In Case 56/75,

RAYMOND ELZ, an official of the Commission of the European Communities, residing in Brussels, represented by Marcel Slusny, Advocate at the Cour d'appel, Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny, 34/B/IV, rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, with an address for service in Luxembourg at the offices of Mario Cervino, Legal Adviser to the Commission,

defendant,

Application for the annulment of the Commission's refusal to pay the applicant's remuneration in a Member State other than that of his place of employment, and the payment of damages arising from the injury caused by this refusal;

the payment of damages for a wrongful act or omission committed by the Commission in delaying the transmission to the applicant of a court summons,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, J. Mertens de Wilmars and F. Capotorti, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case and the arguments presented by the parties in the course of the written procedure may be summarized as follows:

I — Facts and written procedure

1. Raymond Elz, who has been an official of the Commission of the

European Communities since 1956, was transferred on 25 October 1968 from Luxembourg to Brussels where he took up a post in the Directorate-General for Financial Control.

At the time of this transfer he obtained agreement that payments relating to his salary and allowances would continue to be made to the Kredietbank in Luxembourg. Subsequently, on 22 August 1974, Mr Elz asked for his remuneration to be paid regularly to the Banque Internationale à Luxembourg (with which he was negotiating for an allocation of credit). By a note of 27 August 1974 the Administration replied that it could not agree to this request and that payment of his remuneration in Luxembourg in Luxembourg francs was in this instance contrary to the provisions of Article 17 of Annex VII to the Staff Regulations. Following this decision Mr Elz obtained an allocation of credit at another banking institution in Brussels.

2. By a summons transmitted to the Commission through diplomatic channels on 16 September 1974 the applicant was required to appear before the Justice de Paix, Uccle, in proceedings against him by the lessors of the flat which he occupied in Uccle.

This summons was not in due form and therefore the applicant was summoned on a second occasion, on 26 September 1974, to appear on 10 October 1974. This writ of summons, which was also transmitted through diplomatic channels to the Commission, was transmitted by the Commission to the applicant on 4 November 1974. On 25 October 1974 a judgment by default was delivered against the applicant. The objection against this judgment was rejected and on 2 October 1975 the applicant lodged an appeal.

3. On 26 November 1974 the applicant lodged a complaint within the meaning of Article 90 (2) of the Staff Regulations against the Commission's rejection of his request of 22 August 1974, in order to obtain a ruling as to the loss suffered by him as a result of that rejection. In the same document the applicant referred to a second cause of damage consisting in the delay with which the Commission transmitted to him the second writ of summons.

Having received no answer to this complaint, on 26 June 1975 the applicant lodged the present application directed:

— against the Commission's refusal of 27 August 1974 or, to the extent necessary, against the implied refusal resulting from the failure to reply to his complaint of 26 November 1974;
— against the wrongful act or omission committed by the Commission in transmitting to the applicant the writ of 26 September 1974.

4. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

After the closure of the written procedure, the applicant submitted documents concerning the rates of interest applied at the time, in his case, by the Banque Internationale à Luxembourg and by the Société Générale de Banque in Brussels, as well as a copy of the judgment by default of 25 October 1974 and of the appeal of 2 October 1975.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'1. Declare void and of no effect the express rejection of the applicant's request for the continued payment in the Grand Duchy of Luxembourg of his salary and of all supplementary payments;
2. Rule that the opposite party shall be bound to make this payment to such Luxembourg bank as the applicant shall name;
3. To the extent necessary, declare void and of no effect the implied rejection

resulting from the failure of the opposite party to give any reply to the applicant's complaint of 27 November 1974;

4. By way of damages in respect of this refusal and its consequences, order the opposite party to pay to the applicant the sum of BF 30 000 in respect of the difference in interest rates, subject to the right to adjust this sum during the course of the proceedings, and the sum of BF 13 500 in respect of increased costs, and the sum of BF 1 in respect of non-material damage;
5. Rule that the opposite party was guilty of a wrongful act or omission in connexion with the transmission of the procedural documents concerning the action between the applicant and his former lessor over flat No 25, avenue Winston Churchill at Uccle, Brussels;
6. On this ground order the opposite party to pay to the applicant the sum of BF 1 by way of damages;
7. Order the oppositie party to pay the costs of the action.'

