official on specified dates constitutes a measure capable of adversely affecting the official within the meaning of Article 91 of the Staff Regulations.

4. The right to a full pension under Article 5 of Regulation No 259/68 can only vest in a former official who, upon the expiry of the period during which he is entitled to the allowance, has attained the age of 55.

5. Statements supplied solely by way of information, albeit by the competent departments of the appointing authority, do not constitute measures creating rights for the addressees.

6. The adoption of an inaccurate interpretation of a provision of the law governing officials does not constitute in itself a wrongful act. Even where the authorities request those concerned to obtain information from the competent departments, they are not necessarily bound to guarantee the correctness of the information supplied.

7. Delay on the part of the appointing authority in correcting wrong information until after the time when those concerned have to make a decision in the matter constitutes a wrongful act or omission which renders the Community liable for the consequences of the wrong information.

In Case 23/69

ANNELIESE FIEHN, an official of the Commission of the European Communities, residing at 87 Schadowstrasse, Düsseldorf, represented by Hans-Josef Rüber, Advocate of the Landgericht Köln, with an address for service in Luxembourg at the Chambers of André Elvinger, 84 Grand-Rue,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser Pierre Lamoureux, acting as Agent, assisted by Jürgen Utermann, Legal Adviser to the Commission, with an address for service in Luxembourg at the Chambers of Émile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

Application for the annulment of the decision of the Commission of 18 January 1969,

THE COURT (First Chamber)

composed of R. Monaco, President of Chamber (Rapporteur), A. M. Donner and J. Mertens de Wilmars, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

1. Article 4 (2) of Regulation No 259/68 of the Council authorized the Commission until 30 June 1968 to adopt measures terminating the service of officials, in order to rationalize its departments or to meet requirements resulting from a reduction in the number of posts.

Paragraph (3) adds that if the interests of the service permit, the Commission shall take into account an official's request that such a measure be taken with regard to him.

Article 5 of the Regulation provides that an official affected by a measure terminating his service is entitled to an allowance for a fixed period, and states in the fourth subparagraph of paragraph (7) that:

> 'At the end of such period the official shall be entitled to a pension without application of the reduction laid down in Article 9 of Annex VIII to the Staff Regulations, provided that he has reached the age of fifty-five.'

Article 6 provides further that an official who has not completed 11 years service may irrevocably renounce his pension rights and opt for payment of a fixed allowance.

In a staff memorandum of 5 March 1968 the President of the Commission drew the attention of its officials to these provisions and said that officials who wished to have measures taken to terminate their service must submit their request before 6 April 1968 (time-limit later extended to 18 April 1968) and that they could obtain information concerning their financial rights resulting from such a measure from the competent departments of the administration.

When the applicant asked for information on her financial rights in the event of the abovementioned being applied to her, the Commission's offices sent her early in April 1968 a statement containing, *inter alia*, calculations concerning the retirement 'pension from the age of 55'.

On 18 April 1968 the applicant submitted a request that a measure be taken terminating her services and the request was accepted by the Commission in the course of its meeting on 20 June 1968, to become effective on 1 October 1968.

On 20 December 1968 the Director-General for Personnel and Administration sent the applicant a telegram worded as follows:

> 'You will become entitled to receive a full pension at the age of 60 and not 55, as you were earlier informed provisionally Stop You may still renounce this right in order to obtain the severence grant Stop Telephone Brussels 350040 Ext. 2032 or 733052',

to which the applicant replied by letter the same day.

By a letter of 18 January 1968 the Director-General for Personnel and Administration sent her a 'Notice of settlement' containing particulars of the monthly allowances provided for Article 5 (1) of Regulation No 259/68 and stating that her right to a full pension would take effect from the age of 60.

On 10 February 1969 the applicant submitted a complaint under Article 90 of the Staff Regulations (Schedule 12 to the application) 'against the decision of 20 December 1968 issued in the form of the letter of 18 January 1969', asking primarily that she be granted a full pension in accordance with the information originally given her by the administration and, in the second place, that the freedom of choice with regard to voluntary termination of service be restored to her.

