In Case 44/59

RUDOLF PIETER MARIE FIDDELAAR, represented by Marcel Slusny, Advocate at the Cour d'Appel, Brussels, with an address for service in Luxembourg, at the Chambers of Emile Poos, 9, rue de Nassau,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Paul Leleux, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of H. Manzanarès, Secretary of the Legal Service of the European Executives, 2, place de Metz,

defendant,

Application for

annulment of the decisions contained in the letters addressed to the applicant by the Commission of the European Economic Community dated 24 July and 14 August 1959;

appointment of the applicant on a provisional basis in the Language Department in Grade L/C, Step 1;

damages;

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes, President of Chamber, O. Riese, L. Delvaux, Judges and R. Rossi (Judge–Rapporteur),

Advocate–General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I – Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare null and void the decision of dismissal communicated to the applicant by letter of 24 July 1959 and confirmed by letter to him of 14 August 1959;

2. Rule that the applicant shall be deemed

to be appointed on a provisional basis as an official or servant in the Language Department in Grade L/C, Step 1, and that he shall receive the remuneration, allowances and privileges appropriate to that grade under the same conditions as officials and servants in the same category engaged on a provisional basis;

order the Commission to pay to the applicant:

(a) compensation equivalent to one year's remuneration appropriate to Grade L/C, Step 1, in the Language Department, namely FB 400 000

(b) compensation equivalent to a year's head of household allowance appropriate to Grade L/C, Step 1, in the Language Department, namely FB 20 000;

(c) compensation equivalent to a year's dependent children's allowance and education allowance appropriate to Grade L/C, Step 1, in the Language Department, estimated at FB 125 000;

(d) compensation equivalent to the installation allowance at present paid to officials and servants of the same category, namely FB 60 000;

(e) reimbursement of travel expenses incurred by his family at the time of his entry into service, namely FB 5 000;

(f) removal expenses incurred by the applicant at the time of his entry into service on the conditions on which they are paid to officials and servants in the same category, estimated at FB 50 000;

3. Order that, on his reinstallation, the applicant shall be paid the reinstallation allowances on the conditions and in accordance with the rules laid down for officials and servants in the same category and that he shall be reimbursed for his travel expenses and those of his family and his removal expenses on the conditions and in accordance with the rules laid down for officials and servants in the same category, subject to reference to the Court if the parties fail to agree on the amounts;

order the defendant to pay FB 500 000 or 10 000 EMA units as compensation for non-material damage;

in the alternative, rule and require that the European Economic Commission shall pay to the applicant his arrears of salary on the basis of FB 950 per day with effect from 1 October 1959 until he is actually reinstated;

rule and require that, in accordance with Article 9 of the conditions of Engagement of Auxiliary Staff, the Community shall retroactively insure the applicant with effect from his entry into service either with the Caisse Régionale de Maladie du Luxembourg or with such other fund as may be advised against sickness accident and surgical operations;

order the amounts to be paid to the applicant to be reduced by those which he has already received as the result of Order No 44/59/6558 of 1 October 1960;

order the European Economic Commission to pay the whole of the costs of the case, including those for the two interim measures and those for the examination of the witnesses.

The defendant contends that the Court should:

Declare the application for annulment of the decision removing him from his post and the concomitant application for reinstatement to be unfounded;

dismiss the applicant's applications accordingly;

approve the defendant's offer to pay the sum of FB 100 000 to the applicant;

dismiss the remainder of the applicant's claims;

award costs in accordance with the law.

II – Facts

The facts in the present proceedings may be summarized as follows:

The applicant was engaged on 1 September 1958 by a letter of appointment specifying, *inter alia*, that his engagement was 'temporary and provisional' and that he would be paid a daily allowance of FB 950. During the whole of his service he did in fact receive the said allowance in the form of advances rated as 'expert's fees'.

By letter of 24 July 1959 received from the Director-General for Administration, the applicant learned that his engagement would come to an end on the last day of the following month. The letter was couched in the following terms:

'I regret to have to inform you that after 31 August 1959 the Commission of the European Economic Community will dispense with your services as an expert in its Language Service'.

The time-limit laid down above was later extended until 30 September 1959 by letter of 14 August 1959 and until 31 October 1959 by letter of 29 September 1959.