The *defendant* contends that the Court should:

'As regards the first head of the application: dismiss it as being without foundation;

As regards the second head of the application:
(a) principally, declare the claim for BF 1 damages to be inadmissible;
(b) in the alternative, dismiss the claim as being without foundation;
Order the applicant to bear the costs.'

III — Submissions and arguments of the parties

A — The conclusions relating to the Commission's refusal to pay the applicant's remuneration in the Grand Duchy of Luxembourg

The *applicant* argues that the Commission's refusal of his request of 22 August 1974 ignores his vested rights, constitutes a misuse of powers and/or procedure in his respect and is based on an erroneous interpretation of Article 17 (1) of Annex VII to the Staff Regulations.

In fact that provision only has a dual purpose:
— on the one hand, to spare the Administration varied and costly procedures with regard to the payment of remuneration;
— on the other hand, to avoid the transfer of currency from the place where the European institutions have their seat to other countries, which would involve distortions of the monetary policies of those countries.

In the present instance the payment of the remuneration due to the applicant in the Grand Duchy of Luxembourg would not involve costly procedures, nor would it produce distortion as between the two countries concerned, especially because of the 'special position of the Luxembourg currency with regard to Belgian currency and the relations existing between the two countries in the Belgo-Luxembourg Economic Union'.

The applicant further argues that because of the contested decision he was not able to make use of a substantial personal credit, granted to him by the Banque Internationale à Luxembourg on condition that his remuneration would continue to be paid regularly to that bank. He thus found it impossible to pay his contractor for additional work to be carried out in a building under construction at Tilly. The date on which the building finally became available was considerably delayed, which entailed an increase in the cost of construction and further rental payments. In addition to this material damage the applicant alleges non-material damage caused by the search for another loan and by the anxiety which such a situation caused him, in particular in view of his state of health.

The *defendant* recognizes that as from his transfer to Brussels and until the date of the contested decision the applicant had obtained the agreement of the Administration that his remuneration should continue to be paid to him in Luxembourg francs at a bank in the Grand Duchy of Luxembourg. This situation, which is contrary to the provisions of the Staff Regulations, was allowed by the Administration purely as a matter of goodwill, since for some months after his transfer to Brussels the applicant continued to reside for the most part in the Grand Duchy of Luxembourg for health reasons. It continued for reasons which are not easily explained until the summer of 1974 since, due to an omission, the competent departments were not informed that the applicant had removed to his new place of employment as from 1971. The Commission remained unaware of this situation until it received the request submitted by the applicant in August 1974.

This being so there can be no question in the present case of 'vested rights'. In fact, the applicant only benefited from an instance of tolerance *contra legem* which as such cannot give rise to vested rights.

Moreover, in general, the concept of 'vested rights' with regard to matters relating to the Staff Regulations is largely without legal significance in view of the statutory rather than contractual nature of the link between the official and his institution. This applies all the more where the institution discovers that the reasons which justified tolerance *contra legem* no longer exist and that consequently it must put an end to such tolerance. On the other hand, it is generally accepted that no illegal act can create vested rights.

The contested measure is in conformity with Article 17 (1) of Annex VII to the Staff Regulations. The applicant seeks to restrict the scope of that provision by relying on considerations which are extraneous to the text and which cannot be accepted in the absence of provision by the legislature. By withdrawing the advantage at issue the Commission is therefore merely conforming to strict legality and is in no way misusing its powers. Moreover, the last objection is not supported by any *prima facie* evidence.

As the contested refusal is legitimate, the request for the payment of damages is without any legal foundation.