On 2 June 1969 she brought the present application.

2. After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

The parties were heard on 17 February 1970.

The Advocate-General delivered his opinion at the hearing on 22 April 1970.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Annul the decision of the Commission of the European Communities of 18 January 1969;
2. Declare that the applicant is entitled to the monthly allowance provided for by Article 5 of Regulation No 259/68 of the Council in accordance with the particulars provisionally set out in Document No 3 476/IX/68 — F/Frau Fiehn;
3. As a subsidiary matter, reinstate the applicant in the administrative position she would have held had she not submitted her request of 18 April 1968 and, in particular, assign her to a comparable post in the departments of the Commission of the European Communities;
4. Order the defendant to pay the costs of the proceedings.

In a statement lodged on 10 June 1969 she added the following to Conclusion No 1:

— annul the decision of the Commission of the European Communities as provided for in the second indent in Article 91 (2) of the Staff Regulations of Officials, in conjunction with the decision of 18 January 1969.

The *defendant* contends that the Court should:

— rule against the application by rejecting it in its entirety as inadmissible or unfounded;

— order the applicant to pay the costs.

III — Submissions and arguments of the parties

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

Admissibility

The defendant objects that the application is inadmissible as regards:

(a) The first head of the conclusions

It claims that the memorandum of 18 January 1969 from the Director-General for Personnel and Administration in no way settled the pension rights of the person involved since those rights were still contingent and future. The memorandum was purely for information and cannot therefore amount to a decision open to challenge in the Court.

The *applicant* replies that the above-mentioned letter fits the definition of a decision as accepted not only by German administrative law but by the Court of Justice, both as regards its *form* and as regards its *substance*.

First, it emanates from the Director-General who, in accordance with the detailed list of posts published by the Commission in the Staff Courier of 22 August 1968, has power to make decisions with regard to staff; secondly, it has definitive effects with regard to the applicant since it determines her financial situation and decides the age at which she shall become entitled to her full pension.

The *defendant* replies that the letter in question has no immediate legal effect whatsoever concerning the question of a full pension, for pension claims cannot be met until the moment when such claims mature. However, in view of the judgment which has in the meantime been given by the Court in Case 32/68 it is willing to leave the matter to the discretion of the Court.

(b) The second head of the conclusions

The *defendant* maintains that these conclusions should be rejected for lack of any interest on the part of the applicant. They question the amount of the monthly allowance provided for by Article 5 of Regulation No 259/68, whereas all the arguments in the application relate to a dispute concerning the information contained in the letter of 18 January 1969 on the applicant's future and contingent pension

rights at the end of the period for which she is entitled to the allowance. Moreover, the amounts of the abovementioned allowances as stated in this letter are not lower than those shown in the provisional statement.
Even if the conclusions are badly formulated and in fact concern the applicant's pension rights they are equally inadmissible. Since these rights are still only contingent and future, the application amounts in this respect to an application for an interpretation of the provisions of Regulation No 259/68 concerning pension rights, and such an application does not lie within the jurisdiction of the Court.
The application is likewise inadmissible in so far as it requests the Court to issue directions to the Commission, a measure not covered by the functions and powers of the Court.
The *applicant* replies that the sense and purpose of this head of the conclusions is to point out clearly that her rights should be determined in accordance with the first statement submitted to her.
Furthermore, these conclusions have nothing to do with an application for an interpretation nor do they relate to contingent and future rights, since they are directed to the question at what age the right to a full pension accrues under Regulation No 259/68.
An answer to this question will at least have financial repercussions.
In its rejoinder the *defendant* maintains its objection.