The decisions contained in the letters of 24 July and 14 August are the subject of the present application, which was submitted on 24 September 1959.

III – Submissions and arguments of the parties

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

1. *Admissibility*

The defendant contests the admissibility of the second of the main conclusions in which the applicant seeks an order from the Court that he should be engaged on a provisional basis in the Language Department in a specified grade. In this connexion it contends that the power to make appointments belong exclusively to the administration and that consequently the Court of Justice cannot exercise this power in its stead.

2. *Substance*

Submission based on infringement of the rules of law applicable to the conditions of employment of the applicant

The *applicant* maintains that, regardless of the descriptions officially given to him by the administration, the real legal relationship which subsisted between the parties was that of a contract of employment under public law whereby he came under the rules which preceded the Staff Regulations and in particular was given a reasonable expectation of security of tenure.

In support of this he claims that:

from the beginning he was subject to conditions of service which would be inconceivable in the case of officials appointed to non-permanent posts;

he had to keep regular working hours;

he had submit to a medical examination by the Commission's appointed medical officer;

from the beginning, he has been called upon to discharge duties of indefinite duration and not to cope with urgent or temporary translation work;

the Commission issued him with a certificate enabling him to import his furniture and personal effects into Belgium duty-free;

he held a staff identity card.

According to the applicant, the combined effect of these facts is to demonstrate that the relationship between him and the Commission contained the essential features which, according to the Administrative Tribunal of the ILO,[1] distinguish the employment relationship subsisting between

1 – Judgment No 11 in *In re Desgranges* delivered on 12 August 1953.

an 'international official' and his employer, namely, (a) the continuous devotion of his activities to the agency which employs him, (b) the fact that his conditions of service are determined by way of regulation, unilaterally and not contractually (c) the fact that he has access ('accessibilité') to the sickness insurance and pension funds etc.

As regards this last feature, the applicant points out that, although he did not actually 'join' the sickness insurance and pension funds etc. it must not be forgotten that, first, the Administrative Tribunal of the ILO refers to 'access' ('accessibilité') and not to 'joining' ('accession') and that secondly, he received an allowance for doctor's fees and expenses of confinement on the birth of his fourth child.

The *defendant* contends, first, that being subject to departmental orders and to hours of work does not imply the existence in the present that 'conditions of service are determined by way of regulation, unilaterally and not contractually' as claimed by the applicant, because those conditions are also found in the employment relationship governed by private law.

On the contrary, it denies that the applicant's condition of engagement and of employment possess the typical characteristics of employment in the international or the national public service, namely, the 'continuous devotion of the official's activities to the agency which employs him' and the 'appointment of the servant to a post within an administrative establishment'. In this connexion it points out that:

(a) no decision to make an appointment in conformity with the procedure followed for the engagement of servants appointed to a permanent post was taken as regards the applicant;

(b) the appropriate letter of appointment, always addressed to the said servants was not addressed to the applicant;

(c) the mode of remunerating the applicant differed from that of the servants on the strength of the establishment since the necessary funds were charged to the item in the budget expressly intended to cover expenditure arising from the remuneration of temporary staff and the fees of free-lance interpreters.

(d) the remuneration of the applicants was never subject to any deduction either for contributions to the sickness fund or for the establishment of an insurance fund. The decision to allocate a birth grant to the applicant cannot be regarded as amounting to access to the sickness fund because it consisted of *ex gratia* and exceptional assistance which was charged to the budgetary item 'special assistance'.

Again, in respect of the issue of the special identity card and customs concession, the defendant points out that:

as to the first point this was merely a document for internal use which gave access to Community premises;

as regards the second, it must be borne in mind that there was no direct action on the part of the administration, which did no more than certify that the person concerned was in the service of the Community.

On the basis of the foregoing considerations, the defendant contends that the legal relationship which existed between the parties was that of a contract of service under private law. The defendant adds that, in any event, even if it be accepted that the relationship in question may be recognized as one under public law, the applicant could not on that account claim security of tenure because, until such time as the Staff Regulations provided for under Article 212 of the EEC Treaty are promulgated, all staff must be engaged under contracts of limited duration (Article 146 (3) of the EEC Treaty).

