JUDGMENT OF THE COURT (SECOND CHAMBER)
15 JULY 1970[1]

Charles Chuffart, Jean Jaeger and Jean Janssen v Commission of the European Communities

Joined Cases 60, 61 and 62/69

Summary

Officials — Receipt before the entry into force of the Staff Regulations of 1962 of separation allowance provided for by the ECSC Staff Regulations — Expatriation allowance — Failure to qualify therefor — Right to an amount equivalent to the separation allowance — Persons entitled

(*ECSC Staff Regulations of Officials of 1962, Article 97*)

The sole purpose of the first paragraph of Article 97 of the ECSC Staff Regulations of Officials of 1962 is to maintain for the benefit of officials who received a separation allowance under the ECSC Staff Regulations of Officials of 1956, without qualifying for an expatriation allowance under Article 4 of Annex VII to the Staff Regulations of 1962, the amount which they would have received by way of separation allowance under the former system. The said first paragraph is thus not applicable to officials who, having received the expatriation allowance, no longer qualify therefore.

In Joined Cases

60/69: CHARLES CHUFFART, residing at Uccle,

61/69: JEAN JAEGER, residing at Etterbeek,

62/69: JEAN JANSSEN: residing at Evere,

all officials of the Commission of the European Communities, represented by Jacques Putzeys, Advocate, of the Cour d'appel, Brussels, with an address for service in Luxembourg at the office of Nicolas Wennmacher, Huissier, 17 boulevard Royal,

applicants,

1 — Language of the Case: French.

V

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Louis de la Fontaine, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Applications for:

— the annulment of the implied decisions rejecting the requests for the grant of an amount in compensation for the separation allowance;

— the grant of such an amount;

— the payment of compensation in respect of material and non-material damage suffered,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, A. Trabucchi and W. Strauß (Rapporteur), Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

1. The applicants, who are Belgian nationals, entered the service of the High Authority of the ECSC in 1954 (Mr Chuffart) and 1953 (Mr Jaeger and Mr Janssen). At that time they were resident in Luxembourg. When the ECSC Staff Regulations of Officials (hereinafter referred to as the 'first ECSC Staff Regulations') were applied to them on their entry into force on 1 July 1956 they were granted the separation allowance provided for in those Staff Regulations and the 'General Community Regulations' (hereinafter referred to as the 'General Regulations') which form an integral part of the first ECSC Staff Regulations.
As from 1 January 1962 this allowance was replaced, as regards the applicants, by the expatriation allowance provided for in the

ECSC Staff Regulations of Officials which came into force on that date (hereinafter referred to as the 'second ECSC Staff Regulations') and in the EEC and EAEC Staff Regulations of Officials which came into force on the same date (hereinafter referred to as the 'EEC-EAEC Staff Regulations').

2. In an official communication published in Staff Courier No 14 of 11 March 1968, the Commission brought to the notice of officials the list of departments which were to be established in Brussels and Luxembourg.
A further official communication from the Commission which appeared in the Staff Courier (Supplement to No 15 of 26 March 1968) reminded officials that:

> 'In accordance with Article 4 of Annex VII to the Staff Regulations[1], entitlement to the expatriation allowance is subject to conditions of nationality and habitual residence. Under these provisions Belgian officials transferred from Luxembourg to Brussels and Luxembourg officials transferred from Brussels to Luxembourg lose the right to this allowance. However, officials who were already in the service of the Communities before the entry into force of the Staff Regulations of 1962 may benefit from the transitional provisions provided for in Articles 106 [of the EEC-EAEC Staff Regulations] or 97 [of the second ECSC Staff Regulations] if they still qualify for the former separation allowance by satisfying the requirements therefor.'

3. By letters dated 28 May (Mr Jaeger) and 12 June (Mr Chuffart and Mr Janssen), the defendant informed the applicants of its decision to appoint them to certain new posts, 'in the context of measures of administrative reorganization and rationalization of departments'. These letters stated that their former postings were terminated as from 4 June (Mr Jaeger) and 20 June (Mr Chuffart and Mr Janssen).