(c) The third head of the conclusions

The *defendant* claims that the third head of the conclusions is inadmissible in so far as the applicant asks the Court to issue directions to the Commission, a measure which does not lie within its functions and powers.
Even if it is accepted that this head of the conclusions is badly formulated and is in fact directed towards obtaining the annulment of the decision of 20 June 1968 terminating the applicant's service it is still inadmissible for the time-limit for appeal has expired and cannot be revived on the strength of the complaint submitted on 10 February 1969.
In any case the request made in that complaint to the effect that her freedom of choice to volunteer for termination of service should be restored to the applicant was inadmissible since the Commission's power in this respect lapsed on 30 June 1968.
The *applicant* replies that this head of the conclusions seeks, first, the applicant's reinstatement, following the revocation of her voluntary request, in the position she occupied at the time of making the request and, secondly, an order that the defendant pay her damages.
The reinstatement would be the logical consequence of revoking her voluntary request. As for the damages, they are to compensate for the material and non-material damage caused by the wrongful conduct of the Commission.
After confirming the arguments which it put forward in its statement in defence the *defendant*, points out that the applicant's conclusions as set out in her statement in reply do not correspond to those appearing in the original application.

The substance of the case

A — The main conclusions

1. Infringement of the fourth subparagraph of Article 5 (7) of Regulation No 259/68

The *applicant* claims that under this article an official who volunteers to terminate his service acquires the right to a full pension *on attaining* the age of 55. The defendant's argument that this age must have been already reached when the period for which the official is entitled to receive the allowance ends is contrary to the grammatical and logical interpretation of the wording and ignores the interconnexion between the provision and the *ratio legis* of the scheme of which it forms a part.
This provision has introduced special measures whereby the right to a full pension is to accrue once the person entitled reaches the age of 55, as even the title of Chapter II of Regulation No 259/68 shows.
It would therefore be wrong to interpret the disputed provision by way of analogy with the fifth paragraph of Article 50 of the

Staff Regulations of Officials, for those provisions have a different purpose and are of a different nature.

Moreover Regulation No 259/68 was adopted on a proposal of the Commission so that the latter should have seen to it that its provisions were worded sufficiently clearly for the officials affected to be in no doubt as to the extent and nature of their rights. In these circumstances it is natural for them to be given the same meaning as that which those whom they concern would take them, in good faith, to have.

The defendant's decision violates a cardinal principle of the law relating to civil service both in the Communities and in individual Member States, the duty to give all possible assistance to officials.

The defendant replies that it is precisely when examined from a judicial point of view that the interpretation contained in the decision of 18 January 1969 proves to be the only acceptable one of the wording in question. The provision poses a *condition*, that is to say, that the age of 55 should be reached prior to the end of the period for which the official is entitled to receive an allowance. Bearing in mind the form of its drafting it is impossible to see in it as the applicant claims to see, the imposition of a *time-limit* ('when he has reached the age of ...').

This is borne out:

— by Article 9 of Annex VIII to the Staff Regulations, the wording of which is very similar to the disputed provision if not identical with it. In both provisions the condition 'provided that he is not less than ...' or 'provided that he has reached the age of ...' is directly connected with the event in question the official's leaving the service in Article 9 of Annex VIII to the Staff Regulations and the end of the period for which he is entitled to receive the allowance in the fourth subparagraph of Article 5 (7) of Regulation No 259/68;

— by Article 5 (8) of Regulation No 259/68, which can only be understood if the fourth subparagraph of paragraph (7) is interpreted as above. The formulation of the opening phrase of paragraph (8) in the conditional ('If ... the official is entitled to receive a pension before the age of 60 ...') implies in fact that not always, nor in every individual case, does the fourth subparagraph of paragraph (7) entitle an official to receive a pension before the age of 60;

— by the fifth paragraph of Article 50 of the Staff Regulations which is drawn up in terms identical to those of the disputed provision and has the same effect and the same *ratio legis*. The only difference between the two provisions is that Regulation No 259/68 has a special provision extending to all officials covered by Article 5 the benefit linked by Article 50 of the Staff Regulations to officials in Grades A1 and A2.

The *applicant* repeats her assertion that the provision in question must be interpreted with its special nature as a provision making an exception to the ordinary rule in mind and adds that even if the Court recognizes that it is not absolutely clear that its wording has the meaning which the applicant gives it, the defendant is nevertheless liable on the principles of *interpretatio contra stipulatorem*.