Submissions based on misuse of powers in respect of the applicant

The *applicant* maintains that the Commission exercised its powers in an arbitrary manner. In support of this he declares that the contested decision was intended to

disguise disciplinary action because it was no secret that his dismissal resulted from an article which he had had published in the Amsterdam *Algemeen Handelsblad* of 14 February 1959 and in which emphasis was laid on the lack of security which was the lot of the Commission's translators.

The *defendant* emphasizes that the reason for the applicant's dismissal was an unfavourable report on his vocational aptitude by the Head of the Language Service which was made well before the appearance of the article, namely on 16 January 1959, and contends that, since what was involved was temporary and casual employment subject to the rules of private law, the decision to dismiss him can in no way involve a misuse of powers on the part of the administration.

Submission based on infringement of essential procedural requirements because of the absence of a statement of reasons

On the basis of his argument that the legal relationship which has subsisted between the parties constitutes a contract of employment under public law, the *applicant* maintains that reasons should have been given for the contested decision to dismiss him and that in the absence of such reasons the decision is vitiated by infringement of essential procedural requirements.

The *defendant* replies that, as the applicant was engaged under a contract of service under private law, the disputed decision to dismiss him was an act coming under private law for which there was no need to give reasons.

Wrongful act committed by the defendant

In the alternative, the applicant maintains that the Commission of the EEC induced him to entertain a reasonable expectation of security of tenure, with the result that his dismissal appears to be improper and unwarranted and, at the very least, constitutes a wrongful act for which compensation is due to him.

The main task of the Court is to determine, in equity, the amount of compensation which would provide adequate redress for the damage which was inflicted on him. According to the applicant, the best available guide on this subject is Article 42 of the Staff Regulations of the ECSC.

The *defendant* replies that all that it has said concerning the legal nature of the contract of employment which subsisted between the parties is evidence enough that the applicant could not have been unaware of the temporary nature of his engagement, which means that the complaint raised by him is without foundation.

Submission based on infringement of the rules of Belgian law concerning the terms of contracts of service under private law

In the alternative, the applicant repeats that, on the assumption that the legal relationship which subsisted between the parties arose from a contract of service under private law, the notice of one month given by the defendant in its letter of 24 July 1959 must be regarded as insufficient.

The *defendant* first of all points out that the notice which it gave amounts, in aggregate, to three months and not merely to a month. It further contends that, in view of all considerations to which, under Belgian law, the period of notice for the determination of private law employment contracts is subject, and of the applicant's need to find fresh employment, notice of the three months appears more than adequate to satisfy the requirements of Belgian law.

IV — Procedure

The procedure followed its normal course.

On 24 September 1959 the applicant lodged an applicant for a stay of execution of the contested decisions, claiming that execution would involve him in irreparable or at least serious loss.

By Order of 20 October 1959 the President of the Court rejected the application for a stay of execution and reserved the costs,

after considering the written observations of the defendant and hearing the oral observations of the parties at the hearing on 19 October 1959.

By Order of 12 February 1960 the Second Chamber decided to refer the case to the Court pursuant to Article 95 (2) of the Rules of Procedure of the Court of Justice of the European Communities.

By Order of 20 June 1960 the Court decided to call witnesses to prove the facts alleged by the applicant in support of his complaints of misuse of powers.

The witnesses designated by the parties for this purpose were summoned by Order of the Court of 31 August 1960 and gave their evidence to the Court at the hearing on 1 October 1960.

In a statement received at the Registry on 1 October 1960, the applicant claimed that the Court should, as provided for under Article 186 of the Treaty establishing the EEC, 'order the Commission of the EEC to pay to the applicant as an advance on arrears of allowances or salary the sum of FB 100 000 or 2 000 u.a. or such other sum as in equity may be determined.

By Order of 1 October 1960, the President of the Court decided to grant, in part, the application of the applicant and ordered the Commission of the EEC to make an interim payment to the applicant of the sum of FB 60 000, costs reserved.

Grounds of judgment

Jurisdiction of the Court

it is necessary to examine whether the Court has jurisdiction to rule on the present applications. This issue was raised by the defendant during the proceedings for interim measures, but it was not put forward again in the main proceedings.