First, it is generally accepted that the revocation of an illegal measure cannot constitute a wrongful act or omission. Secondly, the applicant has produced no evidence either of the existence of the alleged damage or of its entity. Finally, since only 'direct' damage can be taken into consideration in appropriate cases, the evidence supplied in the application does not establish a direct relationship between the abovementioned refusal and the applicant's inability to obtain the desired cash credit by having his remuneration transferred to the Banque Internationale à Luxembourg, although it is paid and banked in Belgium.

The *applicant* replies that, far from being a measure of tolerance *contra legem* due to benevolence, the payment of his remuneration in the Grand Duchy of Luxembourg until 1970 formed part of a policy followed with regard to other Luxembourg nationals and was based on a correct interpretation of the Staff Regulations, taking account of the particular relationship existing between Belgium and the Grand Duchy of Luxembourg and the practice followed by institutions which do not undertake payment by credit transfer.

The applicant goes on to deal with the problem of the possibility of revocation of administrative measures. After stating that whilst the rule relating to vested rights does not have much force in the case of normative measures it does, on the other hand, apply with regard to

individual administrative measures, he makes particular reference to the national laws of various Member States from which it follows that the revocation of an administrative measure, although possible within a reasonable delay or within the time-limit for bringing legal proceedings or if exercised in good faith, must be belated if, as in the present case, it occurs 6 years after the adoption of the measure.

In the present case the revocation is so belated that the infringement of Article 17 (1) referred to above thus committed by the Commission can only be explained by malevolence constituting misuse of powers. The applicant believes that 'sufficient circumstantial evidence' exists in support of his view, but in this respect he relies on the wisdom of the Court.

Finally, returning to the question of the payment of damages, the applicant submits a number of documents (Annexes 3 to 8 to the reply) and gives notice of production of other evidence in order to prove the existence of material damage caused by the contested measure. This damage is said to have been caused in particular by:

— the difference between the rate of interest on the loan which had previously been envisaged and the rate of interest on the new loan negotiated in Belgium with the Banque Copine for the amount of the sum loaned to him in the Grand Duchy of Luxembourg;
— the costs of the mortgage deed relating to this part of the Belgian loan.

Furthermore, the applicant states that his request only relates to satisfaction of direct and immediate damage, so that any discussion concerning the existence of a sufficient causal link between this damage and the contested measure is superfluous. Moreover, it is not necessary to prove that the damage suffered was inevitable. Such a requirement contradicts the rule, which enjoys a fair measure of acceptance, according to which with regard to wrongful damage it is sufficient that there was a wrongful act in the antecedent chain of events for that act to be regarded as giving rise to the damage.

In its rejoinder the *defendant* emphasizes the purely benevolent motives which gave rise to the advantage granted to the applicant between 1968 and 1974. In addition, since it is accepted that the revocation of the contested measure would be justified both in the case of an error of fact and in the case of an error of law in the application of Article 17 (1) of Annex VII to the Staff Regulations revocation is all the more legitimate when tolerance *contra legem* is at the basis of the prior situation.

The above interpretation of Article 17 (1) advocated by the applicant is moreover unacceptable for several reasons. In fact:

— In spite of the alleged *ratio legis* relied on by the applicant the Commission has for some time paid remuneration in each of the Member States, either where it pays salaries to officials posted to those various States or where, pursuant to paragraphs (1) and (3) of that provision, it transfers officials' emoluments to a Member State other than that of their place of employment. To this end the Commission maintains a bank account in each Member State. Where the Administration pays a certain amount to an official posted to a Member State it does so through a bank account opened in that State and not by a transfer of currency from the seat of the institutions. The particular situation of Luxembourg currency in relation to Belgian currency and the existence of the Belgo-Luxembourg Economic Union is consequently of no relevance;
— Article 20 of the Staff Regulations — providing that an official shall reside either in the place where he is

employed or at no greater distance therefrom as is compatible with the proper performance of his duties — caused the legislature to provide that an official must be paid in the currency of the country of his place of employment or of a neighbouring place in which he resides;

— If it were to be followed, the applicant's point of view would introduce discrimination against officials who are of neither Belgian nor Luxembourg nationality.

