deals in like terms with Miss Boizard's pension, the net monthly amount of which is recorded as being BFR 14 953 and the monthly deduction to be made from it being fixed at BFR 5 000.

The decision was sent to the applicants under cover of a letter of the same date signed by the Director-General of Personnel and Administration, which was manifestly designed to explain the thinking that underlay it and at the same time to soften the blow of it (Annex 7 to the defence). It seems clear from that letter that, in the eyes of the Director-General, the retention by the applicants of the fruits of the judgment in their favour as well as of the full amounts of their pensions would constitute a duplication of benefits ("un cumul") of a kind forbidden by the Staff Regulations and that, in his view, it would be unfair to allow them to enjoy such a duplication of benefits when, in the case of other widows and orphans of officials, Article 47 had been strictly applied. It also appears that the Director-General thought that deductions from their pensions would be less harsh a measure for the Commission to take vis-à-vis the applicants than "tierce opposition" to the judgment.

Nonetheless, on 19 August 1978, the applicants lodged a complaint under Article 90 (2) of the Staff Regulation against the Decision (Annex 8 to the Defence). The appointing authority did not reply to the complaint within the four months prescribed by Article 90 (2), but on 19 January 1979 the Member of the Commission responsible for staff matters (Mr Tugendhat) wrote to the applicants expressly rejecting it (Annex 1 to each of the applications).

Owing, it seems, to an oversight, effect was not in fact given to the decision until 1 April 1979.

To complete the narrative I should mention that the claim against the Commission's insurers has now also become the subject of litigation. That litigation, so we were told at the hearing,

has reached the Cour d'Appel of Brussels, to which the insurers have appealed against a judgment adverse to them of the Tribunal de Commerce.

So I turn to the law.

As to that, I think it logical to consider first three questions as to the proper interpretation of Article 47 that were raised by the arguments of the parties.

First the Commission pressed upon us the view that that article had as its foundation a wish on the part of the authors of the Staff Regulations to forbid any possible duplication of benefits and that it must be interpreted accordingly. If it were uniformly, or at all events generally, the law in the Member States that in the kind of situation to which Article 47 applies no duplication of benefits is permissible, that inference might readily be drawn. But, as the Commission conceded, the laws of the Member States differ on that point. So one can only, in my opinion, in that respect, interpret Article 47 according to its tenor, which is just as consistent with the view that the authors of the Staff Regulations simply wished that, where possible and to the extent possible, the Community institutions should be able to look to a wrongdoer for relief from the burden of financing the benefits to be provided for the victims of his wrongdoing.

Secondly the Commission pressed upon us the view that Article 47 conferred on the Community institution concerned in a particular case no discretion. That, to my mind, is wrong. What Article 47 gives to a Community institution is a right of action against the third party, i.e. a right to make a claim against him and to seek to enforce that claim by means of litigation. It cannot mean that, in every case, however weak or speculative the claim against the third party may be, and however great the risk that the institution may simply end up out of pocket for costs, the institution is bound, willy-nilly, to pursue it. Common sense enters, if I may be pardoned for saying so, into the interpretation of the Staff Regulations, as much as it does into the interpretation of any other legislative instrument.

Thirdly, the parties, whose counsel focused their attention on the French text of Article 47 only, were at issue on the question whether Article 47 provided for a "subrogation dans le droit" or only a "subrogation dans l'action". I understood the difference to be that, if there were "subrogation dans le droit", the rights of action of the official or of those entitled under him were wholly divested in favour of the Communities, whereas if there were only "subrogation dans l'action" those rights would remain exercisable *by* those persons except in so far as the Community Institution concerned elected to exercise them. In my opinion, in order to answer that question, one must look at all six texts of Article 47. They are as follows:

Danish: "Såfremt tredjemand er ansvarlig for en tjenestemands invaliditet eller død, overgår tjenestemandens eller de ydelsesberettigede pårørendes rettigheder i en retssag mod den ansvarlige tredjemand uden videre til Fællesskaberne inden for grænserne af de

forpligtelser, Fællesskaberne har i henhold til denne pensionsordning."

Dutch: "Indien de oorzaak van de invaliditeit of het overlijden van een ambtenaar aan een derde is te wijten, treden de Gemeenschappen, voor zover daardoor voor hen uit deze pensioenregeling verplichtingen voortvloeien, van rechtswege in alle rechten van de ambtenaar of diens rechtverkrijgenden ter zake van hun rechtsvordering tegen de aansprakelijke derden."