Under Article 179 of the Treaty 'The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment'.

At the present time, in the absence of Staff Regulations and pending their adoption, the Community's servants, in the broadest sense of the term, are subject to a special and provisional set of rules. This set of rules applicable to the said servants is, since it has not been expressly determined or defined by the competent authorities, the set of rules resulting from the express or implied conditions which were a basic element in the contracts of employment of those servants, as between them and the Community.

In consequence, the Court has jurisdiction to pass judgment on disputes between the Community and its servants because there exists as between them a set of rules which necessarily, albeit still provisionally, governs their relationship.

Furthermore, Article 173 of the Treaty lays down the general principle that 'The

Court of Justice shall review the legality of acts of the . . . Commission other than recommendations or opinions'. Far from conflicting with or standing in opposition to the application of Article 179 in the present case, this principle reinforces, if it were necessary, the soundness of such application.

Therefore the proper course is to reject as unfounded the objection that Article 179 cannot be applied to the present case because the Community has not promulgated the Staff Regulations for its servants and has not in the absence thereof expressly defined the set of rules provisionally applicable pending their being drawn up. The objection must be rejected also because, as stated above, there necessarily exists a set of rules applicable to the legal relationship between the Community and its servants.

Again, the objection based on the different terminology (servants, officials, etc.) must also be rejected for it is obvious that in present circumstances and pending promulgation of the Staff Regulations of Officials the word 'servant' includes any person employed in the services of the Community.

Admissibility

1. In his second main conclusion, the applicant seeks a declaration from the Court that he must be treated as engaged on a provisional basis as an official or servant in the Language Department at a given step in a given grade.

The power of appointment belongs exclusively to the administration and the latter is alone competent to decide in what grade and at what step a servant may be engaged. Since the Court of Justice cannot exercise this power in place of the Commission the second main conclusion submitted by the applicant is inadmissible.

2. The applicant claims, in the alternative, that the defendant should be ordered to pay compensation for non-material damage.

Under Article 38 (1) (d) of the Rules of Procedure of the Court of Justice of the European Communities, the application must contain the conclusions of the applicant.

The above-quoted conclusion was submitted for the first time in the written observations of the applicant relating to the measures of inquiry ordered by the Court on 20 June 1960 and it is not included by implication in the conclusions set out in the application. In consequence, this conclusion must be regarded as out of time and, accordingly, inadmissible.

Nevertheless, since this case involves proceedings in which the Court has unlimited jurisdiction it has, even where the conclusions want due form, the power

not only to annul but also, if need be, of its own motion to order the defendant to pay compensation for the non-material damage caused by a wrongful act or omission on its part.

Substance

Legal nature of the contract of employment

Under the conditions and circumstances in which the applicant was engaged by the Commission, the contract of employment concluded between the parties arises from the implied agreement between them.

The question arises whether that contract falls within public or private law.

In the present case, one of the contracting parties, the Commission of the European Economic Community, acting within the limits of the powers conferred on it by the Treaty, has legal personality as laid down by Article 210 of the Treaty. That personality is one of public law by virtue of the powers and duties appropriate to it. Consequently, the contract at issue was concluded by a person at public law.

Moreover that contract was concluded to enable the Language Service of the Commission to function properly. This service, which is responsible for ensuring that the contents of the acts of the Commission shall be identical in the four official languages of the Community, constitutes an important element in the procedure which has as its purpose the formulation in each language of those acts; thus that service is of the same public nature as the Commission itself.

Therefore, the contract at issue comes under public law and is subject to the general rules of administrative law.

Existence of a right to security of tenure

The applicant argues that, as the legal relationship created by the contract at issue comes under public law, it confers on him entitlement to conditions of employment before their adoption, the advantage of a set of rules pending promulgation of the Staff Regulations and gives him a reasonable expection of permanent employment.

Therefore the contested decision to dimiss the applicant, in terminating that relationship infringed the rules of law applicable to the conditions of his engagement and was accordingly irregular.

This argument is unfounded.

Article 246 (3) of the Treaty provides that, until the Staff Regulations of Officials

and the Conditions of Employment of other servants of the Community provided for in Article 212 have been laid down, each institution shall recruit the staff it needs and to this end conclude contracts of limited duration.