The Commission next confirms its point of view as to the inconsistency of the complaint of an alleged misuse of powers, in particular since the application submitted by the applicant in August 1974 did not clearly show reasons why the applicant's remuneration should continue to be paid to the Banque Internationale à Luxembourg.

Finally, with regard to the request for compensation the defendant states that it is inadequately supported by the evidence supplied by the applicant, which does not supply the necessary proof of the existence and extent of the alleged damage, particularly as regards:

— the difference between the rates of interests;

— the future charge for the mortgage covering the new loan as compared with that relating to the previously envisaged loan from the Banque Internationale à Luxembourg. Nothing can be proved in this respect because of possible variations in the rate of interest on the new loan. The damage alleged by the applicant is not ascertainable at the present time: it is therefore neither certain nor real;

— the additional costs incurred in taking out a mortage to guarantee the loan raised. The problem of these costs should in fact be dealt with along with the more general problem examined above. Moreover, the figure put forward by the applicant is based on hypothetical rather than real facts.

Finally, the defendant reiterates its view that in the present circumstances it is not self-evident that there existed no more advantageous alternative solution for the applicant than that of the loan from the Banque Copine. Moreover, it cannot bear responsibility for damage which, if it did in fact exist, could have been avoided by the applicant if he had not prematurely put an end to his still incomplete negotiations with the Banque Internationale à Luxembourg (cf. Annexes to the rejoinder).

B — The conclusions concerning a wrongful act or omission by the Commission

The *applicant* maintains that the Commission committed a wrongful act or omission by transmitting to him belatedly the writ of summons of 26 September 1974 (Annex 10 to the reply). Since this summons was not served on him until 4 November 1974 a judgment in default was delivered against him on 25 October 1974. The applicant had to lodge an objection against this judgment and thus suffered damage for which compensation is payable to him by the Commission.

The *defendant* states that on 26 September 1974 it received from the Belgian Ministry for Foreign Affairs two copies of a writ of summons addressed to Mr Elz. The competent department of the institution attempted on a number of occasions during the days following to inform the person concerned by telephoning him on his office telephone. When the person concerned did not reply it was discovered that he was absent without authority. It was only on or about 10 October 1974 that the person concerned sent to the Administration a medical certificate confirming the extension of his incapacity for work from 23 September 1974 to 14 October 1974. As it did not know of the existence of this medical certificate on 10 October 1974 the competent department returned to the Belgian Ministry the legal

document addressed to Mr Elz informing the Ministry that it had not been possible to transmit the document to the person to whom it was addressed and requesting the Ministry to inform the judicial authorities of this fact. By a letter of 24 October 1974 which reached the Commission on the following day the Belgian Ministry again requested the Commission to take the necessary steps to transmit to the person concerned the writ of summons addressed to him. The writ was finally served on Mr Elz on 4 November 1974.

The defendant states that in the event of civil proceedings being brought against officials of the Commission, plaintiffs, whilst being aware of the private address of the defendant, sometimes prefer to undertake the necessary notification through diplomatic channels. In spite of the fact that this form of service of judicial notice is not provided for by the Protocol on the Privileges and Immunities of the Community the Commission has as a general rule acceded to requests addressed to it by the national authorities. Nevertheless, it cannot assume any responsibility for the transmission of such judicial documents unless the official is at his place of work and may there receive in person the documents addressed to him or is at least on formal leave. It is true that on the first occasion in exceptional circumstances the Commission agreed on 20 September 1974 to send an official to the applicant's private residence with a legal document. However, on the one hand the letter from the Belgian Ministry of 16 September 1974 transmitting this document to him was marked 'Urgent' and on the other hand at that time the person concerned could still have been regarded as being on sick leave. This was not the case when the Commission received the letter from the Belgian Ministry dated 26 September 1974 since the document in question did not appear to be of an urgent nature and the person to whom it was addressed was absent from his post without authorization and thus bore sole responsibility for the risks and perils of the situation.

Finally, with regard to the extent of the alleged damage the defendant states that the amounts claimed by the applicant are completely unjustified.