4. In memoranda of 11 June (to Mr Jaeger) and 5 July 1968 (to Mr Chuffart and Mr Janssen) the defendant informed the applicants that:

— the appointments arising out of the letters referred to above 'will involve a change in your place of employment, which will in your particular case become Brussels as from [4 October: Mr Jaeger; 20 October: Mr Chuffart and Mr Janssen] at the latest';

— 'under the provisions of the Staff Regulations (fourth paragraph of Article 97 [of the second ECSC Staff Regulations]), you will no longer receive the expatriation allowance. However, you will continue to receive this allowance [until the dates indicated in the preceding indent], unless you move house before the date'.

5. By letters dated 12 July and 12 August 1968 addressed to the Director-General for Personnel and Administration at the Commission, Mr Janssen and Mr Jaeger respectively stated:

— that they were unable to agree with the interpretation of the fourth paragraph of Article 97, as set out in the abovementioned memoranda of 11 June and 5 July, and that they reserved their rights in this connexion;

— that precedents existed in similar cases for the favourable settlement of the problem of the separation or expatriation allowance..

By letters dated 6 August (Mr Janssen) and 6 September 1968 (Mr Jaeger) the Director-General in question replied that: 'It is not possible for you to continue to receive the expatriation allowance'.

6. By memoranda of 25 September (Mr Chuffart and Mr Jaeger) and 4 November 1968 (Mr Janssen) addressed both to the officials concerned and to other departments, the Director General for Personnel and Administration noted that the expatriation allowance was to be discontinued as from 1 August (Mr Chuffart and Mr Jaeger)

1 — This term refers to the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council (OJ L56 of 4.3.1968, p. 1) hereafter referred to as the 'combined Staff Regulations'.

or from 1 November 1968 (Mr Janssen), which in fact occurred.

7. By a joint letter dated 17 June 1969 addressed to the President of the Commission, making express reference to Article 90 of the EEC-EAEC Staff Regulations, the applicants:

— declared, stating their reasons, that the discontinuance of the expatriation allowance represented 'a mistaken application of the provisions of the Staff Regulations';

— requested that Article 106 of the EEC-EAEC Staff Regulations be applied to them 'as from the date of our posting to Brussels' and that they be paid the amount 'which they received by way of separation allowance on 1 January 1962'.

8. As no reply was received to that letter the officials concerned lodged the present applications which were received at the Court Registry on 16 October 1969.

II — Conclusions of the parties

In their applications, each of the *applicants* claims that the Court should:

1. Annul the implied decision of rejection in issue;

2. Rule that the applicant is entitled to be paid the amount which he would have received by way of separation allowance; order the opposite party to pay him this amount;

3. Rule that as a result of acts and omissions on the part of the opposite party the applicant has suffered exceptional damage, the amount of which should be determined impartially by the Court;

4. Finally, order the opposite party to pay all the costs.

In its defence to each application, the *defendant:*

— leaves the question of the admissibility of the application to the wisdom of the Court of Justice;

— contends that if the application were to be found to be admissible the Court of Justice should dismiss it in its entirety as unfounded; and at all events;

— contends that the applicant should be ordered to pay the costs.

In their replies, the *applicants* restate the conclusions set out in their applications, apart from the phrase 'exceptional damage', which is replaced by the expression 'material and non-material damage'.
In its rejoinders, the *defendant* restates the conclusions formulated in its defence to each application.

III — Procedure

The procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (Second Chamber) decided:

— to order the joinder of the present cases for the purposes of the oral procedure and judgment;

— to open the oral procedure without holding any preparatory inquiry.

The parties presented oral argument at the hearing on 14 May 1970.
The Advocate-General delivered his opinion at the hearing on 25 June 1970.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1 — *Admissibility*

Although it leaves this point to the wisdom

of the Court, the *defendant* questions whether the applications are admissible, on the ground that they are out of time. In particular, it wonders whether the concept of legal certainty did not require the officials concerned to introduce a complaint through official channels at the latest on the expiry of the third month following payment of the reduced remuneration, and possibly to follow it by an action for failure to act lodged within the prescribed periods. It is also necessary to consider whether, in the light of the communication of 26 March March 1968, the memoranda of 11 June and 5 July 1968 brought the imminent discontinuance of the allowance in question to the notice of the applicants.