Moreover the letter addressed to Mr Faniel, Director in the Commission, on 16 March 1967 concerning the application of Article 50 of the Staff Regulations proves clearly that the applicant's interpretation corresponds to the wording of the provision and is in line with prevailing opinion held at that time by members of the Commission.

The *defendant* points out that whilst Regulation No 259/68 was drawn up by the Commission, it was subject to scrutiny by the European Parliament and definitively drawn up by the Council. It goes on to observe that Council Regulations do not fall within the sphere of the law of nations but of administrative law. The applicant's reliance on the principle of *interpretatio contra stipulatorem* is therefore misguided as that principle relates to public international law.

As the argument based on the letter sent to Mr Faniel this is irrelevant since in a later communication of 20 October 1969 the Commission revised its interpretation of

Article 50 of the Staff Regulations as given in that letter. In any case there must be doubt as to the procedural propriety of the applicant's citing in Court a personal letter addressed to a former official.

2. Infringement of vested rights

The *applicant* claims that the decision in question, when taken in conjunction with the telegram of 20 December 1968, is also illegal in that it goes contrary to the information contained in the statement supplied at the beginning of April 1968.
She states that it was this information, requested by her in accordance with the staff memorandum of 5 March 1968, which persuaded her to submit her request for voluntary termination of service.
According to the principle of good faith as recognized also in the case-law of the Court, the Commission is bound by this information and must therefore act in accordance with it. Subsequent divergences of opinion arising within the administration concerning an interpretation or a course of action already decided upon and communicated to those concerned do not release the Commission from its responsibility to such persons.
The correctness of this view cannot be impeached by relying on Supplement No 16 of 16 April 1968 to the Staff Courier which alerted officials to the fact that the information already supplied had been given merely as a guide and was not binding on the Commission. Even apart from the date on which this supplement appeared (two days prior to the expiry of the time-limit for submitting requests), it should be noted:

— that the Commission should have made sure that it reached all the officials who had sought information by the last day on which it was open to them to take action;

— that at the time the applicant received it she had already submitted her request;

— that in any case the applicant thought herself already sufficiently informed and had therefore no occasion to seek additional information;

— lastly, that she could not have connected the information already given to her, which was binding on the authority which gave it, with a mere announcement in the Staff Courier.

It is pointed out by the *defendant* that according to the case-law of the Court, and a principle which is enshrined in national laws, it is permissible in law to withdraw within a reasonable time any illegal administrative act, even in a case where that act has created subjective rights.
In any case there is no question here of vested rights for,

— in the first place there was here no initial legal decision creating subjective rights and later withdrawn, for the estimate supplied early in April 1968 was not a decision, but merely information given by the Commission without any guarantee of its correctness. It had been intended that the facts would be given orally as general information to those interested but, in view of the number of requests received by the administration and the detailed and precise nature of the questions asked, the department concerned considered it advisable to make use of printed sheets specially prepared, and designed solely to facilitate the department's work. These printed sheets were not addressed to the officials concerned (the document produced in Schedule III to the application is unsigned) and it was only at their express request that they were sent to them;

— secondly, there was no decision withdrawing it, since the letter of 18 January 1969 does not amount to a decision as to payment of a pension but gives information on the scope of a legal provision.

It would have been better for the applicant to have exercised the utmost discretion when she submitted her request for voluntary termination of service and waited for it to be accepted, particularly in view of the prevailing atmosphere of great uncertainty and anxiety amongst the Commission's staff during the months when the decisions implementing Regulation No 259/68 were being drawn up.