The *applicant* denies that his absence from his post at the time when the Commission is said to have attempted to transmit to him the judicial document of 26 September 1974 can be regarded as irregular, and in this connexion states that as from 8 September 1974 he had been placed under observation and was receiving treatment at the Clinique St. Jean in Brussels. A first medical certificate to this effect dated 7 October 1974 was submitted on the following day. This certificate, attesting his incapacity for work until 13 October 1974, was confirmed by a further certificate dated 15 April 1975 (Annex 9 to the reply). In addition, the defendant's conduct was in any case wrongful. The transmission of legal documents through diplomatic channels is not within the discretion of the institution. Such transmission has no legal basis and is not merely irregular from the point of view of Belgian law but also entails considerable risks. It could only function properly if the institution were to show diligence in performing it, not only with regard to officials who are at their posts but also as regards officials who, for various reasons, are absent. If in spite of this diligence the document cannot be given in person to the official to whom it is addressed, the institution could either return it immediately to the Ministry for Foreign Affairs in order to enable the court to take notice that there has been no notification or it could inform the official by all possible means. However, the conduct of the Commission in the present case was both irresponsible and inconsistent. With respect to the first writ (of 16 September 1974) the Commission, whilst noting that the applicant was not at work, sent an official to his private residence in order to hand the writ to him in person.

On the other hand, with respect to the second writ (of 26 September 1974) the Commission states that it did no more than telephone to the applicant's office on a number of occasions without however inquiring as to the reasons for his absence.

The defendant cannot successfully rely on the fact that the second writ, unlike the first, was not marked 'Urgent'. All judicial documents bear on the sealed envelope the words *'Pro justitia* — urgent delivery'. In addition the Commission cannot fail to know that the ordinary period for compliance with a writ of summons under Belgian law is eight days. Finally, the letters from the Belgian Ministry transmitting the two writs in question to the Commission were absolutely identical (Annexes 4 and 6 to the statement of defence). Moreover, as the applicant was at his post after the expiry of the period of leave set out in the medical certificate (on 13 October 1974) it must be asked why the writ of summons was delivered to him only on 4 November 1974.

As to the damage suffered, the applicant alleges that it was caused by the factual situation arising from the wrongful act or omission by the Commission. He initiated proceedings before the Belgian court because at that time he was convinced that the rent sought by his lessor was not justified in view of an agreement regarding a transfer of the lease. Nevertheless, since it subsequently appeared that this transfer did not release the tenant from his obligations the applicant paid the sums sought and therefore the only problem remaining to be solved is that of the validity of the writ in question and of the applicant's obligation to bear the costs involved.

As regards the costs of the objection and the allowance to cover those of the proceedings it is not yet known whether the applicant will be ordered to bear these costs or whether he will be awarded an allowance to cover them. The increase in fees, on the other hand, amounts to certain damage, but as in the other cases it is not possible at present to assess it.

Wishing to exercise 'tact both in relation to his employer and his counsel' the applicant finally seeks token damages of BF 1, and in the event of the Court's recognizing his rights he renounces the possibility of subsequently claiming the costs of the objection and the award to cover the costs of the proceedings.

The *defendant* maintains its argument that it must be considered that the applicant's absence was unauthorized at the time when the Commission unsuccessfully attempted to make contact with him at his place of work in order to transmit to him the legal document at issue. Although one of the medical certificates which was subsequently produced by the applicant might retroactively regularize such a situation, the fact remains that until that certificate was submitted the applicant's absence had to be regarded as unauthorized from the time when he should normally have returned to work.

In addition, the defendant denies that the Commission's intervention in the transmission of writs to officials of the Commission, resulting from oral agreements reached between that institution and the Belgian Ministry for Foreign Affairs, was intended to place the Commission under an obligation identical to that imposed on the bailiffs themselves. Further, the defendant states that it has no knowledge of the existence of the alleged circulars mentioned by the applicant and it confirms the arguments set out in the statement of defence as to the extent of its duty to ensure the transmission of legal documents and as to the responsibilities in this respect of officials who are absent without authorization.