The *applicants* reply, in particular, that:

— there can be no time-bar in the case of personal rights;

— the Staff Regulations lay down no time-limit for the submission of complaints through official channels;

— the present applications are based on a new request. In fact, they are based solely on the first paragraph of Article 97 of the second ECSC Staff Regulations, whereas the measures and actions to which the defendant refers in order to question the admissibility of the applications were based on the *fourth* paragraph of the same article;

— the applicants are entitled to refer to a new factor authorizing them to reopen the question. In fact the defendant has never put forward any explanation in justification of its attitude, which is in any case not its true attitude, as the defendant has always considered that only the *fourth* paragraph of Article 97 applies to the applicants.

The *defendant* replies that according to the established case-law of the Court, although the request or complaint referred to in Article 90 of the Staff Regulations may be submitted at any time, it can only extend the period for lodging an appeal before the Court if it is introduced within the period laid down therefor. The question of admissibility is doubtful only to the extent to which the applications concern the allowance provided for by the *first* paragraph of Article 97.

2 — *The substance*

A — The requests for the grant of the allowance in question

In their applications the *applicants* put forward as their 'sole submission' the infringement of Article 97 of the second ECSC Staff Regulations and of Article 106 of the EEC-EAEC Staff Regulations.

If it is accepted, as the defendant maintains, that the applicants do not qualify for the grant of an expatriation allowance under Article 4 of Annex VII to the combined Staff Regulations, they are none the less entitled, under the provisions referred to above, to be awarded the amount which they would have received by way of the separation allowance referred to in the first ECSC Staff Regulations and in the General Regulations.

In its defence the *defendant* interprets the first paragraph of Article 97 to mean that, in order to receive the amount in compensation for the separation allowance provided for by that provision, the applicants must qualify for the grant of that allowance under the first ECSC Staff Regulations and the General Regulations 'having regard to (their) present place of residence and to (their) present place of employment'. Under the terms of Article 9 (b) of the General Regulations, for an official to retain the benefit of the said allowance in the event of a new posting, it was only necessary for him to have established his residence in an area situated 25 km or more from the place where he was resident before he took up his employment. In fact the aim of Article 97 of the second ECSC Staff Regulations and Article 106 of the EEC-EAEC Staff Regulations is to continue to allow the officials referred to therein to qualify for the former separation allowance, the requirements for which were less strict than those laid down for the expatriation allowance in the new Staff Regulations. Since, following their posting to Brussels, the applicants have not taken up residence 25 km or more

from their place of residence before they entered the service of the Community (which was again Brussels), their applications are not justified.

The defendant gives the following examples in order to illustrate the scope which it attributes to the contested Articles 97 and 106:

'An official of Belgian nationality who comes from an area outside Brussels, even if it is more than 70 km from Brussels, who was appointed *after 1 January 1960* under the system [laid down in the EEC-EAEC Staff Regulations], who was posted first to Luxembourg and whose place of employment was subsequently transferred from Luxembourg to Brussels, loses not only his entitlement to the expatriation allowance which he received in Luxembourg, but all entitlement to any amount whatever by way of separation allowance. However, a colleague who is also of Belgian nationality and also comes from an area outside Brussels situated more than 70 km from that city, who was employed *before 1 January 1962* under the so-called "Brussels" system (that existing before the entry into force of the EEC-Euratom Staff Regulations) who was posted first to Luxembourg and whose place of employment was subsequently transferred from Luxembourg to Brussels, loses the benefit of the expatriation allowance but may still take advantage of the more liberal conditions set out in the former "Brussels" system (place of origin situated more than 70 km from the place where, as a result of his transfer, he has established his new residence) in order to claim payment of the amount of his former separation allowance.'