English: "Where the invalidity or death of an official is caused by a third party, the rights of action of the official or of those entitled under him against the third party shall vest in the Communities within the limits of their obligations under this pension scheme."

French: "Lorsque la cause de l'invalidité ou du décès d'un fonctionnaire est imputable à un tiers, les Communautés sont, dans la limite des obligations découlant pour elles du présent régime de pensions, subrogées de plein droit au fonctionnaire ou à ses ayants droit dans leur action contre le tiers responsable."

German: "Ist die Dienstunfähigkeit oder der Tod eines Beamten auf das Verschulden eines Dritten zurückzuführen, so gehen die Rechte des Beamten oder seiner Rechtsnachfolger in einem Rechtsstreit gegen den haftpflichtigen Dritten von Rechts wegen in den Grenzen der Verpflichtungen, die sich für die Gemeinschaften aus der Versorgungsordnung ergeben, auf die Gemeinschaften über."

Italian: "Qualora la causa dell'invalidità o del decesso di un funzionario sia imputabile ad un terzo, le Comunità sono surrogate di diritto, nel limite delle obbligazioni che loro incombono ai sensi del presente regime di pensioni, al funzionario o ai suoi aventi diritto nella loro azione contro il terzo responsabile."

The wording of the English text — "the rights of action ... shall vest" — is appropriate to what an English lawyer would call a statutory assignment of rights, rather that to what he would call subrogation. The distinction in English law between the assignment of a right of action and subrogation corresponds roughly to what I understand to be the distinction between "subrogation dans le droit" and "subrogation dans l'action". To my mind the English text of Article 47 can mean only one thing: that the official or those entitled under him are wholly divested of their rights (within the limits, of course, of the obligations of the Communities under Annex VIII). I understand that the German and Italian texts have the same meaning. So, in my opinion, that must be the way in which the ambiguities, such as they are, in the other texts are to be resolved.

It thus appears that, to the extent of the obligations of the Commission under Annex VIII, the applicants had no right of action against Mr Teugels. That no doubt is a point that could have been taken by Mr Teugels before the Tribunal, had those handling his case known of Article 47. It is also a point that the Commission itself could have taken before the Tribunal, had it applied to be joined as a "partie civile". But it does not follow that, because no-one concerned in the proceedings before the Tribunal was aware of it, the Commission now has a remedy against the applicants under the Staff Regulations.

As to that, the Commission, as Your Lordships know, relied only, and it emphasized that it relied only, on Article 41.

That article, in my opinion, simply does not fit this case. Its first paragraph

provides that the "amount of pension may at any time be calculated afresh if there has been error or omission of any kind". Its second provides that a pension "shall be liable to modification or withdrawal if the award was contrary to the provisions of the Staff Regulations or of this Annex". There is no question in this case of the amount of pension due to either of the applicants having been calculated wrongly. Nor is there any question of the award to either of them of her pension having been contrary to the provisions of the Staff Regulations or of Annex VIII. That award was made in February 1973, to take effect from 1 March 1973, and was then unquestionably in order. Nothing has happened since to cast doubt on its correctness. The Commission's grievance is not that the applicants' pensions were wrongly calculated or wrongly awarded to them, but that they wrongly received from Mr Teugels's insurers damages to which they were not entitled.

The only provision of the Staff Regulations that deals with payments wrongly received is Article 85. The Commission itself, however, conceded that Article 85 was inapplicable in this case, for two reasons. The first is that Article 85 applies only to sums overpaid by the Community institutions themselves. The second is that it permits sums overpaid to be recovered only 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."

To show the precision with which the Staff Regulations define the rights of recovery of Community institutions, I think it may be helpful if I refer also to Article 46 of Annex VIII, which provides:

"Any sums due from an official of the Communities at the date when a benefit is payable under this pension scheme shall be deducted from the amount of his benefit or from the benefits payable to those entitled under him. The deduction may be spread over a number of months."

That however applies only to sums due by the official himself to the institution. It does not apply to sums wrongly received by those entitled under him from third parties.

I conclude that the decision of 1 June 1978 was *ultra vires* and void. In my opinion, the Commission could recover from the applicants the damages erroneously awarded to them by the Tribunal, if at all, only by exercising the remedies available to it under Belgian law in the Belgian courts.

If Your Lordships should take a different view of the correct interpretation of the relevant provisions of the Staff Regulations, Your Lordships will need to consider the arguments that were submitted to us about the conduct of the parties, and in particular the argument put forward on behalf of the applicants that the Commission, by its conduct up to 25 May 1977, precluded itself from subsequently enforcing against the applicants any rights it derived from Article 47.