Several factors were present which should have prevented her from placing complete blind confidence in the information she had been able to obtain from the administration, particularly:

— the publication of the supplement to the Staff Courier of 16 April 1968, which was quite clearly connected with the information already supplied by the administration. The fact that this document could not be published and distributed with all desirable speed was due to the complexity of the legal and administrative procedures required to put Regulation No 259/68 into effect. But in any case since her request for voluntary termination of service presented on 18 April 1968 was not accepted until 20 June 1968 the applicant had sufficient time to obtain all further necessary information and to withdraw her request if she saw fit;

— the letter of 12 June 1968 informing the applicant that the Commission was prepared to grant her request and that she would receive later a statement explaining her financial rights. The announcement of this second statement to come, especially in view of the notice published on 16 April 1968, should have alerted the applicant, the more so since, as she was employed in the administration, it was easy for her to obtain information at any time. Certain statements made in the application and the fact that she has been able to cite personal and confidential documents proves that in any case the applicant was in fact far better informed than she would have people believe.

In any event it is clear that the applicant had to accept her responsibilities and in particular to exercise her own judgment, bearing in mind the following facts:

— her argument is not justified on the wording of the fourth subparagraph of Article 5 (7) of Regulation No 259/68;

— the Commission cannot guarantee to interpret a text which will only become applicable several years hence (any pension rights at the moment are merely future and contingent); its interpretation can be definitively determined in the last resort only by the Court of Justice;

— according to Article 41 of Annex VIII to the Staff Regulations pension rights are always subject to modification.

The *applicant* objects that Article 41 of Annex VIII to the Staff Regulations is a special provision envisaging arithmetical error, whereas in the present case the error is one of interpretation and implementation of a legal provision.

She claims that before submitting her request she took all the necessary precautions and obtained all proper information, and on the basis of this was able to conclude that the general opinion of the Commission was that the right to a full pension arose from the age of 55. The accusation made against her of pleading a blind faith all too sanctimoniously is one which should rather be applied to the Commission which, at its meeting of 25 June 1969, held that its own conduct had been inequitable and decided that the damage suffered by its former officials should be compensated in full.

Lastly, as to the notice in the supplement to the Staff Courier of 16 April 1968 it should be noted that at that date no other information had been given on the point at issue, even though requested on two or three occasions.

The *defendant* replies that the purpose of Article 5 of Regulation No 259/68 was not to give all the officials covered by it the right to a full pension from the age of 55 onwards, irrespective of their age at the end of the period for which they were entitled to receive an allowance, but to provide assistance for older officials who, having received the allowance provided for in Article 5 (1) and (2) of Regulation No 259/68 up to the age of 55 would not, at the end of the period for which they were entitled to this allowance, have reached the age of 60.

The Commission's interpretation therefore meets a social need, whereas that put forward by the applicant would amount to unjustified generosity.

No vested right can be established on the basis of the incorrect and illegal interpretation of a legal provision.
The defendant goes on to recall in relation to the effect of the statement of April 1968 the judgment of the Court in Case 32/68 which shows, in its opinion, that the Commission was right not to guarantee the information which it supplied.
It denies the existence of any 'general opinion' held by members of the Commission to the effect mentioned by the applicant, and then says that the purpose of the staff memorandum of 16 April was not to enable officials to put in fresh requests for information but merely to remind them that the information already given was purely of an advisory nature and that the officials concerned must therefore not rely on it in deciding to volunteer for termination of their service.
Lastly, as regards the argument referring to the Commission's of 25 June 1969 it is not correct to say that it acknowledged its conduct in the matter to have been wrong and improper. It had merely considered the possibility of its having incurred liability for any damage which it might have caused to the officials concerned.