It follows from that provision that no relationship of employment existing between the Community and its servants before the Staff Regulations and the Conditions of Employment mentioned in Article 212 of the Treaty have been laid down, can create any permanent, legal relationship between the parties.

In consequence, staff recruited before that date cannot, on the basis of the conditions on which they were engaged, lay claim to appointment to permanent posts or the benefits of the future Staff Regulations since such appointments and such benefits are in themselves inconsistent with the limited character of any employment relationship created before the entry into force of the said Staff Regulations or Conditions of Employment.

Although the contract at issue was nevertheless concluded for an indefinite period, this is explained by the impossibility, at the time when it was concluded, of entering in contracts of limited duration provided for by Article 246 (3) of the Treaty because the permanent requirements of each service could not at that time be adequately foreseen.

Since, therefore, that contract at issue belonged to a stage preceding the conclusion of the contracts provided for by Article 246 (3) of the Treaty, it can on no account imply a common intention between the parties to enter into the legal relationship of a contract of permanent employment for such an intention is clearly contrary to the principle laid down in the said Article 246 (3).

Nor can such an intention be deduced from the fact that the applicant took part in a competition before entering the service of the Commission, for the object of the competition was to make available to the institutions of the European Communities a list of candidates suitable for subsequent engagement and not to embark forthwith on the recruitment of staff. Moreover, the results of the competition were not known until some months after the date when the applicant was engaged, which rules out any causal link between, on one hand, the holding of the competition and his taking part in it and, on the other, his engagement.

Therefore, since the applicant has no claim whatsoever to security of tenure, there is no point in considering whether the descriptions 'expert' or 'auxiliary' accurately reflect the nature of the legal relationship which existed between the parties.

In these circumstances, certain measures adopted by the Commission concerning the applicant and certain privileges which it granted to him cannot be used to lend permanence to the contract of employment at issue since those measures and

privileges cannot confer on the said contract a tenor and meaning which are expressly prohibited by Article 246 (3) of the Treaty.

There is, consequently, no basis for the applicant's argument that the Commission, by its conduct, encouraged him to expect security of tenure and thereby committed a wrongful act.

Finally, it is not possible, in the present case, to reply on the case-law of the Court of Justice of the ECSC, which has accepted that servants of the ECSC employed prior to the entry in force of the Staff Regulations could expect permanent employment, because, unlike Article 246 (3) of the Treaty establishing the European Economic Community, the last paragraph of the Article 7 of the Convention on the Transitional Provisions does not require every contract of employment concluded before entry into force of the Staff Regulations to be of limited duration and does not thereby preclude the relationship whereby the employee has some security and enjoys the expection of the benefit of the Staff Regulations.

Submission concerning misuse of powers

The applicant contends that, far from having been taken in the interests of the service, or at least substantially on those grounds, the decision of dismissal was the consequence of an article which he had published in the Amsterdam *Algemeen Handelsblad* of 14 February 1959 and in which emphasis was laid on the uncertain future of translators in the Language Service of the Commission, and that, as the decision at issue was, by virtue of this, a disguised disciplinary measure, it is vitiated by misuse of powers in regard to him.

As evidence that this complaint is justified, the applicant asked the Court to call witnesses to prove:

(a) 'that Mr Gummerer, head of the Language Service, assured the applicant that he found nothing to criticize in his work and that nothing would have happened to him if it had not been for publication of the aforementioned article';

(b) 'that, in reply to Mr Stempels, Attaché in Mr Hallstein's Cabinet, Mr van Riemsdijk, reviser in the Dutch section, declared that the applicant's work was in every way satisfactory and that, in his opinion, there was no reason why he should be dismissed apart, of course, from the article already mentioned'.

On 20 June 1960 the Court ordered that the facts hereinbefore mentioned be proved by witnesses, and the witnesses summoned by the Court gave evidence at the hearing on 1 October 1960.