Moreover, the request for damages is inadmissible in view of the applicant's

lack of a sufficient legal interest. From the information submitted by him (Annexes 11 to 13 to the reply), it is evident in fact that he was unjustified in opposing the judgment in default delivered on 25 October 1974: on the one hand, he did not contest the foundation of that judgment since he had in the meantime paid the sums at issue and, on the other hand, his objection was overruled by a judgment of 25 June 1975. In these circumstances the damage caused by the incurring of judicial costs involved in such an objection should be borne by the person concerned himself. There is no direct and necessary causal link between those costs and the wrongful act or omission with which the Commission is charged since the costs were caused by the harzardous or at least irresponsible step taken by the applicant in lodging an objection.

The applicant has stated that he has appealed against the judgment dismissing his objection. There are two possibilities: either the court with which the appeal has been lodged will overturn the judgment, and in this case the applicant will be shown to have been right to lodge an objection, if only to recover the costs, or the appeal will be rejected, and in this case it will be established once again that the applicant acted irresponsibly in lodging an objection.

In any event, it follows from these facts and from the statement made by the applicant himself, accepting the impossibility at the present time of assessing the amount of the costs involved in the alleged damage, that, since the costs are neither certain nor real and have not been directly caused by a wrongful act or omission on the part of the Commission, that damage cannot in the present case justify the applicant's legal interest in bringing proceedings.

The defendant thus concludes that:

(a) principally, the action for compensation is inadmissible as the applicant has no certain and real legal interest in taking proceedings;

(b) in the alternative, the action is without foundation as the Commission committed no wrongful act or omission and because the alleged damage is neither certain nor real and because there exists no direct and necessary chain of causality between it and the alleged wrongful act or omission on the part of the Commission.

IV — Oral procedure

At the hearing on 6 May 1976 the parties submitted oral observations.

The Advocate-General delivered his opinion at the hearing on 3 June 1976.

Law

1 By an application lodged at the Court Registry on 26 June 1975 the applicant, an official of the Commission of the European Communities in Brussels, seeks the annulment of the implied decision rejecting his complaint of 26 November 1974.

2 That complaint concerned, on the one hand, the revocation of the decision of the Commission of 27 August 1974 refusing to continue to pay the

applicant's remuneration to a bank established in Luxembourg and, on the other hand, a finding that a wrongful act or omission was involved in the delay with which the Commission transmitted to the applicant a legal document addressed to him.

3 In his complaint the applicant further sought the payment of damages for the non-material and material damage which he claimed to have suffered because of the two alleged irregularities.

4 The competent administrative authority did not reply to this complaint within the period laid down in the Staff Regulations and the applicant therefore brought an appeal in accordance with Article 91 of the Staff Regulations.

5 In view of the subject-matter of the complaint, the fact that the application is in two parts, one directed against the refusal of the Commission to pay the applicant's remuneration to a bank established in the Grand Duchy of Luxembourg and the other directed against the allegedly wrongful failure of the Commission to transmit as quickly as possible to the applicant the judicial document addressed to him, is justified by the desire to ensure the link which Article 91 (2) of the Staff Regulations establishes between an appeal and the complaint from which it arises and which must precede it.

6 Such a circumstance is not such as to render the application in the present case inadmissible.

7 The applicant argues first that the Commission's refusal to continue to pay his remuneration to a banking institution established in a Member State other than that of his place of employment is based on an erroneous interpretation of Article 17 (1) of Annex VII to the Staff Regulations.

8 In addition he argues that that provision forms no obstacle to the payment to a bank established in the Grand Duchy of Luxembourg of the emoluments of officials of Belgian and Luxembourg nationality posted to Brussels because of the position of Luxembourg currency in relation to Belgian currency in the context of the Belgo-Luxembourg Economic Union, which is not to be affected by the Treaty pursuant to Article 233 thereof.

9 Further, as the applicant benefited from such payment after his posting to Brussels until 22 August 1974, he claims that the withdrawal of this advantage as from that date disregards his vested rights.