B — The subsidiary conclusions

The *applicant* claims that she submitted her request for voluntary termination of service on the basis of the information supplied at the time by the Commission, and that therefore her request was mistakenly made under the influence of an error attributable to the wrongful conduct of the Commission.
That is why in her letter of 20 December 1968 and in her complaint of 10 February 1969 she reserved the right to claim, as she does also in the present proceedings, that her request is void according to the general principle of lack of consent which, together with that of reliance on good faith, is well known in German administrative law. Application of this principle shows that if the applicant were to decide not to submit her request for voluntary termination of service after all, the defendant would be bound to reinstate her in the same position, in fact and in law, as she was in before submitting her request and as she would have been in had the request not been made.
In addition to this the wrongful conduct on the part of the Commission caused her both material and non-material damage for which she should be compensated.
The material damage results from the fact that if the defendant had acted correctly the applicant would either have been entitled to a greater pension from the age of 55 or, in any event, would have received between the ages of 55 and 60 payments of the same amount as the full pension. This damage can be assessed at a minimum of BF 663 935.
The non-material damage, the assessment of which is left to the discretion of the Court, non-material damage having already been recognized in its case-law, arises from the fact that the applicant was and still is completely in the dark as to her financial position and has suffered great anxiety on that account.
The *defendant* argues that the Commission has not been guilty of any failure for which it is liable, pointing to the following facts in particular to bear this out:

— the legal and administrative difficulties inherent in reorganizing its departments and in implementing Regulation No 259/68, with which the Commission had to cope before the date (30 June 1968) set by the Council;

— the gap which occurred between the date on which the applicant submitted her request (18 April 1968) and the date on which this was accepted (20 June 1968);

— the warning given by the Commission in the staff memorandum of 16 April 1968 regarding the purely advisory nature of the information already supplied;

— the fact that the applicant seems in fact to have been aware of the existence within the Commission of an interpretation of the provision in question different from that which she wrongly claims to have been the prevailing one;

— the impossibility in law of applying to public law, and in particular to European law on civil service, the theory of lack of consent relied on by the applicant.

French administrative law on the contrary holds, that when notice is given by an official and accepted by the administration neither act is void unless the notice was given under duress or under the influence of a mental condition such as to render invalid or non-existent the consent of the person giving it: this was not the case here.

Lastly the defendant remarks that:

— the applicant's method of calculating the material damage is incorrect since none could occur until she reached the age of 55, and since she would suffer it gradually as her age increased to 60;

— the alleged non-material damage is due solely to the applicant's own mistake in not taking into account a number of points of fact and law, particularly the staff memorandum of 16 April 1968 and the provisions of Article 41 of Annex VIII to the Staff Regulations.

Grounds of judgment

1 In an application lodged at the Registry on 2 June 1969 the applicant has asked the Court in the first place to annul the decision of 18 January 1969 relating to a 'Notice concerning the settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68' and, as a subsidiary matter, that she be reinstated in the administrative position which she would have held had she not submitted her request of 18 April 1968 for a measure to be taken terminating her service, and in particular that she be assigned to a comparable post in the departments of the Commission of the European Communities.

The application for annulment

Admissibility

2 The Court is asked to restore the interpretation originally adopted by the Commission of the EEC concerning the pension rights provided for by Article 5 of Regulation No 259/68, and, as a consequence, to annul the 'Notice concerning the settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68 of the Council', addressed to the applicant.

3 Whilst it is true, as claimed by the defendant, that Article 91 of the Staff Regulations does not permit the Court to rule in the abstract on the interpretation to be given to a particular provision in the Staff Regulations of Officials, in the present case the application is primarily directed against the abovementioned notice.

This notice is intended to state definitively the pecuniary rights derived by the applicant under the provisions of Regulation No 259/68.

From its wording it is evident that the appointing authority intended by this notice to fix the amounts which it undertakes to pay the applicant on specified dates.

4 Accordingly, since this is an act capable of adversely affecting the applicant, her application is admissible.

The substance of the case

5 The applicant claims that the Commission contravened the fourth subparagraph of Article 5 (7) of Regulation No 259/68 by not granting her the right to a full pension with effect from her 55th year.

She argues that this provision accords to every former official who has been the subject of a measure terminating his service and who has been in receipt of the allowance provided for in Article 5, the right to a full pension once he has attained the age of 55 and the period during which he is entitled to the allowance has ceased.

6 The wording of the provision in question shows clearly that the right to a full pension can only vest in a former official who, upon the expiry of the period during which he is entitled to the allowance has attained the age of 55.

Those who, like the applicant will not yet have attained that age at the end of the period during which they are entitled to the allowance, cannot benefit from this provision.