In his evidence, Mr Gummerer stated that he had never given the applicant the assurance which is the subject of the first fact to be proved; that as he does not know Dutch he was not himself in a position to assess the quality of the work performed by the applicant; that, in order to do so, he had to rely on the assessment made by the Dutch revisers; and that although in his capacity as Head of the Translation Service and the person responsible for its efficient working, he had felt obliged to make some comment to the applicant concerning the publication of the article referred to, he nevertheless considered its publication as a 'superogatory' and not a 'further' reason to those which led him to recommend the appointing authority to dispense with the services of the applicant in the Language Service.

In his evidence, Mr van Riemsdijk stated that he had never declared that the applicant's work was 'satisfactory in every respect'; that, on the contrary, he had expressed the view that, whilst the applicant was not so unsatisfactory as to justify dispensing with his services, he was nevertheless not a good translator; and that, in his conversation with Mr Stempels, he had referred to publication of the press article attributed to the applicant as a very minor consideration.

Mr Stempels confirmed the evidence given Mr van Riemsdijk.

Questioned by the Court in his capacity as Director-General for Administration in the Commission of the EEC, Mr van Karnebeek testified that he had interviewed the applicant concerning publication of the press article as soon as it appeared and that, after the interview, he had considered the incident to be closed.

In accordance with Article 47 (6) of the Rules of Procedure of the Court of Justice of the European Communities, the above-named witnesses signed the minutes of their evidence and, after giving their evidence, Messrs Gummerer and van Riemsdijk took the oath in accordance with Article 47 (5) of the said Rules.

The testimony hereinbefore described did not confirm the allegations made by the applicant in support of his complaint of misuse of powers.

The applicant further contends that the lack of any consideration of the interests of the service in the contested decision to dismiss him is proved by the fact that another translator in the Dutch section, Mr van Alphen continued to be employed despite the fact that, in the classification of suitable candidates drawn up by Mr Gummerer on 16 January 1959, he was placed below the applicant.

Even on the assumption that Mr van Alphen had been illegally retained in employment, this is not, on the other hand, sufficient to justify the retention of the applicant if, on the facts, it is clear that the appointing authority decided to dismiss him in the interests of the service.

The aforementioned contention is in consequence irrelevant to the issue in dispute and in the circumstances of the case the Court cannot give it consideration.

All these considerations justify the conclusion that the applicant has not supplied proof that the reason for the contested decision to dismiss him was publication in the *Algemeen Handelsblad* of 14 February 1959 of the press article attributed to him and that the decision therefore constituted a disguised disciplinary measure.

The complaint of misuse of powers must be dismissed.

Statement of reasons for the decision of dismissal

The conduct of an authority, in administrative as in contractual matters, is at all times subject to observance of the principle of good faith.

The contract at issue, which comes under administrative law, is subject to observance of this principle and the fact that it was provisional or temporary does not exempt it from this requirement.

Consequently, the contested decision of dismissal, must, in order to terminate that contract, be justified on grounds relevant to the interests of the service and there must be nothing arbitrary about it; such, for example, as the need to dispense with the services of an unqualified servant or a servant occupying a post which has been abolished in the interests of the service.

The statement of the grounds on which an administrative measure is dictated by the public interest must be made in terms which are specific and capable of being challenged, for otherwise the official concerned would have no means of knowing whether his legitimate interests have been respected or infringed and furthermore any review of the legality of the decision would be hampered.

In the present case, the letters of dismissal did not more than notify the applicant, without giving any reasons, of the administration's intention to terminate the contract.

It is true that in December 1958 Mr Lankes notified all auxiliaries and experts employed in the Language Service, including the applicant, that it was necessary to reduce the staff of that service and that in consequence not all those servants could be found a place in the final establishment.

The applicant has accepted that the termination of his contract was undoubtedly connected in essence with that notification, but having regard to the circumstances of the case and, above all, the considerable time which elapsed between

the notification, which was in very general terms, and the letter terminating the contract, there was a duty to give a specific statement of reasons.

In consequence, the letter terminating the contract must be held to be insufficient.

This deficiency constitues a contractual wrong on the part of the Commission for which it is liable.

Its liability must, in the present case, be assessed in the light of the fact that the termination of the contract of employment has taken effect and that the Commission must discharge its obligation by way of damages.

In order to assess the amount of damage, account must be taken of the non-material damage suffered by the applicant by reason of the anxieties which the precarious position arising from the default of the Commission caused him and also by reason of his age and the situation of his family.