In their replies the *applicants* state that their request concerns the grant of a sum in compensation for the separation allowance which they in fact received before 1962, and that their applications refer to the first paragraph of Article 97 of the second ECSC Staff Regulations and to Article 106 of the EEC-EAEC Staff Regulations. In particular, they put forward the following considerations:

The aim of the provisions in the Staff Regulations which governed successively the separation allowance and the expatriation allowance was and is, first, to grant such an allowance to servants who must suffer a change in their living conditions and, secondly, 'to ensure continued benefit in respect of such separation allowance or to maintain the value of the expatriation allowance for the benefit of those who, in a changed situation, no longer fulfil the original requirements'. The authors of the various Staff Regulations have always taken care that the transfer from one system of Staff Regulations to another should not adversely affect existing situations.

Therefore, to be able to invoke the application of the first paragraph of Article 97 of the second ECSC Staff Regulations, it is sufficient for the official concerned to have received the separation allowance before the implementation of those Staff Regulations and for him not to qualify under Article 4 of Annex VII to the combined Staff Regulations.

The practice followed by the defendant results in the existence of 'intolerable disparities' among officials recruited before 1962:

— for example, while he is unable to claim an expatriation allowance, a Luxembourg official who is recruited from an area situated more than 25 km from the city of Luxembourg and who continues to reside there, benefits from the continued payment of the amount in compensation for the former separation allowance; on the other hand, a colleague from the same country, recruited in Luxembourg to perform duties in Brussels and transferred to Luxembourg following the merger of the executive bodies, no longer receives any allowance as from that moment. In the first example the official never left his country while in the second he was abroad for 10 years;

— according to the defendant's argument, the applicants would receive the allowance in question if they had fixed their place of residence more than 25 km from Brussels.

The first paragraph of Article 97 and Article 106 are not intended to recreate artificially the conditions for granting the former

separation allowance, but provide for the award of an amount equal to that allowance, which cannot be modified in the future, to those who qualify therefor. The defendant is confusing the respective conditions of application of the first and fourth paragraphs of Article 97, although the difference in wording existing between these two provisions confirms that the applicants' argument is well-founded. The reference in the first paragraph to the first ECSC Staff Regulations was made 'for the sole purpose of calculating the amount to be paid in compensation'. It must be borne in mind that this provision provides for compensation in respect of the separation allowance and not for payment of the allowance itself which, moreover, is also apparent from the fact that it freezes the amount due at the level which it had reached on 1 January 1962.

The wording of the said first paragraph is identical to that of Article 106 of the EEC-EAEC Staff Regulations. Therefore, in view of the fact that a single body of Staff Regulations now exists, these two provisions must be interpreted in the same way. In fact, the applicants fulfil the conditions required for the application of Article 106.

In its rejoinders, the *defendant* puts forward, in particular, the following points:

It is true that, considered in isolation, the first paragraph of Article 97 of the second ECSC Staff Regulations appears also to refer to officials who were already in employment before 1962 and who, since 1 January 1962, have been or will be transferred to a place situated in the country whose nationality they bear. However, this provision has to be considered in the light of the fourth paragraph of the same article, which especially refers to officials who, following a change in their place of employment, no longer qualify for an expatriation allowance under Article 4 of Annex VII. As special rules form exceptions to general rules it must be accepted that in spite of its apparently more liberal wording the above-mentioned first paragraph applies solely to officials whose place of employment has not changed. On the other hand, in the absence of any provision creating an exception corresponding to the fourth paragraph of Article 97, Article 106 of the EEC-EAEC Staff Regulations also refers to officials transferred after 1 January 1962 to the country of which they are nationals. Although Article 106 provides for transferred officials to receive only the frozen amount of the former separation allowance while the fourth paragraph of Article 97 enables those transferred officials referred to therein to receive the expatriation allowance, this favourable treatment of former ECSC officials is explained by the fact that they had already been governed by Staff Regulations before 1 January 1962.