7 There are moreover, good social grounds for the disputed restriction of the rights to pension.

The reason for this provision is obviously the fact that it is generally extremely difficult for older persons to find employment equivalent to that which they had at the time when their career was interrupted.

It is therefore reasonable to grant to former officials who, when their allowance ceases, have already attained the age of 55, and will therefore find it difficult to obtain other income equivalent to the lapsed allowance, the right to an early pension.

8 Conversely, former officials for whom the period during which they are entitled to an allowance ceases at a less advanced age and who will generally be younger

at the time when their service terminates, may be presumed capable of finding during the period in which they are entitled to an allowance a post and prospects sufficiently stable for them not to need a right to an early pension.

9 Thus the provision in question seems to accord with the spirit and general scheme of the rules which usually govern the question, always a difficult one, of reducing staff.

The interpretation adopted by the contested decision is therefore correct.

10 The applicant further claims that the contested measure was adopted without regard for her vested rights.

In this context she makes reference to the statements of her possible pecuniary rights, supplied by the competent departments of the Commission of the EEC during the month of April 1968, which were based on an interpretation of the disputed provision according to which the right to a full pension accrues to all former officials in receipt of the allowances, once they have reached the age of 55 years and the period of entitlement to the allowance has ended.

11 This statement was supplied solely by way of information and was not capable of determining rights which the applicant was to derive from a given legal situation.

It is not, therefore, possible to concede that the statement has the character of a measure creating rights for the addressee.

The appointing authority, being obliged to apply Regulation No 259/68 in defining the applicant's pecuniary rights, could not apply the incorrect interpretation adopted in that statement once it had become aware of the more accurate interpretation.

The argument based on a supposed violation of vested rights is therefore unfounded.

12 The application for annulment must therefore be rejected.

Application for compensation

Admissibility

13 Should the application for annulment be rejected the applicant requests alter-

natively that she be reinstated in the administrative position she would have held had she not submitted on 18 April 1968 a request for termination of service, and in particular that she be reinstated in a comparable post in the departments of the Commission.

She claims that her request to take advantage of the scheme for terminating employment was made under the influence of an error as to an essential fact—the date on which she would become entitled to receive a pension—occasioned by the wrong information supplied by the Commission.

14 The defendant contends that this request, which must imply annulment of the decision of 20 June 1968 terminating her employment, is inadmissible because it was submitted after expiry of the period specified by Article 91 of the Staff Regulations for lodging an application for annulment.

15 The decision terminating the applicant's service was taken by the Commission following her request of 18 April 1968.

Accordingly, the period for bringing an action against the said decision can only begin to run from the time when it became evident that the request of 18 April 1968, which was the basis for the adoption of the decision in question, was made under the influence of an error occasioned by a wrongful act or omission on the part of the Commission.

This is a matter which can only be settled by examining the substance of the case, and therefore the application cannot be dismissed as being made out of time.

16 Next, by asking to be reinstated 'in a comparable post' the applicant has shown, briefly but, in view of the circumstances, adequately, that her principle aim is to obtain compensation for the damage suffered by her owing to the error into which she was led.

In her reply she defined her request by asking alternatively that the Commission be ordered to pay her a sum equivalent to that which she would have received had her pension been granted to her in full for the period between the ages of 55 and 60 years.

17 Since this is an application in which the Court has unlimited jurisdiction it has the power, even in the absence of proper conclusions, not only to annul but, if necessary, of its own motion to order the defendant to pay compensation for damage occasioned by the defendant's wrongful act or omission.

The substance of the case

18 For the application to be well founded it must be established that the defendant is liable for a wrongful act or omission which caused the applicant a still subsisting injury.

19 It is not contested that the appropriate departments supplied the applicant with incorrect information concerning the rights which she would be able to assert in the event of termination of her service.

Nor is it contested that this information was supplied as a consequence of the request by the Commission to the officials concerned to contact the competent departments in order to obtain information on the rights which they would have should Article 4 of Regulation No 259/68 be applied.