10 Article 17 (1) of Annex VII to the Staff Regulations provides that 'Payment shall be made to each official at the place and in the currency of the country where he carries out his duties'.

11 It is evident from the text of this provision and from the other provisions contained in that article that the principle set out in the first paragraph is a rule having general scope, departure from which is possible only in the circumstances expressly defined in the Staff Regulations.

12 Article 17 (2), which enables an official to transfer part of his emoluments through the institution which he serves in the currency of the Member State in which his domicile is located or in that of the State in which the place of residence of a dependent relative is located, permits the regular transfer of these sums only up to a fixed amount or, where appropriate, to the extent strictly necessary to cover expenditure to which the official is committed in those Member States.

13 Paragraph (3) provides further that apart from these regular transfers, an official shall not be authorized to transfer sums which he may desire to have available in the abovementioned currencies 'save in very exceptional circumstances and for good reasons supported by evidence'.

14 Thus these provisions exclude the possibility of a regular transfer which covers all the remuneration payable to an official.

15 It follows that the exceptions which may be made to the principle set out in Article 17 (1) cannot permit an official to have his emoluments paid by the institution which he serves in a Member State other than that where he is employed since such payment entails the regular transfer of all the sums paid to the official.

16 Thus the refusal given by the Commission in its decision of 27 August 1974 is the result of a correct application of Article 17 of Annex VII to the Staff Regulations.

17 In these circumstances the applicant cannot claim the future continuation of the benefit of the means of payment in question.

18 The immediate withdrawal of such a benefit based on a situation which is not in conformity with the Staff Regulations cannot infringe the principle that vested rights must be respected.

19 It is evident from the written and oral procedure that the concession in question from which the applicant benefited as from the time of his posting to Brussels until the contested decision took effect was based either on a failure to act or on administrative tolerance on the part of the departments of the Commission concerned.

20 In view of the factual and legal circumstances surrounding such a failure to act or such an instance of tolerance, the continuation of this benefit for the period in question appears to be a measure of a precarious nature which entails no implied decision on the part of the institution which might create rights in favour of the person concerned.

21 Finally, the contested measure does not infringe Article 233 of the Treaty, according to which the provisions of the Treaty do not preclude the existence or completion of regional unions such as the Belgo-Luxembourg Economic Union.

22 Indeed, while it is true that the Belgo-Luxembourg Economic Union involves particular circumstances with regard to currency for the two associated countries it can however not be accepted that the possibility of derogating from Article 17 (1) of Annex VII to the Staff Regulations in favour of Community officials of Belgian or Luxembourg nationality is one of the indispensable conditions for the existence and functioning of the Union which may not be prejudiced by the Treaty.

23 For these reasons the application must be dismissed for lack of foundation in so far as it seeks the annulment of the Commission decision of 27 August 1974 and the payment of damages in respect of that decision.

24 The applicant further objects that the Commission committed a wrongful act or omission by transmitting to him only on 4 November 1974 a judicial document of 26 September 1974 which summoned him to appear before the Juge de Paix, Uccle, on 10 October 1974.

25 This belated transmission is said to have caused the applicant non-material and material damage for which he seeks compensation.

26 It is generally accepted that where civil law proceedings are commenced against officials of the Commission documents or legal notices addressed to officials are frequently transmitted to the Commission through the Ministry for Foreign Affairs so that the Commission may pass them on to the persons concerned.

27 Nor is it contested that as a general rule the Commission complies with the requests of the national authorities to transmit the documents in question to the persons to whom they are addressed and to obtain acknowledgement of receipt.

28 The defendant states that quite apart from the fact that this method of transmission is in no way foreseen in the Protocol on Privileges and Immunities, the Commission may not be liable for service of such legal documents except in so far as the official is present at his place of work or, in case of absence from work, he is on duly authorized leave.

29 Consequently the Commission is not obliged to go so far as to search for an official who is absent from work without authorization, and the consequences of such absence must in the final analysis be at the official's own risk and peril.