The result of all these points is that, in the present cases, the fourth paragraph of Article 97 is alone relevant. However, 'in order to remove all doubt as to the justification of its refusal of any allowance', the defendant also considers whether, supposing the first paragraph of Article 97 to apply also to servants transferred after 1962, this provision requires by implication that the place of recruitment of the official concerned be situated more than 25 km from his new place of employment. For this purpose it appears necessary to analyse first Article 106 of the EEC-EAEC Staff Regulations, as it is practically identical to the first paragraph of Article 97 of the second ECSC Staff Regulations.

Article 106 applies only to an official who, as a result of a transfer, is placed in a position in which under the conditions of employment in force before 1962, he would have benefited from the separation allowance; thus it applies to an official whose place of recruitment was situated at least 70 km from Brussels, his new place of employment. This interpretation is based on the following factors:

— If the contrary argument were correct, the authors of the provision in question would not have used the formula 'the amount ... *which he would have received*', but rather the phrase 'the amount *which he was receiving*'. Similarly, it would not have been necessary to add 'under the scale of remuneration existing before these Staff Regulations entered into force'.

— The sole purpose of transitional provisions such as those in question is to grant servants the benefit of the earlier rules, to

the extent to which they were more favourable than the new rules. The argument put forward by the applicants amounts to accepting that 'all servants in employment before 1962 who benefited, be it only for a few weeks, from the separation allowance, are entitled to the extraordinary advantage of retaining the benefit of that allowance without even fulfilling the already extremely liberal conditions under the scheme in force until 1 January 1962'.

A similar interpretation applies to the first paragraph of Article 97.

As regards the fourth paragraph of Article 97, the institutions have always interpreted this to mean that if a servant recruited under the ECSC Staff Regulations continues after his transfer to qualify for the separation allowance under the first ECSC Staff Regulations (distance of more than 25 km between the place of recruitment and the new place of employment), he is entitled to the expatriation allowance. Here again, the transitional provision does not attribute to every official transferred to another place of employment an 'established right' to the allowances in question. As the applicants originated in Brussels they cannot benefit from the provision in question.

Neither the scheme laid down in the ECSC Staff Regulations in force before 1 January 1962, nor the schemes which came into force on that date provide, in the matter of separation or expatriation allowances, for the possibility of an official's 'taking root' as the result of prolonged residence in one place, nor of his being 'uprooted' as a result of prolonged absence from his place of origin. The argument put forward by the applicants in fact amount to accepting that the provisions in dispute are based on such criteria.

Replying to the applicant's argument that those provisions are intended to award an allowance to servants who must accept a change in their living conditions, the defendant observes that it has only ever been a question of a change in relation to the living conditions of the servant at his *place of origin*. This principle is also to be found in the first paragraph of Article 4 of Annex VII to the combined Staff Regulations.

The criticism contained in the applicants' example of the two Luxembourg officials is directed at the Staff Regulations themselves. It is not true that the applicants would receive the separation allowance if they had settled more than 25 km from Brussels. Neither the former High Authority nor the Commission has ever interpreted the phrase 'have been caused' which appears in Article 9 of the General Regulations to mean that it is enough for an official to take a deliberate decision, which is not required on grounds of his employment, to settle in an area more than 25 km from his place of employment in order to be able to claim the separation allowance. Such an official has in fact placed himself voluntarily in a position regarded by the Staff Regulations as disadvantageous.

Articles 97 and 106 only concern the 'amount which he would have received by way of separation allowance' and not the allowance itself, but this is explained by the fact that the allowance as such no longer existed after 1 January 1962.

B — The claim for damage

In their applications, the *applicants* state that even if the defendant awarded them the amounts claimed, they would not be entirely restored to the position which would have esisted in the absence of the implied refusal at issue. In fact, they claim to have been placed 'abruptly' and without warning in a psychological and financial situation of particular difficulty.

In its defence, the *defendant* replies that as it has correctly applied the Staff Regulations it is responsible for no wrongful act or omission giving rise to damage. Moreover, the provisions of the various Staff Regulations which are in question are not arbitrary in character; on the contrary, in cases such as the present loss of the allowances is fully justified by the fact that the official is no longer inconvenienced either by separation or by expatriation.