20 The statements submitted by the defendant's representative in the course of the oral procedure show that the departments concerned discovered early in April that their interpretation of the disputed provision in Article 5 on which they had acted was, if not incorrect, at least very much open to question and that it was not accepted by the corresponding departments in the ECSC and the EAEC.

This discovery was in fact the main reason for the publication on 16 April 1968 of a communication from the Commission reminding staff that the information given was supplied only as a guide and without commitment.

21 Apart from the exceptional instance, the adoption of an incorrect interpretation does not constitute in itself a wrongful act.

Even the fact that the authorities request those concerned to obtain information from the competent departments does not necessarily involve those authorities in an obligation to guarantee the correctness of information supplied and does not therefore make them liable for any injury which may be occasioned by incorrect information.

22 However, while it may be possible to doubt the existence of a wrongful act concerning the supply of incorrect information, the same cannot be said of the deparments' delay in rectifying the information.

Although such rectification was possible as early as April 1968 it was deferred without any justification until the end of 1968.

Whilst it would have been simple by means of a general announcement or an individual notice to rectify an error of interpretation which was capable of invalidating a whole group of statements, the communication issued in April 1968 gives the impression that it concerns solely possible arithmetical or similar errors difficult to identify and which could have been due to the speed with which the separate statements were drawn up.

A correction made shortly before or after 16 April, that is to say before the time when those concerned had to make their decision, would certainly have enabled the defendant to avoid all liability for the consequences of the wrong information.

The failure to issue such a correction is, on the other hand, a matter of such a nature as to render the Communities liable.

23 The letter of 20 December 1968 from the applicant to the Director-General for Personnel and Administration, and her complaint of 10 February 1969 show that her request for termination of service was a result of the wrong information which she had been given and which was not rectified in due time.

Moreover, the fact that in the abovementioned letter and complaint she asked, in the alternative, to be reinstated in the service of the Commission lends support to the conclusion that the prospect of a right to receive a full pension from the age of 55 was a deciding factor in her decision to request the application of Article 4 of Regulation No 259/68.

24 The applicant requests that the damage which she suffered as a result of the Commission's wrongful act should be compensated for either by reinstating her in a post comparable to her former one, or by ordering the Commission to pay damages.

25 An award of damages is, in this case, the method of compensation best suited both to the interests of the applicant and to the requirements of the service.

The damage lies principally in the fact that, contrary to what she had reasonably foreseen, the applicant will be obliged at the age of 55 to choose between a reduced pension from that time on and a full pension when she attains the age of 60 but, in the latter case, without entitlement to any payment during the intermediate period.

26 In the circumstances the Commission should be ordered to pay the applicant, when she has attained the age of 55 and until she has attained the age of 60, a monthly allowance equivalent to the pension payments to which she would have

been entitled if the provision in the fourth subparagraph of Article 5 (7) of Regulation No 259/68 had been applicable to her.

Costs

27 The applicant has failed in a part of her application.

28 However, it follows from the foregoing that the application was a result of a wrongful act or omission attributable to the defendant.

29 In the circumstances the defendant must be ordered to pay the costs of the action in accordance with Article 69 of the Rules of Procedure.

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 Treaties establishing the European Communities;
Having regard to the Protocols on the Statute of the Court of Justice;
Having regard to the Staff Regulations of Officials of the European Communities, in particular Article 91;
Having regard to Regulation No 259/68, especially Articles 5 and 6;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application for the annulment of the decision of 18 January 1969 regarding a 'Notice concerning the settlement of claims for the allowance provided for in Article 5 of Regulation No 259/68';**

2. **Orders the Commission of the European Communities to pay to the applicant from the time when she attains the age of 55 and until she attains the age of 60 a monthly allowance, equal to the pension payments to which she would have been entitled if the provision in the fourth subparagraph of Article 5 (7) of Regulation No 259/68 had been applicable to her;**

3. **Order the Commission of the European Communities to pay the costs.**

Monaco Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 9 July 1970.

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER

(See Joined Cases 19, 20, 25 and 30/69, p. 342)