In my opinion that argument was well founded. True Maître Humblet's letter of 19 April 1973 was inaptly worded having regard to its purpose, not so

much because it referred to a "statut contractuel" but because it did not refer to possible rights of subrogation or the like. True also his reaction to Mr Blenkers's letter of 22 May 1973 (total silence until March 1974) was unhelpful. But no-one on behalf of the Commission pressed him for an answer. More pertinently the Commission took no step to inform itself directly of the state of the litigation, much less to take part in it.

I confess that, from the documentary evidence and the pleadings, I had concluded that the Commission's conduct was explicable only on the footing that, until the "recensement" referred to by the Director-General in his letter of 25 May 1977, everyone concerned with this case on behalf of the Commission overlooked Article 47. At the hearing, however, counsel for the Commission gave three reasons for the Commission's conduct. The first was that having been informed belatedly of the proceedings before the Tribunal, the Commission did not have time to apply to be joined as a "partie civile". That of course was not so, as the Commission would soon have discovered if it had bestirred itself, e.g. by instructing counsel on its own behalf. The second reason given was that, although Belgian law would have permitted the Commission's joinder as a "partie civile", the point was doubtful in French law. That reason puzzles me, both because it seems difficult to reconcile with the first and because I do not understand why it was thought that French law could be relevant. Thirdly it was said that the Commission wished to bring an action in a civil court as late as possible so as to make its initial claim as large as possible and so reduce the need to claim reimbursement from Mr Teugels each time it paid an instalment of the applicants' pensions. That too seems to be difficult to reconcile with the first reason. Moreover I would have thought that the Commission's obligations under the pension scheme could have been quantified with the help of actuarial tables. However, what seems extraordinary, if that was the Commission's intention, is that it should have given no notice of it to Mr. Teugels or his insurers.

At all events the Commission's conduct was such as to lead Maitre Humblet and his clients to believe that the Commission had no rights in the matter or that, if it did, it had no intention of exercising them. In that belief the latter shouldered alone the risks and the expense of the litigation. We were reminded in that connection that in Belgium the costs awarded to a successful litigant do not include counsel's fees.

The applicants rested their argument on this part of the case on the French doctrine of "renonciation implicite", which also exists in Belgian law. The Commission submitted that that doctrine did not apply, mainly on the ground

that, as a public authority, it could not waive its rights. In my opinion, however, for the reasons I stated earlier, Article 47 does not confer on a Community institution rights that it is bound to exercise; it is perfectly free to waive them. Moreover, this Court, in developing the general principles of Community law, draws on what has been termed "the legal heritage" of all the Member States. It seems to me that, if one considers, for instance, the Danish law as to "stiltiende afkald", the English law as to estoppel, the German law as to "Rechtsverwirkung", the Italian law as to "legittimo affidamento" and the Scots law as to personal bar, as well as the French law as to "renonciation implicite", there emerges a general principle (applicable to a public authority except where that would be irreconcilable with its public duty) that one who, having legal relations with another, by his conduct misleads that other as to a material fact (including the existence of a right) cannot thereafter base on that fact a claim against him if he (that other) has acted in a relevant way in reliance on what he was led by that conduct to believe. What matters here, of course, is the existence of the principle, not the scope or mode of its application in the law of any particular Member State. The principle exists also in public international law where, although it is generally given its English name of "estoppel", it is considered to have its origin in Roman law.

Such is the principle on the basis of which I said earlier that, in my opinion, the applicants were entitled to succeed even if I was wrong as to the interpretation of the Staff Regulations.

I turn to the applicants' claims for relief.

They claim first a declaration that the decision of 1 June 1978 was void. To that they are in my view entitled.

Secondly, they claim, if and in so far as it may be necessary ("pour autant que de besoin"), a declaration that the express rejection of their complaint by the letter dated 19 January 1979 was void. For the reasons that I explained a moment ago in my opinion in the *Paschek* case, such a declaration is not, in my view, necessary.

Thirdly, they ask for an order requiring the Commission to pay to them the sums deducted from their pensions pursuant to the decision of 1 June 1978. That is an order that Your Lordships have jurisdiction to make and should, in my view, make.

Fourthly, they claim interest at such rate as the Court should consider "normal" on those sums as from the respective dates when they were deducted. As to that I need not repeat what I said in the *Paschek* case. Consistency seems to me to require that Your Lordships should award interest at the rate of 8% here too. No problem arises as to the dates from which interest should run, since the applicants' complaint preceded the first deduction.

Lastly the applicants ask for costs. They are, in my opinion, entitled to them.