The discontinuance of the emoluments in question could not have been a surprise to the applicants, who were aware of the clear wording of the Staff Regulations and who received, within the prescribed period, communications of both a collective and an

individual nature concerning the way in which those Regulations would be applied to their cases.

In their replies, the *applicants* maintain that even if the Court were to dismiss the application for annulment, they are entitled to complain of a wrongful act or omission on the part of the defendant. Officials are entitled to expect the administrative authority to draw up its Staff Regulations for the purpose of protecting their individual rights.

In order to know whether they were to be posted to the departments established in Brussels the applicants had to wait for the memoranda of 28 May or 12 June 1968. In addition, Mr Jaeger and Mr Janssen refer to certain circumstances which concern the departments to which they were answerable at that time and conclude that they were unable to be certain until the last minute that they were being posted to Brussels and not to Luxembourg.

The applicants complain of a 'lack of information' and a 'failure to protect their legitimate expectation'. The letters dated 11 June or 5 July 1968 in fact omitted to specify that the applicants could retain the expatriation allowance if they settled more than 25 km from Brussels.

In addition, Mr Chuffart and Mr Jaeger refer to 'the abrupt withdrawal of the allowance'. On 15 October 1968 the defendant deducted, in a single operation, a sum amounting to three months' expatriation allowance (BF 27 771 or BF 34 191).

The defendant's attitude resulted in both *material* loss corresponding to the amount of the frozen separation allowance which the applicants were refused as from 1 August or 1 November 1968, and *non-material* loss. The latter resulted from the sudden reduction in income and, in particular:

— from the fact that this reduction occurred when, taking into account the changes which had taken place in the interla organization of the Commission, the applicants were obliged to deal with quite new problems;

— from the fact that, returning to Brussels after 14 or 15 years' absence, the applicants had to face problems arising from their transfer: complete disruption of their former manner and way of life at the age of 45 or 51 years, the fact that accommodation is more expensive then in Luxembourg, etc.

In its replies the *defendant* raises the question whether, in their rejoinders, the applicants have not submitted a new request which is inadmissible at the present stage of the proceedings. They state therein for the first time that a wrongful act or omission existed even if the implied decision in dispute was lawful. The defendant states that it leaves this point to the wisdom of the Court.

The criticisms made by the applicants are in fact directed to the authors of the Staff Regulations.

The uncertainty preceding the decision to post the applicants to Brussels was not in itself sufficiently serious to give rise to a right to damages. Moreover, it was inherent in the measures which the defendant had to take in relation to numerous other officials. As has already been stated, it is not correct to say that the applicants would have been able to claim the expatriation allowance if they had settled more than 25 km from Brussels.

The applicants' position is no less favourable than that of many other officials, in particular officials who originated in Brussels and who, having always been resident in that city, have never received any allowance. In particular, if the applicants complain of being 'uprooted' from Luxembourg it must be concluded that for many years they received an allowance which amply compensated them for the disadvantages of 'separation'.

As regards the high cost of living in Brussels, the differences in the weighting factor are specifically designed to take account of possible disadvantages of this nature.

Grounds of judgment

1 By applications lodged on 16 October 1969 the applicants, who lost the benefit of the expatriation allowance following a change in their place of employment, requested the Court to annul the implied decisions by which the Commission refused to award them the sum which they would have received by way of separation allowance under the first paragraph of Article 97 of the second ECSC Staff Regulations.

2 In addition, they have claimed compensation for the damage which they allegedly suffered as the result of a wrongful act or omission on the part of the Commission.

I — Admissibility

3 The defendant raises the question whether the applications are inadmissible on the ground that they were submitted outside the prescribed time-limit.

4 It claims that the concept of legal certainly required the applicants to submit a complaint through official channesl at the latest on the expiry of the third month following the first payment of the reduced remuneration, and to follow it if necessary by an appeal to the Court.