The Court has extracted from the circumstances of the case factors enabling it, in equity, to assess damages at FB 100000.

Consequently the offer made by the defendant to pay the applicant the sum of FB 100000 must be considered adequate.

By order of the President of the Court dated 1 October 1960, the Commission of the EEC was ordered to make an interim payment to the applicant of FB 60000; consequently, the amount of FB 100000 to be paid to the applicant as compensation for non-material damage must be reduced by the amount of the interim payment made to him.

Period of notice granted by the Commission

It is also appropriate to consider whether the period of notice granted by the Commission in terminating the contract at issue conformed to normal practice.

In the absence of any relevant requirements in the contract of employment it is of no avail to refer to the conditions applicable to the temporary servants of the ECSC, because those conditions make no provision for contracts of indefinite duration in the engagement of temporary officials; it is consequently necessary to rely on the general principles of law and the 'Conditions of Engagement of Auxiliary Staff', to which the defendant refers.

Article 2 of the said conditions provides that, for the termination of contracts for an indefinite duration, the period of notice shall be calculated on the basis of one day's notice for every seven working days.

The contested decision of dismissal provided for a period of notice of only about one month whereas under the terms of the aforementioned Article 2 the period of notice ought to have been longer.

However, the period was twice extended by a month.

In view of this, and since the applicant continued to receive his emoluments until the expiry of this period, having at the same time had the opportunity of using it to seek fresh employment, it follows that the period of notice actually given by the Commission to the applicant was in the region of three months.

Bearing in mind the possibilities open to the applicant of finding fresh employment, the Court considers this period of notice to be reasonable. Accordingly, no blame attaches to the Commission under this head.

Costs

Under Article 70 of the Rules of Procedure of the Court of Justice of the European Communities, without prejudice to the provisions of the second subparagraph of Article 69 (3) of those rules, in proceedings commenced by servants of the Communities, institutions shall bear their own costs.

Under the first subparagraph of Article 69 (39) of the aforesaid rules, where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part.

The applicant has failed on the heads of his application for a ruling that he is entitled to security of tenure and that the period of notice given by the defendant for termination of the contract in question was illegal; the applicant has also failed on the head of his application for a declaration that the contested decision of dismissal was a misuse of powers.

In consequence the costs must be shared.

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 Order of the President of the Court of 20 October 1959;
Having regard to the Order of the Court of 20 June 1960;
Having regard to the Order of the President of the Court of 1 October 1960;
Having regard to the first paragraph of Article 173 and Articles 178, 179, 181, 183, 189, 190, 210, 212, 215 and 246 (3) of the Treaty establishing the EEC;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Orders the Commission of the EEC to pay to Mr R. P. M. Fiddelaar the sum of FB 100000, from which shall be deducted the sum of FB 60000 being the interim payment made under the Order of the President of the Court of 1 October 1960;**

2. **Awards Mr Fiddelaar two-thirds of his costs against the Commission of the EEC, and orders the latter to bear its own costs;**

3. **Orders Mr R. P. M. Fiddelaar to bear the costs which he incurred in the proceedings for the purpose of obtaining a stay of execution of the contested decision and during the measure of inquiry ordered by the Court;**

4. **Orders the Commission of the EEC to pay the costs of the proceedings for the adoption of interim measures.**

Donner Hammes Riese
Delvaux Rossi

Delivered in open court in Luxembourg on 16 December 1960.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 4 APRIL 1960

In Joined Cases 43, 44 and 45/59 (see page 478)

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 18 OCTOBER 1960[1]

Mr President,
Members of the Court,

In the opinion I gave last April in the case of *Fiddelaar* v *Commission of the European Economic Community,* which was joined with three very similar cases, I fully reviewed the issues of fact and of law which arose in that case. My recommendation at that time was that the Court should allow Mr Fiddelaar's application and declare that the decision of dismissal by the Commission was of no effect; alternatively, I suggested that the Court should order a measure of inquiry if the evidence which had emerged during the course of the proceedings was insufficient to justify an assumption that the dismissal involved a misuse of powers. The Court followed this suggestion and, as a result of an Order of 20 June 1960, it has just heard a number of witnesses

1 – Translated from the German.