30 Moreover, the defendant states that having received by letter from the Belgian Ministry for Foreign Affairs dated 26 September 1974 two copies of a writ of summons addressed to the applicant it attempted on numerous occasions during the days following to inform the person concerned by telephoning his office.

31 As the applicant did not reply and as no medical certificate had been submitted to the administration the department responsible for transmission of the legal document concluded that the applicant was absent from work without authorization.

32 Furthermore, the department concerned, which had not been informed of the submission of a medical certificate on 10 October 1974, which certificate was dated 7 October and stated that the applicant's incapacity for work was to be prolonged until the 13th of that month, returned the legal document in question to the Belgian Ministry for Foreign Affairs on 10 October 1974.

33 By a letter of 24 October which reached the Commission on the following day the Belgian Ministry for Foreign Affairs again requested the Commission to take the steps necessary to transmit to the applicant the writ of summons in question.

34 This writ was finally served on the applicant on 4 November 1974 as the department responsible for delivering the legal document was only belatedly informed of the submission of the abovementioned medical certificate.

35 Whilst it is true that there is no provision of Community law which imposes on the Commission responsibility for transmission of legal documents addressed to its officials which are transmitted to it by the Belgian national authorities, nevertheless once it has agreed to undertake such transmission the Commission must make every effort to ensure that the document in question is delivered as soon as possible to the person to whom it is addressed or, if such delivery is not possible, that it is returned to the national authorities in sufficient time to allow them to examine other methods of delivery.

36 The fact that at the time when the legal document is to be delivered to him the official is absent from work without authorization may justify the application of disciplinary measures required in the context of the Staff Regulations but it cannot release the Commission from the duty to make every effort to deliver the legal document entrusted to it to the official concerned, where necessary by sending the document to the private residence of the person concerned or to any other address notified to it by the latter.

37 In the present case, as the Commission failed to effect such notification its conduct appears to constitute a wrongful act or omission such as to render it liable for any damage caused to the applicant.

38 It is common ground that due to the belated transmission of the abovementioned writ, judgment in default was delivered by the Juge de Paix, Uccle, against the applicant.

39 Nevertheless, the existence of material damage has not been established.

40 The same applies to the alleged non-material damage, as the applicant's reputation was in no way prejudiced by the Commission's conduct, in particular as he finally acknowledged the debt for the payment of which he had been summoned before the Juge de Paix, Uccle.

41 The application must therefore be dismissed.

Costs

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

43 The applicant has failed in his application.

44 However, under Article 70 of the Rules of Procedure, in proceedings instituted by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. Orders the parties to bear their own costs.

O'Keeffe Mertens de Wilmars Capotorti

Delivered in open court in Luxembourg on 24 June 1976.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 3 JUNE 1976 [1]

Mr President,
Members of the Court,

The proceedings on which I am today giving my opinion concern the question whether an official of the Commission, who is employed in Brussels, can require that his remuneration be paid to a bank in Luxembourg. In addition, a claim for damages is being made against the Commission for belated transmission of a writ of summons for a civil action in which the applicant in the present proceedings was involved.

The following preliminary observations are to be made as to the facts of the case.

The applicant was for a long time employed as an official of the Commission in Luxembourg. In October 1968 he was transferred to Brussels. Nevertheless the Commission at his request continued to pay his remuneration to a bank in Luxembourg. This went on after October 1971 when the applicant transferred his family residence which had previously been in Luxembourg to Brussels.

By a request submitted to the Commission on 22 August 1974 the applicant sought to have his remuneration paid to another Luxembourg bank. He did this in view of the fact that he had been granted a personal credit by this bank on condition that the remuneration payable to him should be paid to the bank giving credit, that is that the applicant should give to the Commission an appropriate irrevocable payment order to this effect which could only be withdrawn with the agreement of the bank. However by a reply of 27 August 1974 this request was rejected. This was justified by reference to the fact that the bank in Luxembourg to which the remuneration of the applicant had been paid until then under a standing arrangement had not given the appropriate clearance. In fact the clearance from this bank of 9 August 1974 was not received by the Commission until 3 September 1974. In

1 — Translated from the German.