5 Moreover, the defendant claims that the staff memoranda addressed on 11 June 1968 to the applicant in Case 61/69 and on 5 July 1968 to the applicants in the two other cases, brought the imminent discontinuance of the expatriation allowance to the notice of the officials concerned.

6 The proportion of the applicants' emoluments which was discontinued in 1968 was made up of the *expatriation* allowance provided for in Article 4 of the combined Staff Regulations.

7 The discontinuance of that allowance also forms the subject of the abovementioned staff memoranda.

8 That allowance was discontinued in pursuance of the *fourth paragraph* of Article 97 of the second ECSC Staff Regulations.

9 On the other hand, the present applications seek to obtain for the applicants the amount which they would have received by way of the former *separation* allowance, in accordance with Article 106 of the EEC-EAEC Staff Regulations and the *first paragraph* of Article 97 of the second ECSC Staff Regulations.

10 Thus, the present applications do not concern the measures taken by the Commission in 1968.

11 The applications are thus admissible.

II — Substance

1 — *The first two heads of claim*

12 Under the first two heads of claim in their applications the applicants are seeking, first, the annulment of the implied decision rejecting their request for the award of the amount which they would have received by way of separation allowance, and secondly, a ruling that they may claim payment of this amount and an order for it to be paid by the defendant.

13 The applicants base these requests on Article 106 of the EEC-EAEC Staff Regulations and the first paragraph of Article 97 of the second ECSC Staff Regulations.

14 The content of these two provisions is the same although the first refers to officials established under the EEC-EAEC Staff Regulations whilst the second refers to officials who, having previously been subject to the first ECSC Staff Regulations, automatically became officials within the meaning of the second Staff Regulations of that Community by virtue of Article 93 thereof.

15 As the applicants fall into the latter category their applications must be considered solely within the context of the abovementioned first paragraph of Article 97.

16 The sole purpose of the first paragraph of Article 97 is to maintain for the benefit of officials who received a separation allowance under the first ECSC Staff Regulations, without qualifying for an expatriation allowance under the stricter requirements of Article 4 of Annex VII to the second ECSC Staff Regulations, the amount which they would have received by way of separation allowance under the former system.

17 Having received the separation allowance under the terms of the first ECSC Staff Regulations, the applicants qualified for the expatriation allowance under the terms of the second ECSC Staff Regulations.

18 Thus they were never in the situation referred to in the transitional provision contained in the first paragraph of Article 97.

19 Accordingly, the first two heads of claim in the application must be dismissed as unfounded.

2 — *The third head of claim*

20 Under the third head of claim in their applications, the applicants request the Court to 'rule that as a result of acts and omissions on the part of the opposite party, [they] suffered exceptional damage, the amount of which should be determined impartially by the Court'.

21 This request is based on the conditions under which the applicants' expatriation allowance was discontinued.

22 The legal justification for this disadvantage is to be found in the first decisions taken by the Commission under the fourth paragraph of Article 97 of the second ECSC Staff Regulations, which became definitive when no appeal was submitted within the period laid down.

23 As the applicants were duly advised of the measures for the reorganization of departments following the merger of the institutions and the effects which these would have on their individual positions, they cannot complain that the Commission's action was such as to render it liable.

24 For this reason the third head of claim must be dismissed.

III — Costs

25 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs, although this is subject to the provision in

Article 70 of those Rules according to which in proceedings brought by servants of the Communities, institutions shall bear their own costs.

26 The applicants have failed in their submissions.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations of the ECSC which came into force on 1 July 1956;
Having regard to the General Regulations of the ECSC which came into force on the same date, especially Article 9 (b);
Having regard to the ECSC Staff Regulations of Officials which came into force on 1 January 1962, especially Articles 93 and 97;
Having regard to the EEC and EAEC Staff Regulations of Officials which came into force on 1 January 1962, especially Article 106;
Having regard to Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down, in particular, the Staff Regulations of Officials of the European Communities (OJ L 56 of 4. 3. 1968, p. 1);
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the applications;**

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

Pescatore Trabucchi Strauß

Delivered in open court in Luxembourg on 15 July 1970.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber